

**Town of Duluth  
Planning Commission  
Meeting Minutes  
August 25, 2022**

The meeting was called to order at 6:40 by Chair Angela Wilson.

In attendance: Angela Wilson, Pam West, Blane Tetreault, and Justin Osadjan.

Absent: Dave Edblom, Dave Meyer, and Tony Mancuso.

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

The agenda was approved as presented.

The July 28 minutes were approved as presented.

**Forde/Hannah HFSTR IUP Extension Hearing**

Sue introduced the hearing and presented the request. Sean Forde and Genise Hannah are requesting an extension of the Interim Use Permit for their short-term rental at their home at 5420 McQuade Road. The applicants were not able to be present, but Sean was available by phone in the event any questions arose. The Ordinance that should be considered for this hearing is the Ordinance that the Use was granted under, Ordinance Number 5.

Sue read the applicants' description of the use from the application: My husband and I work in Korea as international school teachers during the school year but bought the 5420 McQuade property to come home to during the summer. To offset the costs while we are away, we would like to use the property as a short-term rental.

The property is located in Zone District RR-1 and it meets all setbacks for a short-term rental. It is slightly above maximum impervious surface area.

The original Interim Use Permit was granted on August 26, 2021. The conditions on the permit were:

- 1) The rental will be allowed for a maximum of 200 days during the next year.
- 2) The property lines will be delineated to make them clear to renters.
- 3) The use will be allowed to start on September 1, 2021.

Their rental records show that they rented a total of 154 nights as of June 24, so the number of rental nights might be higher now, but is still under the 200 allowed by the permit.

Sue 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.

She said that the Town has not had any complaints pertaining to the rental. She talked to a neighboring resident who had received the hearing notification and that person reported that they had not experienced any problems related to the rental.

Beth read an email comment from Mary Robinson.

Greetings,

We received the request regarding renewal of the short-term rental located at 5420 McQuade Rd.

As we expressed when this request was initially made, if it is made clear to renters that hunting is forbidden on our adjoining posted properties, then we have no objection to the use of their property for short term rentals. However, if this is not made clear to the renters, then we are absolutely opposed. As owners of these adjoining properties, we are extremely concerned about renters accessing our property to hunt, either intentionally or from lack of knowledge of property boundaries.

Thank you for your thoughtful consideration of our concerns.

No other comments had been received and no one was present at the meeting to comment on the extension request.

Justin said that it seemed to him that it has been a good short-term rental. They have met the conditions and there have not been reported problems.

Pam asked if the applicants have been made aware of the Robinsons' concerns. There has only been one hunting season since the rental commenced. She said that it needed to be made clear that the property boundaries be respected. It should be a part of the rules that are provided to renters.

Angela said that she does not like that the owners are so far away. She would prefer that they were closer to keep an eye on things.

Blane said that considering the usage and the fact that there have not been complaints, he felt the rental was working out well.

Justin said that the 200 night limit was originally established to allay neighbor concerns. Would the Commission want to continue to limit the rental?

Angela noted that someone applying now for a high-frequency short-term rental would not be allowed to rent for more than 60 days. This limit was based on discussions the Commission had that HFSTRs could cause long-term difficulties in the communities they were located in. The policy that was set as a Commission is that HFSTRs in residential areas of the Township should be sparingly allowed. This rental was allowed to rent for 200 nights, but that is no longer the norm. She would consider renewing the permit for another year and maybe further limiting the allowed number of rental days to the current maximum.

Liz said that the request is being heard under the old Ordinance. There would need to be substantial concerns to reduce the number of rental days by that much. There are many things in the Town that are grandfathered in that would not be allowed under the current Ordinance. Consider that this is one HFSTR out of a handful in the Township that have these liberties. We will not have these going forward.

Blane agreed that it would not be right to change the permit in such a substantial way. STRs granted under the old Ordinance have broader privileges. It would not be right to reduce theirs for reasons that are not a part of the required criteria.

