

**Town of Duluth
Planning Commission
Meeting Minutes
October 27, 2022**

The meeting was called to order at 6:31 by Chair Angela Wilson.

In attendance: Angela Wilson, Dave Edblom, Pam West, Justin Osadjan, Blane Tetreault, Dave Meyer, and Tony Mancuso.

Absent: No one.

Also attending: Sue Lawson, Planning Director; Liz Strohmayer, Planning Assistant; and Tim Strom, Town Board liaison to Planning.

The agenda was approved as presented.

The September 22 minutes were approved as presented.

Hoffman HFSTR IUP Extension Hearing

Liz introduced the hearing and presented the request. Nathan Hoffman is requesting an extension of the Interim Use Permit for a high-frequency short-term rental at his property at 1690 Aho Road. His original Interim Use Permit was granted October 28, 2021, commencing December 1, 2021 for a period of one year with a maximum number of rental days of 120. A condition was added requiring dogs to be leashed when outside. The rental usage during that time was approximately 104 nights, with an average of 3 nights per rental and an average of 6 people per rental.

The property is located in Zone District FFL-1 and it meets the minimum lot size and all setbacks for the district except for setback from the road.

Nathan said that the rental has been working out well and he hasn't had any problems to date. He said that he works closely with the property's nearest neighbor, Bruce, to avoid problems. He has much more communication with Bruce than he would likely have if he weren't renting the property.

Liz said that no complaints had been received by the Township. In addition, a notification went to the neighboring property owners for this hearing and no comments were received in response to that.

Tony asked Nathan what renters tend to do when they come up.

Nathan said that they often use the home as a kind of base camp for hiking or visiting Duluth and the North Shore.

Angela asked if he hoped for the same terms as before for the extension of the rental.

Nathan said it has been good to have people there, especially during the winter. He wouldn't mind being allowed more rental days. The rental goes through Heirloom and is advertised on Airbnb. Both work to avoid any party situation. The rental seems to be used mostly by people who enjoy the area. He wouldn't mind being able to rent the property more nights, but he doesn't want to overrent it, either.

Liz read the criteria from the Ordinance to be considered for approval of an extension of an Interim Use Permit.

- 1) Demonstrated compatibility with the neighborhood.
- 2) Any detrimental effects documented during the period of the interim use.
- 3) Any increased costs to the Town as a result of the interim use.

There was no public testimony.

Tony asked if the Commission were to decide to extend the rental for, say, 3 years, are there criteria by which the permit could be recalled?

Sue said that a permit can be rescinded, but that it's not an easy thing to do. There are criteria, but it's a long process and could be expensive.

Dave Meyer said that he would be in favor of extending the permit for 3 years. There is one close neighbor and there are no issues with that neighbor. The property owner doesn't want the type of renters that cause problems.

Angela said that if we extend a permit for a number years and problems come up during that time, then it's on the Town to remedy the situation. But if we extend a permit on a yearly basis, we can treat it like a report card and the onus is on the applicant to show that it is meeting the criteria for extension. It gives the Commission a chance to check in and make sure everything is going okay. It also allows for not extending a permit instead of trying to rescind it. It seemed to her that it would be a good use of the Commission's time to have more frequent check ins. It lets the community know that the Town is keeping an eye on things and allows for frequent community input. Hopefully, it would not be a huge imposition on the property owner's time. It would be investing the least amount of resources for the most benefit. She would be in favor of extending the rental for one year and allowing 150 nights, with the same conditions as previously imposed.

Justin noted that the Commission had a similar request for a short-term rental extension two months ago and gave that property owner a one-year extension.

Pam said that she liked the idea of checking in. Short-term rentals have a high profile right now so letting the community know the Town is keeping an eye on them is good.

Justin noted that 120 days is twice the number of days allowed under the current Ordinance. Does it make sense to increase that to 150?

Tim said that this situation is a use that is grandfathered in under the old Ordinance. Typically, if you are grandfathered in, you are allowed to continue the use, but not expand the use.

