

**Town of Duluth  
Planning Commission  
Meeting Minutes  
September 28, 2017**

The meeting was called to order at 7:00 pm by Vice Chair Wayne Dahlberg.

Present: Wayne Dahlberg, John Schifsky, Jerry Hauge, Larry Zanko, and Liz Strohmayer.

Absent: Jo Thompson and Dave Edblom.

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

The agenda was approved as presented.

**Public Hearing: Proposed Text Amendment to the Ordinance for Short-Term Rentals**

Sue introduced the hearing. She gave a brief history of short-term rentals (STRs) in the Township. Short-term rental issues were brought to the Planning Commission as early as 2006. In January 2008 the Zoning Ordinance was amended to allow STRs. In August 2008, the Commission requested a moratorium on STRs in order to study the issue. In May 2009, after a detailed study, the Commission recommended that STRs not be allowed in the Town based on their findings that they do not fit with the vision set forth for the Township in the CLUP; that they would be detrimental to maintaining the existing rural character of the Township; that tourism activity is not a dominant activity in the Township; and that enforcement is difficult and costly and concerns over the Town's budget were expressed at the annual meeting. The Town Board decided to continue to allow STRs in the Town. In July 2012, the Commission recommended to the Board that STRs be separated into high-frequency and low-frequency rentals. The Board fine-tuned the recommendation, resulting in the language that is currently in our Ordinance. The original intention was to allow high-frequency STR under a conditional/interim use. However the requirements for them were placed in Performance Standards allowing for the possibility of a variance from those requirements.

At the July 13, 2017 Town Board meeting the Board directed the Planning Commission to review the requirements for high-frequency short-term rentals and make recommendations to the Board. The Planning Commission recommended the changes that are being considered tonight.

The procedure for text amendments to the Ordinance is that the Commission holds a Public Hearing regarding the proposed text amendment and, with consideration of public input, makes a decision on the proposed text changes. The Commission then recommends the changes to the Town Board and the Town Board decides whether to adopt the proposed amendment or any portion thereof it deems advisable.

Sue continued. There are two types of STRs in the Township. There is low-frequency, which won't change and means you can rent 4 times per year. The high-frequency is for renting more frequently. Under the proposed changes, it will require a 2 acre lot and 50 ft setbacks. This is not necessarily a discussion on the pluses and minuses of STRs, it is a consideration of how the proposed Ordinance text changes would affect Town residents. There are two zoning districts in the Township that are likely to be affected. SMU-8 which is the Greenwood Road area and SMU-6. The minimum lot size for SMU-8 is one acre and the minimum setback for the primary structure in SMU-8 is 20 ft. Because so much of this zone district is built to these dimensional requirements, it would be unlikely that homes in the zone district would be able to meet the requirements to have a STR. In SMU-

6 the minimum lot size is 2 acres and the minimum setback is 35 ft, so STR opportunities could be somewhat limited in SMU-6. The key question is what would be the effects of limiting STR opportunities in SMU-6 and SMU-8. The new language would not affect other zone districts as much. It would be mostly along the shore.

Sue read from the Ordinance: “The Ordinance and the Zoning Map may be amended, supplemented, or appealed whenever the public health, safety, and general welfare would best be served by such action, in accord with the Town’s Comprehensive or Land Use Plan.” During the STR moratorium in 2009 the Commission completed a detailed study that included information gathered from open houses, articles, and other communities’ zoning ordinances and land use plans. Through this, they came up with the following criteria for considering STRs: the Comprehensive Land Use Plan, public health and safety, property values, and effect on character of the neighborhood.

Sue read some of the goals from the Town’s CLUP that could be applicable to STRs:

1. Provide for quality, controlled growth that respects natural resources and retains the existing character of the community.
2. Maintain the rural character of Duluth Township.
3. Encourage tourism activities that complement and do not detract from the community’s historic and rural character.
4. North Shore Corridor - 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.
  - i. Maintain and promote the North Shore’s current character, image, landscape, and economic base to serve residents and visitors.
  - ii. Limit and restrict nuisance behavior to promote civil sharing of the North Shore corridor.
  - iii. Ensure that public facilities fit into existing natural and community landscapes.