Angela felt that a short-term rental renting 200 nights a year was not consistent with the neighborhood.

Justin said that he would like to do a longer extension, maybe 3 to 5 years and then stipulate that any subsequent extensions would be under the new Ordinance. He said we all have misgivings about STRs, but he thinks this one is doing well.

Angela asked about extending it for a longer period but then having it expire at that point.

Sue said that the Ordinance says you can apply for an extension to an Interim Use Permit. The use would have to not meet the criteria for an extension to be denied. It isn't an arbitrary decision.

Justin made a motion to extend the Interim Use for the rental for 3 years with the same 200 day limit in place. They have met the requirements and have run it without problems.

Angela seconded.

Tim said that at one point a number of years ago, the concept of amortizing a grandfathered use was popular. The idea was that if a use is grandfathered in, it is an economic benefit. The local zoning authority would say that after a period of time, say 5 years or 20 years, the benefits of the grandfathered use had been realized and the use was ended. This was met with resistance from the courts and such amortization is no longer legal in MN.

Pam said that she would prefer to renew it for only one year. She would have a difficult time at this point extending it for three years. If it went one more year without problems, she would be willing to extend it for a longer period of time.

Justin said that it was typical for the Commission to allow an Interim Use to continue until the property changed ownership following the successful completion of the initial term of the Interim Use. He felt it was inconsistent and unfair to give them only one year on the extension. They were initially limited to one year due to concerns expressed by neighbors. The message was that if things went ok for one year, which they have, we would consider a longer term.

Angela said that there is no precedence for a rental like this. The unique circumstances of this rental are that the owners live half way around the world. She felt that the appropriate consideration would be to repeat the conditions of the original permit.

Blane noted that there is another STR owner who lives in the Twin Cities. This is not that different.

Sue read the criteria for an Interim Use Extension again. She asked under which of those criteria would they deny the extension.

In response to a question from the audience, Sue said that revocation of a permit can be very difficult and there are a lot of costs involved. The Township went through this a number of years ago. It was costly and the documentation was arduous. It is not a simple thing.

Angela said that was further reason to have someone come back every year for an extension. It would be easier to deny a request for an extension than to revoke a longer-term permit.

The motion failed with Justin voting in favor and Pam, Angela and Blane voting against.

Angela moved that the Interim Use Permit for the high-frequency short-term rental be extended for one year with a limit of 200 rental days per year. Pam seconded.

The motion passed with Angela, Pam and Justin voting in favor and Blane voting against.

## Munio Variance Request

Liz introduced the hearing and presented the request. Andrew Muonio was present and was requesting a variance from the requirement that the height of a non-conforming structure not be increased through construction of an addition for an addition to his home at 5356 Greenwood Rd. She showed the vicinity and site maps. The existing home is a nonconforming structure on a conforming lot. All setbacks are met except the rear yard setback. This setback will not be increased by the proposed construction.

Liz showed the applicant's responses to the required criteria for approving a variance.

*Is the proposed variance in harmony with the general purposes and intent of the Ordinance and consistent with the Comprehensive Plan?*

*Applicant response:* I need more space for my family than the current structure provides. If I were to add an addition horizontally rather than vertically (which I would not need a variance for), not only would I have to turn green space into non-porous surface, I would also create far more land disturbance. If allowed, I would gain the needed space for my family with minimal impact on the ecosystem and encroach far less on my neighbors. I also would not have to encroach upon the DNSSD easement for the sanitary sewer.

I believe that permitting this variance would be in step with the current CLUP. This variance, if granted, would uphold the core values of ruralness, and the natural environment by not increasing non-porous surfaces, maintaining the current green space on the property, all while not expanding out towards my neighbor's property.

