

**Town of Duluth  
Planning Commission  
Meeting Minutes  
March 23, 2023**

The meeting was called to order at 6:30 pm by Chair Angela Wilson.

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

Absent: No one.

Also attending: Liz Strohmayr, Planning Director.

The agenda was amended to move Concerns from the Audience to the beginning of the meeting and the agenda was approved as amended.

**Concerns from the Audience**

Deb Aho, 1225 W Knife River Road, was present at the meeting to ask about placement of a garage on her property. She had applied for a land use permit for the garage in March of 2022. Liz showed a map of the property on Google Earth. Deb's concern was that she was told that the proposed garage site is too close to the property line. The site had already been prepared when she purchased the property. It is 30 ft from the west side property line. She was told that she would have to move it at least 75 ft to the east. Tony asked if a slab had been poured. She said no, but the site has been built up for a slab.

Liz explained that the required side yard setback for her zone district is 75 ft from the property line. She said that one possibility is to move the pad over. Another is to apply for a variance for the current location, but there is no guarantee that the variance would be approved. If it were not approved, Deb would still have to move the pad.

Deb said that she was concerned about the utilities that are already in place if she were to have move it.

Angela noted that the pad would only need to be moved 45 feet east to meet the 75ft setback.

Deb said that neighbors told her you could build a shed without a permit if it was under a certain size. She went to the Clerk's office to see what was allowed and was told the structure could be up to 10 ft by 10 ft and 30 inches tall. That didn't make sense to her. Liz said that there wasn't a height limit and she wasn't sure how it may have gotten confused. In the Township, anything over 30" is considered a structure, so that could be where the 30" figure came from. Also, the maximum size for an accessory structure not requiring a permit was recently changed to 144 sq ft. All of the setbacks and dimensional requirements for the zone district must still be met.

Liz agreed to meet with Deb the following week at her property to evaluate options for the garage placement.

**Public Hearing for Perault HFSTR**

Joe Perrault was present. He was requesting an extension of the interim use permit for his high-frequency short-term rental (HFSTR) unit in his home at 5668 North Shore Dr.

Liz explained the process and presented the application. The rental is in the SSUR-1 zone district. It meets all the dimensional requirements except lot width and lot size. She showed aerial photos of the site. The original interim use permit was granted June 24, 2021 for 18 months with an unlimited number of rental nights in a calendar year. There were no additional conditions. Over that 18 month period, Joe's records showed that he rented the unit a total of 144 nights.

Approval of an extension of an interim use permit is “based on an evaluation of the interim use in terms of demonstrated compatibility with the neighborhood, any detrimental effects documented during the period of the interim use, and any increased costs to the Town as a result of the interim use.” (*Article IX, Section 8F*)

Liz said that the Township has not received any negative comments or calls on the rental.

Joe said he has had a good experience renting. He has had great renters and has had no problems or complaints. He is always there when he rents.

Angela asked if he intends to increase the rental frequency. Joe said that he lives there and has found that he likes to have time in between renters, so if anything, he would like to have fewer renters. He uses a company called Evolve. They set the advertising up for him and send it to the online rental sites. Evolve also has rules pertaining to rentals, one of which is that renters must be at least 25 years old. They are always in communication with him regarding upcoming renters. He has a cleaning company out of Two Harbors as well as another local person.

Angela said an extension of a permit is typically one to two years. Joe said he would like it to be as long as possible so he doesn't have to go through this process as often. He had heard it would probably be longer than the original 18 months.

### **Public Testimony**

Beth read two email comments.

1) I am writing in support of the extension of the Interim Use Permit-Joe Perrault. As a neighbor within the 1/4 mile radius of Joe's BnB, I can attest that no issues whatsoever have surfaced in the neighborhood, concerning his business in the period of his current Use Permit. Providing lodging for tourists on the North Shore continues to be a mainstay for our economic vitality. I wish him continued success and I encourage the Commission to approve his request for continuation of his Use Permit.

2) Regarding public comment related to this property, I would like to ask a question. I'm currently unable to view details of the permit request, in person. Will the owner be on property while it is being rented out? If not, I would be opposed to an extension. Thank you.

Beth said that she gave the second commentor Joe's application and did not hear anything back from them.

There was no one present wishing to comment.

Dave Meyer made a motion that we extend the permit for a period of three years. Joe has shown over the past 18 months that he has had no problems and there have been no detrimental effects or increased costs to the Town. He does not see problems arising from this rental. Dave Edblom seconded.