Concerns under public health and safety include frequent rental turnovers and their effect on the sense of community safety, and potential for fire hazards, drug use and drug labs.

The next consideration is the effect on neighborhood character. How well do STRs fit with residential neighborhoods?

Wayne asked what the language, as it is now in the Ordinance, allows property owners to do and if there have been issues with it.

Sue said that currently a property owner can request a variance for lot size and or setbacks from side yards. If the proposed language goes through, that will not be an option; a property owner will have to have 2 acres and be able to meet the 50 ft setbacks. Variances are only allowed for permitted uses, not conditional uses. The Town has had some negative experiences with STRs in densely populated areas. At the time of those problems, STRs were granted as conditional uses; interim uses were not an option.

Larry asked if she meant one bad property or experience. What was the recourse? Were any permits revoked?

Sue said that there was one property in particular that had a lot of problems. It was in a close neighborhood with small lots and the neighbors complained a lot and the police were called frequently. The Town ended up spending a lot of money on attorney fees for one STR. But the Town has also had STRs that have gone very well.

### **Public comment**

Dan Watkins spoke. He owns a home at, and manages, Dodges Log Lodges Dodges. In addition, he owns the home across the street from the resort. He bought it specifically to use as a STR. He also has a neighbor who has

a STR. He thinks the proposed change to the Zoning Ordinance is the wrong approach to solve the problem. If you have someone who is misbehaving, you revoke their permit. The most common concern is noise. He thought rules for STRs should be set and if someone doesn't adhere to the rules, rescind their permit. His lot is .49 acres, but no one is nearby. In the 7 years he has been at the resort, they have never had any noise complaints. His neighbors have bonfires, but it is never noisy. The Town should address individual problems as they arise.

Barb Crow spoke. She said that she was on the Planning Commission when the rules for short-term rentals were written. She said that there is no doubt that the intent at the time was to have a steadfast rule regarding the 2 acre and 50 ft setback requirements. She asked about the proposed language only imposing the requirements on high-frequency STRS and not on low-frequency STRS. Sue said that that was how it was intended to be.

Tom DeSutter spoke next. He asked if there is currently a permitting process in place to have STRs.

Sue said that there was. Someone wanting a STR would have to apply for a conditional use permit. In addition, if they could not meet the minimum 2 acre lot size and and 50 ft setbacks, they would have to apply for a variance.

He said that a better approach might be to rescind permits for STRs that have problems. If the rule is changed it might affect businesses that are not having problems. If someone wants to have a STR business but can't meet the criteria, they don't have the opportunity. There is a potential to negatively affect businesses.

Liz asked if there were any high-frequency STRs that will expire besides when they are sold. Would they meet the new requirements if the changes were enacted?

John said that there was the one on Wildwood and one on North Shore Drive that was set to 18 months. The Commission granted variances for both the lot size and the setback for the one on North Shore Dr.

Sue said she was not sure what happens if someone has an interim use and the rules are changed before the interim use expires and they can apply for a longer term permit.

Rolf noted that his understanding was that the way the requirements are currently in the Ordinance was unintended. The original intent was to prohibit rentals with less than 2 acres or not able to meet 50 ft setbacks.

Sue said that STRs have grown by leaps and bounds and are becoming very common. Motels and resorts are regulated, but there is not similar regulation for STRs.

Wayne said that they are still a major issue in the City of Duluth.

Dan said that he didn't agree with having to have 2 acres to have a STR. It is like a punishment.

Barb asked if there are STRs in the Township where the owner is present on the property. To her, that is important. The definition for STRs does not differentiate between someone who does not live locally at the rental and someone who does. Often, the local source maintaining and keeping an eye on the property is not reliable. Could the Commission consider revising the definition?

Larry said that a clause could be inserted that you would have the opportunity to have a STR if you live on the property, even if you can't meet the dimensional requirements. The current language in the Ordinance refers only to a contact person.

Wayne said that the contact person is supposed to be able to be at the rental within 30 minutes. How do you administer that?