Angela moved to approve the extension of the high-frequency short-term rental, including all existing conditions, for a one-year period for a maximum of 120 rental nights beginning December 1, 2022 through November 30, 2023.

Justin seconded and the motion passed unanimously.

Proposed Changes to Current Ordinance – HFSTR Definition

Sue said that she had someone interested in having a high-frequency short-term rental who wanted to apply for variances from the following requirements: that the HFSTR be the applicant's primary residence, that it could be rented for no more than 60 days, and that a resident could have only one HFSTR in the Township. Sue's understanding was that variances are typically for dimensional requirements, not for uses. She discussed the matter with Tim and the Town attorney.

Tim agreed that generally there is no such thing as a variance to a use. But it's not always clear if a matter pertains to a use or a geographical issue. There was an instance of a care home that was allowed six residents that wanted to be allowed eight residents. He would consider that a variance to a use and, hence, not something to which a variance could be applied. But the Court of Appeals said that the number of people was a geographic change, not a use, so it could be heard as a variance. This example underlines the fact that it's not always easy to

discern between a geographical issue and a use. The person inquiring about HFSTRs wanted two. The Ordinance clearly says that only one is allowed per owner. If a use is prohibited in a particular district, you cannot apply for a variance for that. In this person's district, HFSTRs are allowed. Scott thought it could possibly be argued that that makes it a geographical issue. The applicant would still have trouble showing that theirs was a unique situation. Sue's suggestion to move the language from the performance standards for HFSTRs to the definition for HFSTRs would make it more difficult to argue that it was a requirement that could be altered through a variance.

Liz said that because many of the current Commission members were involved in the CLUP revision and subsequent Ordinance changes, if someone came before the current Commission with this variance request, it would be clear to the Commission that that was not the intent of the Ordinance language. The question is how to make it clear to subsequent Commissions who may not share this history.

Blane said he did not see how anyone could get around the requirements as they currently exist in the Ordinance so he didn't see the need to make a change.

Sue said that the language makes sense the way it is, but it would be clearer if it were in the definition. It would not be as easy to circumvent.

Tim said that based on statutory language, someone could argue that the use is allowed in the district, hence they should be able to apply for variances on the terms. If the terms are in the definition itself, then it's stopped immediately and the use is not allowed in the district outside the defined terms.

Tony moved to recommend to the Town Board that the requirements for HFSTRs from Section 20, Article A, Special Requirements and Conditions, Numbers 2, 3, and 4 be moved to Article II, Definitions to further clarify the use.

Angela seconded.

The motion passed unanimously.

Justin asked if the Commission wanted to develop standards for extending HFSTRs. Should we stipulate that the number of rental days will not be increased and that extensions will be required yearly?

Sue noted that per Tim, grandfathered uses are grandfathered as they were originally permitted and are not expanded in subsequent extensions.

Angela also noted that there would have to be a really good reason to reduce the number of rental days. But she agreed with Justin's thinking that if that is what the Commission is going to do, it be understood up front.

Liz asked if it made sense to make future HFSTR permits subject to these conditions. Any future HFSTRs would be permitted under the stipulations that the home be the owner's primary residence and that only 60 rental days per year are allowed. Under these conditions, it might make sense to extend a permit for a longer period of time.

Sue said that the \$100 fee to apply for an extension is not excessive. She agrees with Angela's reasoning that it is easier to maintain control when renewing on a yearly basis.

Blane said that in the past we've indicated that if a HFSTR gets past the first year without problems, then it may be extended for a longer period. How many do we have that are grandfathered in?

Beth looked it up and said that there are only three HFSTRs in the Township that are permitted for a period of time that is less than when the property changes ownership.

Justin said that as we get new HFSTRs, should we only permit them for one year at a time?

Angela thought that made sense. The question is, do we want to let people know that their HFSTR permit is going to be on a year-to-year basis?

Tim noted that you don't want to be "arbitrary and capricious." But nor do you want to tie your hands. Situations can be unique and you might want to keep your options open. If you have reasons for a decision or action, it's not considered arbitrary and capricious.

