

**Town of Duluth  
Planning Commission  
Meeting Minutes  
January 26, 2023**

The meeting was called to order at 6:35 pm by Chair Angela Wilson.

In attendance: Angela Wilson, Blane Tetreault, Justin Osadjan and Tony Mancuso.

Absent: Dave Edblom, Pam West and Dave Meyer.

Also attending: Liz Strohmayer, Planning Director, and Tim Strom, Town Board liaison to the Planning Commission.

The agenda was approved as presented.

**Public Hearing for Hoepfner/Dalton Bed and Breakfast Short-Term Rental Interim Use Application**

Liz introduced the hearing. The applicant, Kyle Dalton was present. The application was for an interim use for a bed and breakfast short-term rental at 6374 McQuade Road which is in Zone FFL-1. It meets all of the dimensional requirements for FFL-1 except for the structure setback from the river, which is 72 ft instead of the required 200 ft. Liz showed the vicinity map and the site drawing. The proposed use, as stated in the application, is:

I plan to allow short-term stays of 2 to 4 days. Maximum number of guests is 2. No pets. No children under 12. No smoking allowed. Property will be maintained by owner. No parties or events. This is solely to be used for serene relaxing stays. There is one loft bedroom in the one room cabin.

Liz went over the operational questions and answer from the application.

Rental days per year: Unknown  
Check in /Check out times: 3 pm and 10 am  
Site traffic: 1 vehicle, 2 people  
Increase in traffic: No  
Parking spaces required: 1, on property  
Will there be a sign? No, unless preferred by the Township  
Will any activities generate dust, smoke, smells, pollution, etc? No  
Will noise from your rental be heard on adjacent properties or on a lake? No. Guests must follow quiet hours- no pets allowed.  
Wastewater/ Septic: Privy only  
Water Supply: No water supply (No well, lake, or municipal system)  
Waste Disposal: Hartel

For wetlands, the applicant indicated that there were none, but a National Wetlands Inventory map shows that there are wetlands on the property.

Liz read the criteria for deciding an interim use and the responses to those criteria from the application.

**Is the proposed use consistent with the CLUP and with the spirit and intent of the Ordinance?**

*Applicant states:* Yes, we have 40 acres in total. The majority of our property is timber forest. We leave it natural, do not use chemicals or pesticides. We do not leave cars, snowmobiles, tires, or barking dogs tied on leashes. We promote the natural environment as stated in the ordinance.

**Is the proposed rental compatible with the existing neighborhood?**

*Applicant states:* Yes. It has been part of the area for 30 years. Neighbors are not visible. Private 40 acres.

**Will the proposed rental impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district?**

*Applicant states:* No impact to surrounding area.

**Is the location and character of the proposed rental considered to be consistent with a desirable pattern of development for the area?**

*Applicant states:* Yes, it will still be timber land.

**Does the proposed rental comply with the wetlands requirements in Article III, Section 7 of the Ordinance?**

*Applicant states:* We do not intend to make any changes to the existing structure or use. No construction or development is planned. Natural state of woodlands and wetlands to remain untouched.

**Does the total amount of impervious surface area exceed that allowed in the zoning district where the rental will occur?**

*Applicant states:* No, we have none.

Liz clarified that the driveway and all structures count as impervious surface area, so they do have impervious surfaces, but are well under the limit for the zone district.

**Are the topography, vegetation, and soil conditions adequate to accommodate the proposed rental?**

*Applicant states:* Yes the structure was built 20 years ago.

**Will the proposed rental impact public waters or wetlands during or after construction without appropriate measures? (Will there need to be construction and post-construction stormwater plans?)**

*Applicant states:* NA

**Are adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities provided or are to be provided, backed by appropriate financial assurance?**

*Applicant states:* No running water needed.

**Will the proposed rental create potential health and safety, environmental, lighting, noise, signing, or visual problems?**

*Applicant states:* It's off-grid solar. It is very environmentally friendly.

