

**Town of Duluth
Planning Commission
Meeting Minutes
February 27, 2020**

The meeting was called to order at 6:30 pm by Chair, Liz Strohmayr.

Present: Liz Strohmayr, Wayne Dahlberg, Jerry Hauge, Larry Zanko, Dave Edblom, Pam West and Angela Wilson.

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

The agenda was approved as presented.

Bergstedt/Nakamura Short-Term Rental Public Hearing

Sue introduced the public hearing and the process for the hearing. Rita Bergstedt and Amy Nakamura are applying for a conditional use for their high-frequency short-term rental which is currently operating under an interim use permit that expires in April. The rental is located at 5940 River Road. They would like a permanent use, which is typically a conditional use. Another option is an interim use that is in effect for as long as the property is owned by the applicant.

Sue showed the vicinity map and the site map with setbacks. She reviewed the zoning requirements for the zone district. In 2017 they were granted an interim use for their short-term rental for a period of three years. They had to meet the high-frequency short-term rental requirements in the Ordinance as well as the conditions that were added by the Commission. The proposed use as described by the applicants is:

Renewal of 3-year interim use to permanent. It is a 3 bedroom, 2 bathroom guest cottage. Newly built in 2017, finished in April 2018, for the purpose of having a home-based business of operating a vacation rental. Our first guests came in May 2018 and our only advertising is through VRBO and Airbnb. Our cottage and our guests have been very well received and we have 100% of all renters giving us 5 stars. We have achieved “superhost” designation and have volumes of personal guest notes of appreciation.

For the Community Participation Report, 26 neighboring property owners were contacted. Twenty-two supported the short-term rental and/or it had no effect on them. One did not support it because he “wasn’t for commercial development down there.” Three neighbors did not respond. In addition, the Town has not received any complaints regarding the interim use.

Rita said that their short-term rental has been a wonderful experience and they have had amazing guests. They have found it to be a wonderful way to have a home-based business. She asked, if the conditional use is approved, could the condition that they can only rent for 250 nights per year be changed. They would like the opportunity to rent more.

Amy said that people come from all over. They contribute to the local economy, asking about restaurants, the beach, where to go.

Wayne asked if there have been issues with adjoining property owners. He said that there was originally a problem with their neighbor who held the easement to their property. That neighbor thought having a short-term rental usurped the original intent of the easement.

Amy said that everything has been good. They have been talking, communicating, and building relationships.

Sue said that that neighbor has passed away.

Rita said that his wife has had a difficult time over the past 3 years. They have talked more with her. When she got the notification letter she called and asked if she should do something. She didn't want to write or come to the meeting, but she asked that they convey that she has no issues.

Angela asked how many days they would like to be allowed to rent.

Amy said that they would like to not have a limit.

Rita said that she is not aware of restrictions on other short-term rentals in the area. She didn't think they would ever go to 365 days.

Sue said that the original intent of the limit was to minimize the potential effects on neighbors.

Public Comment

Beth read two emails sent in support of the rental.

The first was from Stacey and Shellie Seering at 5902 River Road.

I am writing this email in support of extending Rita B. and Amy N's conditional use short term permit. Our property is directly adjacent to their rental property and we have had absolutely no issues with their guest on our land or using our river access. They have very specific rules for their guests and always meet them in person on their arrival date. We also feel it is to the advantage of the township to invite visitors for such stays in order to support local businesses and possibly get new owners of land and houses for sale on the Northshore.

The second was from Keith and Andrea Darsow at 1691 Wildwood Rd.

Andrea and I are writing this in support of Rita and Amy continuing to be able to use their property for their short-term rental. Over the last two years we personally have not been inconvenienced in any way, nor have we noticed any change to our neighborhood. In the last two years we may have seen a very slight increase in traffic but in no way do I feel this property has contributed to that. It should be noted that within the last two years there are three new teenage drivers on our short little road that have received their drivers licenses and that is cause for any noticed increase. With young drivers brings many friends who also drive their vehicles on our road as teenagers come and go. At least that is the case in our busy household. I can also say that I personally recognize over 90% of the traffic on our road which I feel means there have not been an increase of "strangers".