The Commission agreed to leave the extension period undefined at this point. It may make sense in the future to extend rentals for longer periods of time.

Proposed Changes to Current Ordinance – Accessory Structures in SSUR-1

While working with someone on the shore, Sue discovered that accessory structures between 1000 and 2000 sq ft are shown as not allowed in SSUR-1 in Table 5.3. She believes these were meant to be allowed in SSUR-1 with performance standards.

Angela moved to recommend to the Board that Table 5.3 be updated such that Accessory Structures between 1000 and 2000 sq ft are allowed with performance standards in SSUR-1.

Justin seconded and the motion passed unanimously.

Proposed Changes to Current Ordinance – Interim Use Fees

Sue said that there is currently no fee specified for an interim use application. Short-term rentals are listed separately, but HFSTRs are shown as conditional / interim. Since HFSTRs are only allowed as interim uses, the word "conditional" should be deleted. The fee for a low-frequency short-term rental is \$68.

Angela moved to recommend to the Board to remove the word "conditional" from HFSTR in the fee schedule to align with the use being allowed only as an interim use and to increase the annual fee for a LFSTR from \$68 to \$100.

Pam seconded and the motion passed unanimously.

Liz said it would be a good idea to add a fee for a generic interim use application. As it is, the only interim use indicated is under short-term rentals so an interim use application that was not a short-term rental would fall under the category of Fees Other than Noted which is \$120.

Angela said that \$120 is not nearly enough to cover the costs of holding a hearing. If the word "interim" were added to each applicable conditional use in the fee table, would that suffice?

Sue said that it would fit well to have the option of making an adult business an interim use. It would also cover anything not specifically listed as an interim use to add "interim" to the Conditional Use Permit - Unless Noted line. That fee is \$425.

Angela moved to recommend to the Board that the fee table be amended such that "Conditional Use Permit" under "Conditional Uses" be amended to "Conditional /Interim Use Permit" for each applicable instance so that Interim Use Application fees are the same as the fee currently set for Conditional Uses.

Justin seconded and the motion passed unanimously.

Sue said that the next step in the process for an Ordinance amendment was to hold a public hearing on it. The Commission then considers comments from the hearing and makes a recommendation to the Board. The Board

considers the recommendation and can then reject some or all of the recommended changes or enact some or all of them with or without additional changes.

The November Planning meeting date falls on Thanksgiving, so the Commission agreed to meet on November 30 instead, and hold the hearing for the Ordinance amendments at that meeting. December 15th was set as the date for the December Planning meeting if a December meeting is needed. If there is no business that needs to be attended to, the meeting will be canceled.

Wedding / Gathering Commercial Use Discussion

Liz said that there has been an individual looking at land in the Township with the intention of living on the property and also having a barn-like structure to host events like weddings, conferences, etc. Would this use fit under home-based business or perhaps market farm?

Tony asked if they sent a proposal detailing the use. He would have a lot of questions about such a use. There are many issues and rules involved in having a business like this. There used to be a place called The Brass Rail in Cloquet that hosted similar events. There was a lot involved - parking, safety, security, traffic, trash, hours, alcohol, prior notification. This type of use is a deep use; not at all simple.

Sue said that whatever it was called, it would be a conditional use unless the property were rezoned. There would have to be conditions for everything Tony just talked about.

Liz asked if these folks were intent on applying, would they apply under the home-based business use?

Sue said that they could bring a proposal to the Commission and ask if it would be considered a home-based business.

Blane noted that the market farm use is limited to four events per year.

September 22, 2022 Minutes

The September 22nd minutes were approved as presented.

Director's Report

This was Sue's last meeting as Planning Director. She thanked the Commission and her colleagues.

Everyone present contributed their thanks and appreciation to Sue. She will be missed.

The meeting was recessed while the decision and findings document for the Hoffman hearing was drafted.

When the meeting resumed, the Commission reviewed the decision document and Tony moved to approve it as presented. Blane seconded and the motion passed unanimously.

The meeting adjourned at 9:04.