**Is the location of the site appropriate with respect to existing or future access roads?**

*Applicant states:* It is at least 800 ft from cement road on 40 acres.

**Will the demand for public service be affected by the proposed rental? Are services adequate to meet any increase demand?**

*Applicant states:* No change to existing needs.

The Community Participation Report was presented. The applicants were able to contact nine of the fourteen neighbors on the notification list, mostly in person. Three neighbors said they were in favor of Airbnbs, one had questions but did not have concerns, four had no concerns, and one was excited for them. They were not able to contact five neighbors.

Kyle said that there will not be any change to the property. The only construction he can imagine is if they needed to replace a solar panel. There won't be any heavy equipment on the site. They limit the number of guests to two. It's a unique rental and if it's not a good fit for someone it's usually clear right away. They don't allow firearms, hunting or ATVs. It's a quiet place – a landing spot to visit the North Shore. They have been renting it for a while now, not realizing they needed a license. The reviews have been very positive. Kyle said they intend to stay here and want to be good neighbors.

Angela asked how long they have been running a short-term rental at the location.

Kyle said over a year. They have owned it for 2 ½ years.

Angela asked if they occupy the home as their primary residence.

Kyle said that he has only recently started living there. Their plan was to move up here in a couple years, but he changed jobs recently and is now living here and he hopes to be self-employed.

Justin asked if the rental cabin is a separate building from his residence.

Kyle said that there is a separate shed right next to the cabin that they sleep in when they rent the cabin. There is also a sauna and a shed. They live in the cabin when it's not rented. They have advertised the shed as "the birdhouse" or "the bunkhouse" in the past.

Justin asked for clarification as to which of the structures he is seeking to rent.

Liz noted that the definition states that you have to live in the same residence that you rent. As such, the bunkhouse would not be eligible for a HFSTR.

Kyle said that the bunkhouse and the cabin are separate structures that share a roof. You walk outside through a sort of breezeway to get from one to the other.

Liz said that the two areas would then be considered a part of the same structure.

Tony said that renters would park on the McQuade Road side of the river and cross a footbridge to get to the rental. There is a privy and renters have to bring their own water in. Is that correct?

Kyle said that they have a Sunmar composting toilet. They leave 50 to 70 gallons of potable water for the renters. He said that some people don't care for the taste of well water, and in that case, they ask that they bring their own water.

Liz noted that St Louis County regulates sanitary facilities. MN Department of Health requires that you provide water. They also require a restaurant license for a bed and breakfast.

Tony asked if renting as a bed and breakfast creates any type of problem for the Township in terms of emergency services like ambulance and fire.

Liz said that she had been to the property for a medical call prior to the applicant owning the property. The pedestrian bridge is the only way to get to the building, so access could be an issue. Otherwise, she would not think that it would increase the need for such services. Access for a fire would be a problem.

Tony asked if it created liability for the Township. It was felt that liability would be with the owner.

Kyle said that they have insurance that addresses those concerns.

Tony asked how they heated the building.

Kyle said they heated with propane. There is also a fireplace for aesthetics. They had it cleaned recently and got a good report from the cleaner, so it is not a fire danger. They have a rain barrel and bucket next to the outdoor fire ring, but most people choose not to have an outdoor fire.

Angela asked how many days they hoped to rent.

Kyle said he didn't know – it depended on demand. It has been popular in general, but not as much now. COVID had an effect and he thinks that its popularity will wane as people return to pre-COVID type vacations. They could easily rent it every weekend. During the week it's not as popular. He would like to have the option to rent it 365 days a year.

Liz said the allowed number of rental days is not set for a hosted HFSTR or bed and breakfast. That limit would be set in the conditions of the permit, if granted.

Angela said that the State requires a kitchen license for a bed and breakfast. How do they plan to address that?