Sue agreed that Barb hit on a key point. If your rental is on your property or next door, you are more likely to be stricter with quiet times, etc.

John asked who is going to enforce the rules. Typically, when there is someone on-site it is not a problem. The Ordinance could stipulate that if a contact person is used, that person needs to live in the neighborhood, but how close? Next door? How would that language be written and who would enforce it? His sense of the problem in the City of Duluth is that it is one of enforcement.

Sue said that there have been STRs in the Town that have had issues. Neighbors have felt like they were the ones enforcing the rules. It is different than someone living on the property, next door or across the street. The Town has limited resources for enforcement. The Comprehensive Plan is like an agreement of how we are all going to live together as neighbors. You could have language in the Ordinance such that if you can't meet the dimensional requirements, you must live on the property, directly adjacent to it or across the street from it. But there is always a possibility that the property owners are not good neighbors to begin with and, with a STR added into the mix, it might only get worse.

Tom asked if anyone has had their permit to operate a STR rescinded.

Sue said that it has been the Town's experience that it is very difficult to rescind a permit. It may take thousands of dollars in legal fees and a lot of time.

Dan asked about a probation period for STRs.

Sue said that interim uses, to some extent, can serve as that purpose. Since interim use became available, there has been one STR that had a 2 year interim use without problems which was subsequently given another interim use to be in place until 6 months after the property is sold.

John made a motion to recommend to the Town Board that high-frequency short-term rentals must have a minimum 2 acre lot size and be able to meet 50 ft side and rear yard setbacks. If those requirements cannot be met and the owner lives on, adjacent to (to be defined), or nearby (to be defined) the rental, they can still apply for a conditional use for a high-frequency short-term rental.

Liz seconded.

Jerry asked if, under this, a property owner were to apply for and get a conditional use for a STR on a lot that doesn't meet the dimensional requirements, could they come back for a variance for an improvement to the property that would benefit the STR.

Wayne said that each variance is considered on an individual basis.

Barb said that she thought it would be difficult to allow a variance request that would put the property out of compliance with any of the dimensional requirements for the use.

The motion passed unanimously.

### **Public Hearing: Dan Watkins Variance for a Deck**

Sue introduced the hearing process and the hearing. The application is for a variance from the road setback and from the side yard setback for a deck on Dan Watkins property at 5849 North Shore Road. The deck was constructed without a permit and was found to not meet the road and side yard setbacks. The property is in SMU-6 and the minimum nearest side yard setback is 25 ft and the minimum road setback is 110 ft. The deck is 8 ft

from the nearest side yard and 71.5 ft from the road. The house is a nonconforming structure on a nonconforming lot. Sue showed the vicinity map and the site map.

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:* Existing deck was improved to include a wraparound design that includes an eight foot dimension across the front facing the highway.

1A. Harmony with the general purpose and intent of the Ordinance. The Ordinance purpose: “maintain the community...balancing the many natural amenities, protect its rich natural resources”. This deck will allow this home to more fully enjoy and appreciate the wonderful natural resource of Lake Superior and encourage conservation through experiencing both the lake and the landscape.

1B. Comprehensive Plan: Vision –“Development along the shore is characterized by high quality design, appropriate scale of development...protection of natural resources.” Deck is designed by local craftspeople. It has super-solid drilled footings. It wraps around the home to afford a view of Lake Superior, which will heighten awareness of this natural resource.

Comprehensive Plan: Housing – “New housing promotes the communities rural character”. This deck allows direct access to nature and views of Lake Superior.

"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:* Existing deck and house were constructed in the 1950s. Upgrading existing deck and altering design to include 8 ft by 20 ft portion facing Scenic Drive.

a. Property owner proposes to use in a reasonable manner not permitted by the zoning ordinance. The existing house built in 1951 was already 79,6 feet from the center line of the highway – out of present zoning requirements. This deck only increases this by 8 feet.

b. Plight is unique to the property. The deck was added to an existing 1950’s home, grandfathered in to previous zoning requirements.

c. Variance will not alter the essential character of the locality. The street side of this home has been open for years. The deck will enhance the look and design of this home, make the empty space more attractive, and allow access to views of Lake Superior.