We are in full support of VRBO type rentals as they are the preferred type of accommodations our family and friends use as we have found them to be much more comfortable and accommodating to our types of travel.

I personally thought odd of the idea to grant a two year trial of their business. If after the two years they were denied, what then would be the case? It would lead to either a nice piece of property sitting vacant and deteriorating, or having to possibly sell and the property being purchased by someone or a family living their full time. I think either of those options would cause more impact to our road than an occasional visitor or family being there on a very limited number of days.

Don McTavish spoke. He lives near the rental property. He said that he has had no problems whatsoever with the interim use. He was concerned, though, that if the property were to be sold the situation might not be the same.

End of Public Comment

Liz made a motion that she would like to hear the request as an interim use because she would like to assure that the permit stays with the current owners and, if there were a change in ownership, the new owners would have to go through the conditional use application process. Larry seconded.

Angela moved to amend the motion to say that because of the nature of the use in that neighborhood, health and safety could be an issue if the property ownership changed and closer monitoring of the property could be required. Liz seconded the amendment to the motion.

The motion to hear the use as an interim use passed unanimously.

Angela moved that the four conditions established with the original interim use be rescinded because the current owners have demonstrated that they are not an issue. Liz seconded.

Liz said that she didn't see a need to limit the number of rental days. She thought there was something dictating the maximum number of overnight guests.

Sue said that the Ordinance doesn't speak to the allowable number of guests.

Sue said that the Ordinance indicates that the allowable rental frequency will be established as a part of the conditions of the permit.

Wayne thought that the condition allowing no more than 7 persons in a rental party was reasonable since the rental is a three bedroom unit.

Sue asked if the State Health Department has any restrictions on the number of guests.

Rita said they didn't. She said that they could pack more people in by rolling out sleeping bags, but that's not the type renters they get.

Amy said that they would like that limit to be higher to allow some latitude. Sometimes there is an extra adult and or children in a rental party.

Liz said that at the time it made sense to cap it. The Commission has done that historically. But she thinks it could be raised to allow for flexibility. The rental history shows that they had 7 people just twice. Most rental parties were 2 to 6. Seven seems limiting.

Rita said that they have felt like they have had to turn people away because children put them over the maximum number allowed. They don't necessarily want 10 adults, but would like flexibility.

Angela said that she feels confident that these owners will continue to run their business responsibly. There have been no complaints.

The motion to rescind the four previous conditions was approved unanimously.

Angela moved that the interim use be approved with the term of the interim use to be as long as the current owners own the property plus a period of 180 days. Pam seconded.

Jerry said that he thought 60 days would be enough time for the new owners to apply for a permit. And if the new owner were to decide not to rent, they might not want reservations out 6 months.

Larry agreed that 60 days seemed like a fair enough time to give notice that the place has sold and may not be available for rental.

Dave said that 60 days was too short. Any snag in the process could set it back.

Rita agreed. She said that the process doesn't happen quickly – there would be a lot to do within two months to hold a public hearing.

Angela amended the motion that the interim use be granted for as long as the property remains under current ownership plus 90 days past the date of transfer of the property. Dave seconded the amendment to the motion.

The motion to approve the interim use with the term of the interim use to be for as long as the current owners own the property plus a period of 90 days was approved unanimously.

Amy noted that although she was at first reluctant, contacting all their neighbors for the community participation report was really fun. They enjoyed talking to everyone.

End of Public Hearing

The January 23 minutes were approved as presented.

Director's Report

Sue said that there was one comment on the proposed CLUP from the open houses. The public hearing will be on April 16. So, there will be two meetings in April, the public hearing and the regular meeting.