Kyle said that in retrospect, he may want to amend his application to a hosted HFSTR instead of a bed and breakfast. They hadn't planned on cooking – only providing fruit or baked goods from local bakeries. They planned to leave the food in the rental for guests to have when they wished.

Angela was concerned that they have not been in compliance with our regulations or with the Dept of Health's regulations. They are also unclear about what use they are applying for.

### **Public Testimony**

Beth read two emails that had been received by the Township.

Bryan Beede wrote "In regards to Rebecca Hoepfner's plans for a bed and breakfast at 6374 McQuade Rd, I have no objection what so ever, on the contrary I think this is a wonderful idea. It's a unique setting for such an endeavor that can't possibly affect anyone in a negative way. Good luck to Rebecca."

Don and Kit Sitter wrote

We do have some concerns about this requested permit so I put together a list of questions for the applicant that may ease some of our concerns. I'm hoping you can send this list of questions to the applicant so they can address them as part of their Participation Report. Then we can share our thoughts on the request.

Don and Kit Sitter

To better understand the situation being considered for an Interim Use Permit, it would help to have the applicant answer the following questions:

You are applying for a bed and breakfast permit, are you now planning to provide a meal to guests?

Where do you stay on the property when the cabin is being rented?

Is that structure off-grid or do you have facilities like water and sewer?

Your website mentioned you also rent out the "birdhouse" and it mentions a "bunkhouse", can you please explain what these are?

Your website requires guests to bring their own firewood. How do you monitor and control where this wood is coming from so we don't introduce invasive species such as the Emerald Ash Borer? How will you know they are complying with the "don't move firewood" policies?

How do you control outdoor fires, are they in a firepit or? How far is it from any combustible materials?

Your website mentions guests should "empty the dirty water bucket in the woods, clean cool ashes out of the fireplace and sauna....dump far into the wood." We assume because you live on the property, you know how to do this properly, but would your guests know the proper methods? How is this controlled? We are especially concerned with the risk of outdoor fires with all of the dead balsams in the area due to the Spruce Bud Worm.

Does all the gray water go into these buckets or is anything draining below the cabin? Our concern is the short distance to the Sucker River and the increased use if being rented.

Who deals with emptying the composting toilet that is seen in the photos? Your application mentions a "privy", is there also an outhouse on the property?

Your website mentions guests need to be prepared for "marshy land" below the deck, yet your applications checked the "no" box for the question regarding low areas or areas of standing water, please explain. You also checked no for any increased traffic, smoke or smells, please explain?

Kyle had been provided with a list of these questions. Some had been answered in the course of the hearing and he provided answers to those that weren't.

He said they have already changed the language regarding firewood in response to this question. They now require that renters buy firewood locally or from a source such as Menards or the COOP. They, too, are concerned about this. He said they used to supply firewood, but if they were to do that again, they would need to charge guests.

The firepit is ringed with concrete blocks and a metal ring. There is a full rain barrel 5 ft from the fire pit. It is in a clearing and nothing nearby is combustible. They have prohibited fires in the past when advisories were in place. They have a 55 gallon clean metal drum for ashes by the sauna and will use that for fireplace ashes in the future.

They are changing to a bucket system for gray water. They don't want it drained near the cabin.

They are the only ones who empty the composting toilet.

Regarding the wetlands, Kyle said he did not consider the area wetlands because it dries out in the summer. The only area of standing water is a small area adjacent to the stream which stays wet the longest.

Typically, guests come in one car. Because they only allow two guests, it is not a significant increase in traffic. There is no increase in smells from cooking and any smell of smoke from the fireplace could just as easily be them.

Tony asked for clarification on how renters are directed to dump graywater.

Kyle said that the only wastewater to speak of is from washing dishes. They use biodegradable natural dish soap. There is a designated spot to dispose of the water that is not near the river. If a better way were suggested, they would definitely consider it.