Tony asked what happens if problems were to come up. Angela said that permits can be rescinded. Dave Edblom said that after 18 months without a problem, he doesn't see that there is likely to be an issue.

Joe pointed out that he limits the number of renters to 4 at a time. He is also very clear on his house rules.

Liz said revoking a permit is a long process. Usually if there are complaints, an effort is first made to remedy the situation.

Angela said that it often makes sense to grant shorter extensions of these permits because it is easier to deny an extension than it is to revoke a permit. But she agreed that under these circumstances, there is a good rationale for 3 years.

Blane said that knowing that the revocation process is cumbersome, two years makes more sense to him. It doesn't seem like it would be a problem to have to reapply in two years. He likes the idea of a check in. Three years seems a little long to him.

Tony asked Joe if two years would be a burden. Joe said no, but the application is long. Beth told him there is a shorter extension application for next time.

Dave Meyer said that two years would be alright. He, too, likes the idea of checking in. He asked how much it cost to apply for an extension. Liz said \$100.

Dave Meyer amended his motion to a two year extension. Dave Edblom seconded the amendment.

The motion to extend the interim use permit for a period of two years passed unanimously.

A short break was taken.

### **Bergstedt / Nakamura Variance Request**

Liz presented the application. Rita Bergstedt and Amy Nakamura were present. They were requesting the following two variances in order to proceed with an interim use application for a high-frequency short-term rental on a property they recently purchased at 5902 River Road.

- 1) A variance from the definition for a HFSTR (Article II Definition for Dwelling, Principal, High-Frequency Short-Term Rental) defining that HFSTRs are only allowed in principal single-family residential dwellings that are occupied by the owner as a primary residence for at least 9 months of the year.
- 2) A variance from the definition for a HFSTR (Article II Definition for Dwelling, Principal, High-Frequency Short-Term Rental) defining that there shall be only one single-family dwelling short-term rental in the Township per owner.

The applicants previously lived on the property adjacent to the recently purchased property and have a HFSTR on that property in a building separate from the dwelling they lived in. They plan to rent their former home on that property as a long-term rental and live in the primary dwelling on the recently purchased property. The new property has a second dwelling that currently has an interim use permit for a HFSTR which expires 6 months following the date the property changed ownership. Rita and Amy would like to continue renting this home as a HFSTR in addition to maintaining the HFSTR on their adjacent parcel. In order to do this, they would need variances from the definition for a HFSTR, one, to operate two HFSTRs in the Township when only one is allowed, and two, to not occupy the new HFSTR as their primary residence for nine months of the year as required. The definition of a HFSTR is

A rental of a single-family residential dwelling for less than or equal to thirty (30) days at a frequency greater than four (4) times per calendar year. Short-term rentals are only allowed in principal single-family residential dwellings that are occupied by the owner as a primary residence for at least 9 months of the year. The allowable number of days a high-frequency short-term rental may be rented will be no more than 60 days per year with the year commencing on the start date of the rental as established in the Interim Use Permit. There shall be only one single-family dwelling short-term rental in the Township per owner.

The request for a variance was stated as follows in the application.

We are asking for a variance to the ordinance, definition and requirements for an existing HFSTR located on our primary home property, parcel A on the survey map, in order to continue operating Singing Water's Guest House.

Rita Bergstedt bought this land in 1991 naming the property Singing Waters. She built an art studio and then her home and lived there until selling her home and associated 20 acres. Rita Bergstedt and Amy Nakamura then built a new home on the adjoining 10 acres. A few years later they built Wildwood

Cottage, an HFSTR on the adjoining 10 acres to the east. Wildwood Cottage obtained an interim use permit and has been operating successfully and without complaint for the last 6 seasons.

The buyers of Singing Waters, Stacy and Shelly Seering, converted the existing art studio building into and HSTR, Singing Waters Guest House, obtaining a Conditional/Interim use permit. Singing Waters Guest House is located at the far west part of the 40 acres and is 300 feet away from the primary residence, sharing a well, electric and septic system and has been operating successfully and complaint free since inception.

In late fall of 2022 Rita and Amy were able to buy back Singing Waters and the 20 acres. They have moved to Singing Waters and will long term rent their previous home.

We would like to continue running a business that has been successful on this property, providing a peaceful, quiet and beautiful place for families and friends to relax, connect and rejuvenate. As an existing complaint free home based business, we believe the operation of Singing Waters Guest House in the greater community's best interest, a peaceful respite, and deserves a variance.