*The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance, the plight of the property owner is due to circumstances unique to the property not created by the property owner, and the proposed variances will not alter the essential character of the locality.*

*Applicant response:* Reasonable manner: I am proposing to add an addition in the form of a second story on an existing structure that is non-conforming by being into the rear setback by 15 ft. The addition would take place within all of the setbacks. The height of the proposed structure does not exceed 26 ft, 9 ft below the 35 ft height restriction. The nearest neighboring building is a non-conforming garage 56 ft away. All neighboring houses are at least 100 ft away.

*Circumstances unique to the property:* I purchased the property on 07-29-2022. The existing structure was built in 1954. The former owner did not disclose the encroachment.

*Altering the essential character of the locality:* I do not believe that the variance if granted would alter the essential character of the locality. There are multiple updated houses in the area that are as tall or taller than the proposed structure.

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

*Applicant response:* The proposed variance would be for residential use. An addition to a single-family home.

Andrew said that he could add on to the house with an addition on the ground but it would encroach on the well and septic. The existing house has a very low pitched roof with ice dam problems. Inside, the ceilings are 5' 11" at low points. He was not made aware that the home was nonconforming when he bought it. Andrew showed the Commission pictures from his roof.

Justin said that he had been concerned that the addition would impede others' view of the lake, and the photos Andrew showed demonstrated that it would not.

Angela said that it looked like the addition was designed to fit in.

There was no public testimony.

Angela moved to grant the variance request. It is in harmony with the general purposes and intent of the Ordinance as the design is tailored to meet the needs of the property and it does not create an excessively high structure. The variance is consistent with the Comprehensive Plan as it does not alter the primary use of the property. The proposal is reasonable because it allows room for a family in the same footprint as the original home. The circumstances are unique in that the lot is small and the residence is also small and is within the required setbacks with the exception of an existing nonconforming setback that is not impacted by the variance request. The variance does not alter the essential character of the neighborhood because it is still a residential use in a residential area.

Pam seconded. The motion passed unanimously.

### **Concerns from the Audience**

John Christenson said that he lives on Shilhon Road on 20 acres and was considering adding a hosted short-term rental to his property. He is considering creating an apartment above his garage or creating an apartment in an outbuilding and connecting it to his home. Because the Town has gotten very prescriptive regarding short-term rentals, and hosted short-term rentals are somewhat undefined, he would like some understanding of what to expect. He felt the number of allowed rental days, what you can do with the property, and other things were vague and he wanted to have a stronger understanding before spending the money and time on building and renovating.

Sue said that hosted short-term rentals are allowed as an interim use. There are some requirements for the use in Section 21 of Article IX, Conditional Uses.

Blane read the definition:

Dwelling, Principal, Single-Family, Hosted High-Frequency Short Term Rental – A rental of part of a principal, single-family dwelling where the owner occupies the dwelling during the rental period. The rental is for less than or equal to thirty (30) days at a frequency greater than four (4) times per calendar year.

John said that it is a gray area; the Ordinance doesn't give him anything to rely on.

Sue said that he could apply with the plan that he is considering. He would have to decide which route he was taking to create the rental space. If the buildings were not connected, it would be considered a subordinate residential for family members only. The Ordinance doesn't stipulate what constitutes "part of a principal, single-family dwelling." She questioned what kind of attachment would work to consider the two buildings as one and how far apart the two buildings could be. Putting the apartment above the garage would be more straightforward. But there would have to be an application to get actual decisions on parameters.

### **Director's Report**

Sue said that permit applications are coming in fast and there have been a lot of applications for parcel split reviews. It's been a very busy time.

Tim gave an update on the American Rescue Plan Act. The Town of Duluth will be allocated over \$200,000 dollars and he spoke to the details considering allocating and spending the money by certain deadlines.

Sean Padden retired from his position as the Town's Chief of Police.

Tim spoke about the Congdon Trust Land and that there is legal uncertainty whether these properties are public or private lands.

**Old Business**

None.

The findings of fact documents for each of the evening's hearings were prepared and approved.

The meeting adjourned at 8:49.