Don Sitter spoke. He said that he lives directly east of the property. He appreciated the answers to his written questions. He said that he is concerned that they have the cart in front of the horse, renting without having permits or licenses in place. The cabin is too close to the river and as such is nonconforming. This will be an increase in the use of this nonconforming structure, which concerns him. He asked if there is water and another toilet for the bunkhouse.

Kyle said no. The composting toilet is in the same structure as the bunkhouse but with a separate entrance. It is a shared facility.

Don said that there were too many yellow flags and he was not in favor of approving the rental at this time.

Kit Sitter spoke. She said that everyone has learned some new things about bed and breakfasts and permits. She said that she didn't think that they were quite there yet to be good stewards of the environment. They may also be bringing people in who may not have the same sensibility for the environment. Environmental education and learning to protect the watershed are very important to her.

Kyle said that they are very willing to educate. He has found that it's been a good education already for folks. They are now doing what they should have done previously to get permitted. He is here because they love the area and want to share it.

Les Grumdahl spoke. He lives immediately to the south of Kyle's property. He came to listen and get more information. He asked if this is going to be a bed and breakfast or a frequent rental? They are different. He said he hasn't met Kyle but doesn't have any negative comments about the operation so far. He had an idea they were renting because of all the different cars. But that has been the only indication he has seen that they are renting. He is in favor of it if it meets all the criteria and does not need a variance to meet the standards. But he has known since the cabin was built that it does not meet the regulations regarding setback from the river. He said that if this interim use were to be granted, it would justify the cabin being where it is and allow it to be used for a commercial operation. The rest of us have to comply when we do things. This is a concern for him.

Don asked about the kitchen license required by the State for a bed and breakfast.

Kyle said that they would either get the kitchen license or amend their application. They were not previously aware of that requirement and will look into it. If they decide against a kitchen license, they will apply for different interim use.

Public testimony was closed.

Tony said that he would like to see rules for the renters.

Kyle said that they did have rules and they continue to evolve. They changed the rules today in response to some of the good questions that were asked. The rules are for their benefit, too. He doesn't want a guest that's going to disturb him or the area.

Angela said she didn't feel like they had enough information. It is not clear on what they are asking for. Would they consider withdrawing the application and resubmitting it when they are more prepared?

Liz said that there is nothing different between the applications for a bed and breakfast and a hosted HFSTR. The Commission could allow the application to be heard as either or ask that they reapply.

Angela asked if the fact that it was noticed as a bed and breakfast makes any difference.

Liz said that because there is very little difference between the two, she didn't think so. But it is the Commission's decision.

Kyle said that the meal portion of it is not important at all. He would like to pursue the application as hosted rental.

Dave asked if they were advertising through Airbnb.

Kyle said they were using Airbnb exclusively. With Airbnb, you can get an idea of the potential renter before renting to them. Renters are expected to be more of a house guest than a hotel guest. They are very specific regarding the renter's responsibilities.

Liz said that both Kyle and Becky are listed as owners of the property, but they are not homesteading it, which is required for residence. Becky has provided an affidavit that it is her primary residence. The definition is ambiguous – it has to be the primary residence – is that requirement met if just one of the owners uses it as a primary residence?

Kyle said that they have two homesteaded properties that are occupied by their adult children, so they believe they can homestead the McQuade property as well.

Angela said that they say in their application that the proposed use would not increase the use above what it would be with just them but it clearly at least doubles the impact of current occupancy. To say that there's no increase is simply incorrect. It's a significant increase in use for a non-conforming structure that is too close to the river.

Kyle said the property was previously occupied fulltime by two adults. Becky travels a lot. So, it may be an increase, but to him, it's pretty minimal. He is thinking of what you see for traffic on the road – it would be one more day per year. In addition, he said that there are neighbors who far exceed the impact they have with this rental.

Tony said he agreed with Angela. The use would make an impact. Consider what happened in the BWCA during COVID with people coming to the area who didn't know how to behave. It would have to have some impact.