Liz showed aerial photos of the vicinity and the site layout.

She then read the criteria for deciding variances and the applicants' responses to those criteria as stated on their application.

*Variances shall only be permitted a. When they are in harmony with the general purposes and intent of the Ordinance, and b. When the variances are consistent with the comprehensive plan.*

*Applicant response:* The general purpose and intent of the CLUP is to provide guidelines for ordinances and decisions that protect the environment and quality of life of the citizens who live and work in Duluth Township. The Guest House easily supports that intent. Continued operation of the Guest House will:

- \*Maintain the rural character of the property.
- \*Maintain housing stock.
- \*Maintain good relationships with neighbors.
- \*Have owners who live 300 ft from the Guest House and are present and attentive to guests and the community.
- \*Maintain zero complaints involving the Township.

*Variances may be granted when the applicant establishes that there are practical difficulties in complying with the Zoning Ordinance. "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; and c. The variance, if granted, will not alter the essential character of the locality.*

*Applicant response:* a. The operation of the Guest House has proven itself, over the last 8 years to be a reasonable and permitted use of the property.

b. Our "plight" is that the Commission changed the definition/ordinance of HFSTR in order to address concerns about new HFSTR rentals. Singing Waters Guest House is not new! It has been operating for 8 years, is a known entity with a proven history. As owner operators of Wildwood Cottage, Rita and Amy also have a successful proven complaint free record.

The Spirit of the CLUP and the ordinances is to protect the very essences that make up Duluth Township. The concerns that prompted the changes to the ordinance have never been an issue with the Guest House and with the continued operation will not become an issue.

c. Essentially, in continuing operation of the Guest House, nothing will change. There will be no loss of housing stock. No change in traffic, the environment or noise level. In 2016 the Commission found the operation of the Guest House to be an acceptable use and granted a permit, this situation is no different and continues to be an acceptable use and worthy of a permit.

*The Planning Commission may not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zone where the affected person's land is located.*

*Applicant response: NA*

Tony asked if they plan to join the three parcels at any point and if they are joint owners of the three parcels. Rita said they feel like they have reunited the land but it will remain as separate parcels. They are joint owners.

Pam asked how far the rental dwelling was from the primary dwelling where they live. Amy said it was a little less than 300 ft away.

Blane asked when they purchased the property. Rita said she originally bought the land in 1991 and repurchased it last fall.

Tony asked if, when they repurchased the property, did they know that they would have to apply for a new permit for the existing HFSTR. Amy said they didn't know that the Ordinance had changed to preclude having this second HFSTR.

### **Public Testimony**

Beth read four comments received by email.

1) Hello, I do not feel the Seering's place should be grandfathered in as that was closed down in 2020. Too many strangers on our roads and woods. We have many short-term rentals in our Township. This takes away from our peaceful area and is not what it is intended to be. Greed is taking over. Thank you

2) To The Duluth Township Planning and Zoning Board,

My family has been neighbors of Rita and Amy for over 20 years. I am writing this to give my full support for them to use the existing building on their property as a HFSTR. They have been running a property as a rental for several years and they have always been respectful, quiet, and followed rules put in place by the township. I believe there has never been a single negative impact to our quiet rural neighborhood because of their business. I enjoy having them as neighbors and believe that what they are requesting should be granted to them. They are not looking to expand or build anything new, just make use of what is already existing. When my family and large group of friends travel we always hope to find something like Rita and Amy are proposing to provide as a place to stay. It is my strong belief that Rita and Amy's proposal will not cause any type of detriment or consequence to the quiet rural area we appreciate calling home! Thank You

3) Planning Board,

I received your letter reference Rita Bergstedt and Amy Nakamura.

This property already has one HFSTR per the ordinance. I see no reason to grant a variance. The owners should abide by the current ordinance in effect.

4) Planning Department,

Please accept this letter as opposition to the request by Rita Bergstedt and Amy Nakamura for the variance from the HSASTR. Allow me to outline the reasons for this opposition:

1) Since the start of the short-term rental's owned and operated by the aforementioned parties; the increased traffic on the Wildwood Road has been very pronounced. The short-term renters are numerous, travel at high rates of speed and have not yielded when needed. This excessive traffic has caused Wildwood Road to deteriorate to the point that it's costing more to maintain; when it is maintained. Also, the excessive dust from the many short-term renters traveling Wildwood has been an issue.