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

*Applicant response:* Yes

Dan said that he wasn’t aware that he needed a permit. Consequently, he is paying a monetary penalty on both the land use permit and the variance. It is just an 8 ft extension on the house which was already nonconforming. It is not extravagant and it adds to the house.

Larry asked how far the existing house is, without the deck, from the side yard.

Dan said that it was 8 or 10 ft. He said that he is on friendly terms with his neighbor and his neighbor doesn't mind.

John asked how close he is to his east neighbor.

Dan said that the lot is vacant. It belongs to John Schulz.

### **Public Testimony**

Two letters were received prior to the hearing, one from John Schulz and one from Charles and Carol Bille. Beth read the letters. (See attached.)

No other comments were received and no one was present to speak.

### **End of Public Testimony**

Liz Strohmayer made a motion to approve the variance. Larry Zanko seconded.

Liz Strohmayer made a motion to split the motion. Larry Zanko seconded.

The motion to split the motion was approved unanimously.

Liz Strohmayer made a motion that the variances are in harmony with the general purposes and intent of the Ordinance because the deck is an allowable and reasonable accessory structure as part of the Ordinance. John Schifsky seconded.

Wayne said that he thought it was generally in agreement. Due to the close proximity, he would like to see some screening. It could complement the deck structure and wouldn't have to interfere with the view.

Wayne Dahlberg made a motion to amend the motion that the deck be screened with shrubs and vegetation to soften and naturalize the deck and its surroundings from the highway and that the owner submit a simple sketch showing how he would satisfy the condition. The Zoning Director would review the plan. John Schifsky seconded.

Sue asked what exactly Wayne had in mind. What type of vegetation and how much? Boulders?

Wayne said that he would rather leave it to Dan's discretion, to be approved by the Planning Director.

Dan said that there is a ditch there, so that already prevents a car from crossing from the highway onto the property.

The amendment to the motion passed unanimously.

The motion, as amended, passed unanimously.

John Schifsky made a motion that the variances are consistent with the Comprehensive Land Use Plan because the project is characterized by high quality design and is appropriate to the scale of design. Jerry Hauge seconded.

Wayne Dahlberg made a motion to amend the motion by clarifying that the land be developed with respect for the physical limitation of natural resources so that a quality environment can be enhanced and preserved. John Schifsky seconded.

The amendment to the motion passed unanimously.

The motion, as amended, passed unanimously.

Larry Zanko made a motion that the property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance because the setbacks were in place due to the age of the house and the deck does not alter the situation in any significant way. Liz Strohmayer seconded.

Wayne said that it is an unusual situation in that it is quite a bit out of compliance with the existing Ordinance. The property owner inherited that when he bought the property. By the same token, people need to be aware that they need to check with the Ordinance about what is allowed and required before starting a building project.

The motion passed unanimously.

Liz Strohmayer made a motion that the plight of the property owner is due to circumstances unique to the property and not created by the property owner because he has built the deck in a reasonable manner considering the space and has actually improved the space and safety. Larry Zanko seconded.

The motion passed unanimously.

John Schifsky made a motion that the variance, if granted, will not alter the essential character of the locality because the deck existed on the side of the house and the owner extended it around the front. Decks are common on the North Shore in that area. Liz Strohmayer seconded.

The motion passed unanimously.

The main motion to approve the variances because they meet the criteria as stated above was approved unanimously.

The Findings of Fact and Decision were completed and approved.

The August 24<sup>th</sup> minutes were approved as presented.

### **Director's Report**

Sue said that the Town Board upheld the Planning Commission's decision on the last Bille variance application. Permits, especially for garages, are coming in. There will be a public hearing at the October Planning Commission meeting for Andrew Hagglund who is applying for a variance for access for a driveway onto the Beck Road. He does not own the land the driveway will cross, but has an easement. The Zoning Ordinance requires that he get a variance to access the Beck Road across the easement.