Justin noted that the applicant came in with a bed and breakfast application and has changed it to a hosted HFSTR, which is very similar. So, there has been a change in the goal of the application. Then we find that, historically, this has not been their primary residence. He felt as though the application has changed in reaction to learning about the requirements. He thought it made sense to get the homesteading straightened out and then reapply. He values the fact that Kyle wants to comply with the regulations and is here now and honest and upfront about the process. But it might be worthwhile to wait a month and get some things straightened out.

Angela moved that the Commission look at each of the twelve criteria individually. Dave seconded. The motion passed unanimously.

Angela moved that the proposed use is not consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance because it expands the use of this particular piece of property in this location. Tony seconded.

Dave said that he does not see how you have any rental and not have some kind of effect if people come. The effect would not be any worse than if they had another couple over as guests.

Angela said that if you have a three bedroom, three bath house, the expectation is that there will be that many users. In this situation this is a one-bedroom cabin with an existing shed used as part of the cabin. To her, it's a disproportionate expansion.

Tony felt it violated the Town's CLUP in not adequately protecting the waterway there.

The motion passed three to one with Dave voting against.

Angela moved that the use is compatible with the existing neighborhood because it is a residence and would continue to be used for residential purposes. Dave Meyer seconded. The motion passed unanimously.

Angela moved that the use would impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district because of where the residence is in relation to the Sucker River and the potential impact to the Sucker River. Tony seconded.

The applicant noted that if he were to move in with six kids, it would be much more impactful.

Angela said that was true, but he is asking for a commercial purpose that will impact the area.

Dave said that he thinks the impact of this proposed use is minimal – they are using a biolet vs a giant mound system and they are off the grid. The only concern is gray water. Otherwise, it is very light impact. He said that some of what was presented was unclear and they are trying to make the best decision with the information they have. It made sense to him to reevaluate and come back.

Kyle said that the Ordinance is not clear. They have talked to Liz for some time and tried to apply for the right thing and meet the requirements, but ultimately, she is not the person who makes the decision. He felt they had a right to this according to the Ordinance.

The motion passed 3 to 1 with Justin voting against.

Justin moved that the location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area because a hosted bed and breakfast or a hosted short-term rental requires that the owner be on the premises which better insures the well-being of the community. Dave seconded. The motion passed unanimously.

Justin moved that the proposed use will comply with the wetlands requirements because there is no septic system that will leach into wetlands. Angela Wilson seconded.

Tony noted that the disposal of graywater is in the wetlands.

The motion passed 3 to 1 with Tony voting against.

Justin moved that the impervious surfaces would not be impacted because there was not going to be any new construction. Angela seconded. The motion passed unanimously.

Angela moved that the topography, vegetation and soil conditions are not adequate to accommodate the proposed use because the dwelling is less than 200 ft from the Sucker River and is in a wetland. Tony seconded. The motion passed 3 to 1 with Justin voting against.

Angela moved that the proposed use will not impact public waters during or after construction or impact wetlands because there will be no new construction. Dave seconded. The motion passed unanimously.

Justin moved that utilities (water supply, wastewater treatment), access, drainage, stormwater retention, are adequate for the property because it is off grid and has no water supply and needs no septic. Dave seconded. The motion was tied with Angela and Tony voting against and Justin and Dave voting in favor.

Tony moved that the proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems. Dave seconded. The motion passed unanimously.

Tony moved that the location of the site is appropriate with respect to existing or future access roads because it is on McQuade Road and the driveway is in place and doesn't encroach on other properties. Dave seconded. The motion passed unanimously.

Tony moved that the demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, would not be affected by the proposed use. Existing services are adequate to meet the increased demand and are already available to the site. Dave seconded.

Angela said that the lack of a driveway to the cabin is a potential problem for safety services. Dave asked if that meant Angela thought they should build a road in if they were to reapply. Justin said as it is currently structured, there is a footpath and no new road would be needed.

The motion passed unanimously.