Over the last 4 years, when Wildwood Road was treated for dust control, those measures do not extend to nor past my property – 1718 Wildwood Road. One could argue that these short-term renters only enter the property and leave the property. That is not at all true. Many of them come and go numerous times over their stay. I observed one party leave and return at least 16 times in one weekend. How did I know they were short-term renters? They had stopped by my property to ask for directions to the unit.

Though difficult to measure, the additional vehicle traffic has also increased the amount of noise on Wildwood Road.

2) I have noticed an increase, again over the last 4 years, of trash on Wildwood Road. I cannot determine if it's from the renters or just rude people tossing trash out their vehicles.

In closing, allowing the variances to continue puts a large strain on resources and has caused Wildwood Road to deteriorate. Actions I would suggest are to charge the parties for and increase maintenance of Wildwood Road including but not limited to treating all of Wildwood Road for dust control. Also, charge the parties for and provide extra law enforcement for the enforcement of the speed limit, proper yielding and littering.

Liz said that she had received another comment from someone on Wildwood Road who wished to remain anonymous. This person was opposed due to seeing an increase of traffic on Wildwood Rd.

There was no one present wishing to comment.

Amy spoke to the comments. She said that the last commentor didn't even live in the Township. Nor do they have experience as to what the neighborhood was like prior to having the rentals. They do come and take care of the property. She said that she sees issues on Wildwood Road with teenage drivers. If these rental homes were owned by families with teenagers, there would be much more traffic. Nor has she seen that much trash. When she does, she usually stops and picks it up. She is not sure they have the perspective to say what they said. Also, the commentor who said the rental had closed down in 2020 was not correct. They may have been referring to the temporary COVID shutdown.

Rita read from a statement detailing her history with the land.

Amy said that the primary point is that the HFSTR would not be new; it's already in place. If there have been complaints, no one has said anything to them. She said that things have changed in a positive way with their neighbors since they started their original short-term rental. People who rent are there to experience the area, nature, and the river and they appreciate that opportunity.

Rita said that once they reopened during COVID, they found that people were desperate to experience the outdoors and be with their family in a safe place.

Justin said that there was feedback from six neighbors, four of which were in opposition. That's a fairly high percentage. The fact that this was operated as a HFSTR in the past is not relevant. Decisions the Commission

makes are not precedent-setting, but we live in a small community where, if this were to be allowed, other residents could think they could use auxiliary structures on their property as HFSTRs.

Amy said that their situation was unique. Their request is to continue a HFSTR that is already in operation. It may be in a separate building, but she is aware of what guests are doing.

Blane said that three months ago the Commission had a discussion of accessory structures as HFSTRs. There seems to be some interest in that. Has there been further discussion? Liz said that allowing accessory structures as HFSTRs would require changes throughout the Ordinance. It would not be simple. But the Commission could consider it and recommend it if they wanted to. They would have to consider St Louis County's Ordinance, as well, and be at least as restrictive as that.

Pam said that we settled on the current language in the Ordinance after extensive conversation and input from the community. We should respect the decisions that emerged from that process.

Blane said that it is apparent that Amy's and Rita's rentals have gone well and they have done a good job. The Ordinance went into effect on April 20, 2022 and there are new rules regarding HFSTRs, so it's understandable that there's confusion. Someone may not know what the Ordinance or law is, but you still have to follow it. If the Commission were to grant these variances, it would have to be due to the plight of the applicant.

Dave Edblom asked, if we say yes to this, what would we say no to?

Angela agreed. It is not an indictment of Amy or Rita -- they are responsible and doing a good job and she has a great deal of respects for them. But the Ordinance has changed. She does not feel the criteria for granting the variances have been met.

Tony said that HFSTRs have become much more of a concern now than they were in the past. The Ordinance reflects that.

Amy said that the purpose and intent of the Ordinance and CLUP is to maintain a good community and she felt that they were doing that, even with the rentals. If they end up applying for an interim use, they will be talking to their neighbors about it. It builds community. She questioned whether they should have just applied for a renewal of the HFSTR instead of going this route.

Liz said that the permit they are operating under now explicitly expires 6 months after change of ownership. A renewal would not be an option. The other options are a low-frequency short-term rental or a long-term rental.