Jim Snell said he lives on Homestead Road adjacent to Beck Road and offered to show Commission members what the situation was.

Sue said that she expects another variance application for a STR.

John asked what the Board vote was in upholding the Bille variance.

Sue said it was a difficult decision. Rolf, Travis and Barb voted to uphold it and Corlis and Dave voted against.

Sue noted that the SMU-8 update is still on hold while the Commission continues to be busy with public hearings and other business. Hopefully, we will have time to get back to that soon.

### **Concerns from the Audience**

None.

Wayne said that he was not sure if he will be able to be at the next meeting.

The meeting adjourned at 9:35.





Beth &lt;bmullan.duluth@gmail.com&gt;

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**Watkins Variance Meeting - September 28, 2017**

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J Schulz &lt;schubud@gmail.com&gt;

Fri, Sep 22, 2017 at 9:58 AM

To: "PlanningZoning@duluthtownship.org" &lt;PlanningZoning@duluthtownship.org&gt;

September 22, 2017

To: Duluth Planning Commission

Re: Dan Watkins Variance Meeting September 28, 2017

We support Dan Watkins request for variances on his property at [5852 North Shore Drive](#)

Dan has done great things with a home he bought that was in dis-repair. The foundations were sagging, the electrical system had extension cords sealed in the wall and the kitchen was a mess. Dan faithfully upgraded all of these and added a great deck that makes use of the exterior space and currently provides views of Lake Superior. The deck was constructed on pilings that extend to bedrock, not required but an additional safety feature.

The east side yard setback only comes into play because the house is closer to our property than current zoning allows – the house was built in 1950 and is grandfathered in. Likewise the road setback – the 8 foot deck extends from a house already out of compliance to current zoning regulations.

These variances, if granted, are consistent with the Comprehensive Land Use Plan because it permits housing consistent and similar to neighboring residences, which this does, and maintains the rural residential nature of the locale. Dan is seeking to use the property in a reasonable manner not permitted by the ordinance setbacks. His plight is due to a house that is already non-conforming. These variances will not alter the essential character of the locality because there are similar sized decks in the area.

Respectfully

John Schulz &amp; Becky Norine

[5848 North Shore Drive](#)

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Thanks,  
John Schulz

**CHARLES & CAROL BILLE**  
4660 ALLENDALE DRIVE  
WHITE BEAR LAKE, MN 55127

September 25, 2017

Ms. Beth Mullen, Secretary Planning Commission  
DULUTH TOWN HALL  
6092 HOMESTEAD ROAD  
DULUTH, MN 55804

Dear Ms. Mullen,

We are in receipt of the notification of Dan Watkins' variance application and the hearing scheduled for September 28th. Having been aware of the Zoning violations committed by Mr. Dan Watkins over the past year regarding set-backs, lot size, and required permits for the construction that took place at our former home at 5849 North Shore Drive, it was extremely difficult to listen to the letters of opposition to our building project that were submitted by Mr. Watkins during our public hearings over the past six months. However, we do not believe that focusing on any of Mr. Watkins' comments are of any value to anyone, so we will refrain from discussing that subject any further.

We believe that Mr. Watkins has done a very nice job of remodeling and upgrading our former home, which will hopefully have a positive influence on our neighborhood and our community. For that reason, we do not object to Mr. Watkins obtaining the variances that he has requested from the Town of Duluth Planning/Zoning Commission to retain the accessory structure.

It is also our understanding that Mr. Watkins has been and will continue to rent this property on a short-term basis, which requires a conditional use permit from the Town of Duluth according to Town Ordinances. Again, we do not object to Mr. Watkins obtaining the permits necessary to conduct his commercial resort operations in an orderly and legal manner.

One condition that we would like the Planning/Zoning Commission to consider for this property is regarding a safety screening of trees along the road side. With a deck so close to the Scenic Highway, there is nothing to inhibit a vehicle from crossing the yard and causing serious injury to guests who may be staying at the house, or on the deck. This was a condition applied to our variance approval, and feel that for safety reasons, it should be required on Mr. Watkins' property.

Respectfully submitted,

Chuck and Carol Bille