Mike said that he was a part of the meeting with the attorney provided to the Township by Minnesota Association of Townships regarding the Bille court case. The court is going to hear it again. The attorney said that a lot of different scenarios are possible because of the history of this particular property. The hearing date has not been set yet.

Sue said that the Supreme Court appointed a judge and it will be heard in Anoka.

Mike said the Board discussed the Town's MS4. The proposed fee for stormwater could be expensive. There are two elections coming up, the presidential primary and the Township election. There is one person running for two positions, so the second position will be determined by write-in.

After a break to put together the Findings of Fact and Decision document for the interim use permit, Sue reviewed the State statutes regarding childcare programs and the different levels of childcare.

Lane Schraufnagel and Zach McAlear arrived to discuss their plans for a Class C-3 Group Family Childcare program at the French River Lutheran Church. They would be renting space in the church and both of them would be teaching.

Sue said that the State considers a program with 14 or fewer children a permitted single-family residential use. The Town issues land use permits, not building permits, so, if permitted, it would be for an accessory use. The primary use of the building is the church.

The City of Duluth defines an accessory day care center as:

A private or public establishment licensed by the State that regularly provides one or more dependents with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods less than 24 hours a day, for gain or otherwise, as a secondary and subordinate activity to a permitted or approved special use of the property.

The State definition is

A licensed nonresidential program with a licensed capacity of 12 or fewer persons and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445, to serve 14 or fewer children shall be considered a permitted single-family residential use of property...

The Commission agreed that the State definition fit the Township purposes better.

Sue said that there is a list of uses in the Ordinance, but childcare is not one of them, so the Commission needs to determine where in the Township it would be allowed and if any performance standards apply. The church is in zone district SMU-8. According to the Zoning District Land Use Matrix in the Ordinance, single family uses are permitted in SMU-8, so child care would be permitted. One of the requirements the City of Duluth has is to provide for off-street safe drop off and pick up areas. Although this is not an issue in this case, it might be good to include a similar requirement in the Township. Liz said that the County already requires that. It was decided that in that case, it didn't need to be a part of the Township's Ordinance.

Angela said that if we felt enforcement was needed and the County wasn't doing it, we would need to have the language in place to enforce it.

Liz said that at any time, anyone can make a report to the Saint Louis County licensor, whether a neighbor, a parent or even someone just driving by. The licensor is required to come out at least one time per year and generally comes out more frequently if a report is made. The County holds the license and makes the decisions regarding it.

Sue asked Lane and Zach how close they are to licensure.

They said that the application is currently being reviewed and they have been told it takes 2 to 3 months. They hope to be open in the fall.

Liz said that if at some point they wanted to expand their program and change from a Rule 2 license to a Rule 3 license (center-based), there are additional factors involved so would be another process.

Lane said that a center-based facility is licensed through the State and would be a new process for them, too.

Sue read the State rules for a multifamily use. In our Township, a center-based facility would be considered a multifamily use and would only be allowed in the Township in commercial zone districts. According to the definition for variance, it might be possible to apply for a variance for a Rule 3 operation.

Sue said the Commission needed to decide if a land use permit is required. It would be under Permit-Other, which is \$110. If the Town required land use permits for child care, it would inform the Town as to how many child care programs there are in the Township and it would also make the police and fire department aware of them. Existing programs would be grandfathered in.

Angela moved that the Town require a one-time permit at a fee of \$110 for family day care at the proposed location at French River Lutheran Church. Wayne seconded. The motion passed unanimously.

Angela moved that we add to the Zoning District Land Use Matrix of the Ordinance the use of accessory child care for Family Child Care Classes A, B1, B2, C1 through C3 and D, as defined by Minnesota Rules, chapter 9502. The use must meet all County, State and Federal requirements. Refer to Minnesota State Statute 245A.14: Special Conditions for Nonresidential Programs Subdivision 1. Permitted single-family residential use. Jerry seconded. The motion passed unanimously.

The meeting adjourned at 8:48.