Angela made a motion that the variance application be denied because the request is not in harmony with the general purposes and intent of the Ordinance because the requested variance is for a high-frequency short-term rental of an accessory structure and as such is not the primary residence of the applicant for nine months of the year and therefore does not meet the requirements of the Ordinance. Justin seconded. The motion passed unanimously.

Pam made a motion that the variances are not consistent with the Comprehensive Plan because they propose to have two HFSTRs under one owner.

The motion failed for lack of a second.

Dave Edblom made a motion that the proposed variance is consistent with the Comprehensive Plan because the Comprehensive Plan allows for tourist activity. Justin seconded. The motion passed unanimously.

Angela moved that the variance request does propose to use the property in a reasonable manner but it is not consistent with the Ordinance because it is rental of an accessory structure, it is a second high-frequency short-term rental under one owner, and because it is not the primary residence of the owner for nine months out of the year. Justin seconded. The motion passed unanimously.

Justin moved that the variance request is due to circumstances unique to the property not created by the property owner because they purchased the property with an existing detached HFSTR and the owner is simply seeking to continue the existing use. Dave Edblom seconded.

Liz said that they were aware that the Ordinance had changed and they couldn't continue the use without a variance and new permit. The Ordinance was updated in April of 2022 and the property was purchased in the fall.

Angela said that it could be considered reasonable to have an expectation that an existing operating business could be continued.

Blane felt that the circumstances were created by the property owner in that they bought the property knowing that the Ordinance had changed.

Tony said that it is up to the buyer to do due diligence when buying a property.

Angela proposed that the motion be amended with the following wording: the plight was due to purchasing property with an existing business that is no longer allowed under the Ordinance. Justin accepted the amendment to the motion.

The motion passed with Angela, Pam, Dave Edblom, Justin and Dave Meyer voting in favor and Tony and Blane voting against.

Angela moved that the variance will not alter the essential character of the locality because it has been an existing business for many years. Tony seconded. The motion passed unanimously.

Angela summarized. The variance application is denied because it failed to meet the first variance criteria that a variance must be in harmony with the general purposes and intent of the Ordinance.

### **Open Commission Seat**

Liz said that Dave Edblom has served two three-year terms and this will be his last meeting. Dave has been a valued member of the Commission and also served the Township as a Board Supervisor. Everyone thanked Dave and shared their appreciation for the many things that he was uniquely able to contribute.

In addition, Blane's first term is over. He has an opportunity to agree to serve an additional three years. Blane, too, has been a valuable member and it would be great if he could serve again, providing important continuity. After some thought, Blane agreed to serve a second term.

The February 23, 2023 minutes were approved as presented.

### **Director's Report**

Liz said that she talked with the owner of Red Swan Catering following last month's meeting. They were a restaurant and catering business before COVID. Since then, they closed the restaurant but still have the catering business. They have put multiple apartments in where restaurant was, and are renting them out, which is a change of use. Liz called the St Louis County Planning Department and they said that this use would definitely be considered a PUD. Liz will call the owner and let her know that we need to be in line with the County and they will need to apply for a PUD from the Town. Their long-term plan is to phase out the catering business and turn all of the space into apartments. Depending on the timing of the changeover, they may need two different permits but Liz would like to work with them on the timing in order to apply only for the permit that will encompass the final use.

Liz said that she called the MN Dept of Health regarding permitting of short-term rentals. They told her that all vacation rentals are required to get a permit from the State and the owner would apply for this permit once they

have been granted the interim use permit from the Town. Liz will find out how long it takes to get a permit from them.

Angela said that the Commission could approve a short-term rental interim use permit contingent on the applicant getting the proper permits from the State within a certain amount of time.

Liz said that the Ordinance states that the permittee is responsible for all necessary licenses and permits. It's stated in general terms because we don't always know what permits are required.

Blane asked if it's public information who in the Township has permits. Liz said if someone calls and wants to see a copy of an application or permit, we provide it, but that information isn't available to browse.

Liz said that there have been a lot of inquiries lately regarding properties for sale in the Township and what would be allowed for the property under the Ordinance. This happens almost every time a property in the Township goes on the market.

Liz said that the Board did not agree to the Commission's recommendation for a moratorium on businesses involving THC because a moratorium cannot be put in place unless the Town plans to undertake a study on the matter. The Board felt that anyone proposing this type of use would need a conditional use permit and that would provide a safety net. It was felt that the State will be addressing the issue before too long.

A break was taken while the findings of fact and decision document was drafted. The Commission approved the document.

The meeting adjourned at 9:45.