The application was denied because all 12 of the criteria listed in Article IX Section 7.B must be met in order to approve an interim use and the Commission found that the application did not meet a number of those criteria.

Liz outlined Kyle's options following the denial of his application. She said that he has to stop renting the property until he has a permit.

Justin thanked him for being here and being so open and cooperative throughout the process.

The public hearing was closed.

A break was taken while the decision document was drafted.

### **New Business**

Tim said that in 2022 the MN legislature updated a statute that resulted in allowing for certain THC edibles in the state. St Louis County sent around a flyer regarding the updated statute and suggested that local zoning entities may want to consider how to react to it. He asked if the Commission might want to look at the issue. They could consider language restricting it from areas around schools and churches, for example. The Town looks at liquor sales in the Township every year – that could be another thing to consider. He will ask the Board but expects that the Board will ask the Commission to look at it.

Tony said it would be simple to adopt the same approach as the Town currently uses for alcohol sales.

The Commission agreed that they would look at it in February if the Board wants them to.

The minutes were approved as presented.

### **Directors Report**

Liz said that St Louis County is reviewing its Subsurface Sewage Treatment System Ordinance. They are accepting comments on the proposed amendments. If anyone sees something they would like to comment on, the Commission can submit comments through a letter to St Louis County.

Liz said she worked with Scott Witte on getting letters drafted for two different compliance issues. One was in regard to a stormwater plan that was due back in October, the other was in regard to a resident who built a house without a land use permit and has not responded to requests to comply.

There are a couple of residents on Wildwood Road who have grandfathered HFSTRs. The rentals are in separate buildings built specifically for short-term rental. Recently one of these residents bought the other resident's property. That property's HFSTR had a condition that it expired six months following the property's change of ownership. The new owners, who already have one grandfathered in HFSTR in a separate building, want a special permit to continue to use the rental on the property they just bought as a HFSTR. They want to apply for a variance to do so.

Tim said that the intention behind the recent change in Ordinance language regarding HFSTRs was to make it clearer that those conditions are not subject to variance. However, if someone were not given an opportunity to submit a variance application, they might appeal it to the Commission or Board or go straight to the courts. The courts would be likely to say that they should be allowed to apply for the variance. So, it makes sense to let them apply for the variance.

Beth said that when the Commission originally decided to require a farmstand permit, one of their goals was to let folks know what the regulations were for farmstands. At the time, the Commission thought that a brochure to accompany the free permit that explained the rules would be a good way to go. She said that she was drafting the application for farmstands and would either put a brochure together or include the rules on the application if the Commission would let her know what they had in mind.

Liz said that as a noncommercial person, you are selling under cottage food laws and the requirements are based on the amount of sales. She thought providing a resource list for these requirements might be best. It is impossible to educate everyone on all of the requirements that are out there and the Town is not an authority on these matters. So, directing people to the regulating sites might be adequate.

Justin and Liz agreed to look into this, and drafted Blane to help, as well.

Angelas said that she would like to go through the STR language in the Ordinance again. She felt that there has been an evolution of the Commission's position on the role of HFSTRs in the Township. Liz said that Dave Edblom was questioning why the Town did not allow an accessory structure to be used as a HFSTR. It would take a lot to change the Ordinance language to allow that. She felt that the Commission has already changed the Ordinance twice and that maybe it should be left as is for now.

Tim said that regarding a grandfathered structure, such as in the instance tonight, there are two interests, that of the property owner and that of the governing body. The owner has an interest in being allowed to continue to use the structure, but the governing body is interested in having the nonconformity eventually go away. The governing body's perspective is that they respect the owner's right to continue to use it as it has been used, but an expansion of the use is not allowed.

If we were to allow the owner to use the nonconforming structure in a different and profitable way, it changes things. Grandfathering does not allow for expanding a use.

The language for the decision document for the Hoeppepner public hearing was approved.

The meeting adjourned at 10:14.