

**Town of Duluth
Planning Commission
Meeting Minutes
April 27, 2023**

The meeting was called to order at 6:32 pm by Chair Angela Wilson.

In attendance: Angela Wilson, Blane Tetreault, Justin Osadjan, Dave Meyer, Tony Mancuso, and Nathan Nesgoda.

Absent: Pam West.

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

The agenda was approved as presented.

This was Nathan Nesgoda's first meeting as a Planning Commission member. He has been a resident of the Township for 6 years and has family roots here. He is a real estate appraiser and applied for the Commission position to be more involved in the community.

ArMand Nelson is the new Town Board Supervisor and Town Board liaison to the Planning Commission. He has lived here about a year, but has been coming up to the area for 20 years. He was previously mayor of Champlin and was also on the city council.

Perliger Variance Hearing

Liz introduced the hearing, explaining the process and presenting the application. Rachael and Paul Perliger were present. They were requesting a variance of 45 ft from the required 200 ft setback from a trout stream to build a pole barn. Liz showed an aerial map of the area and a sketch showing the proposed location of the barn. She showed the zoning requirements for their zone district, FFL-1.

She read the variance request from their application.

We would like to build a barn on our 20 acre farm. We can do it around existing structures and driveway with proper setback from roads, but it is 155 ft from a trout stream/tributary to trout stream. The DNR said it is a trout stream last week, however has told our neighbor it is a tributary to the Knife River. If it is a tributary, no variance is needed.

Liz noted that she also checked with the DNR and they said that it is classified as a trout stream.

Paul said that just south of where they propose to build, there are two smaller buildings that will be removed. He noted that the DNR and St Louis County require a 150 ft setback from a trout stream, while the Town requires 200 ft. At 155 ft from the stream, the building location would be compliant with both the County's and the DNR's setbacks. Rachael said that they want to remove the two small buildings, a cabin and a lean-to, and put up a pole building to provide better shelter for the horses and clean up the property at the same time. The pole barn will be open on the west side for the horses to come and go and there will be storage on the other side.

Angela said that the proposed barn location appears to be high compared to the where the stream is. She has had horses, so is familiar with manure management. How do they plan to manage waste?

Rachael said that she grew up with a large herd of horses that were out 24/7. She maintains two to three manure piles away from the barn area that she composts and rotates through yearly. Jim Snell pointed out that their mound system is between the proposed barn site and the stream. Rachael said that water tends to run behind the buildings and is captured in a low spot there.

Tony said he looked at the site on Tuesday. He was concerned about waste and the trout stream until he saw the berm for the mound system between the barn and the stream. That berm will divert runoff from the stream. In addition, they don't plan on having many horses or boarding. They could extend the berm a little bit and completely block any waste from reaching the stream.

Nathan asked why they couldn't build in the pasture area and avoid the need for a variance.

Rachael said that the pole barn will be 64 ft long with two run ins. One part of the structure will be a drive through for their truck and horse trailer so she can come out without backing. They would lose some of their sacrifice area if they set it further back. Paul said that if they had a bigger setback, the turning radius wouldn't work for the drive through on the east side of the building. In addition, if it's pushed to the west, it would require an extension of the driveway, creating more impervious surface area. Placing it where they propose also keeps it closer in to the homestead in general.

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

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

Applicant response: We request a variance from a 200 ft setback from a trout stream to a 150 ft variance. As a rural resident with a horse farm, we want to enhance the rural character of our farm by building a barn for our horses that is in harmony with our pastures, fences, existing driveways and buildings and blend into our neighborhood. There is a question about our stream being a designated trout stream or tributary. We would build upon an existing driveway and would remove two smaller outbuildings, mitigating some impervious surfaces. We deeply respect the land and take seriously our role in protecting the environment and ecosystem.

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: Our barn would be built further away from the stream than our house is, the original barn is, and garage is, and our mound system. We've chosen a location that is as far from the stream as it can be to fit the existing driveway, fences and other structures.

The stream runs thru the NE corner of our acreage. The house and original barn were built in 1903-1906 and are closer to the stream. All other structures were already existing when we purchased the farm in 2019.

Building a new barn that is consistent with our other structures will enhance the character of our rural farm. We will remove two rudimentary smaller buildings once the new barn is built. The requested location allows us to maintain our existing pastures. Having to place the barn at 200 ft would mean a loss

of pasture, moving of fence line, significant addition of gravel and more driveway, moving of water lines, and more disturbance of natural space.

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

Applicant response: Yes. We want to build a barn on our 20 acre horse farm that fits within existing buildings, driveways, and fences.

Public testimony

Beth read one email comment received by the Town:

We are Rod and Sue Garver and we live at 6376 Homestead Road. The Perlinger's are our neighbors living just north of us on the west side of Homestead Road. We live downstream from the Perlinger's relative to the flow of the trout stream mentioned in this variance, with said stream completely traversing our property from northwest to southeast. We have known the Perlinger's for some time now and have found them to be very environmentally conscientious people who would make the necessary efforts to protect the trout stream should this variance be granted. We fully support this variance and believe it should be granted.

Jim Snell spoke. He said that he has lived on his property, which is next door to the Perlingers, since 2006. His grandparents homesteaded the area. He believes that with the mound between the barn and the stream that the stream will be protected.

Roger Beck spoke. He said that the Perlingers have restricted where the horses can graze. The previous owner allowed their horses to go in the stream while the Perlingers have fenced their horses out of the stream. His grandparents built that house and his mother was born in it. He thinks they are great stewards of the property.

End of public testimony

Dave moved to grant the variance. It is in harmony with the general purposes and intent of the Ordinance and is consistent with the Comprehensive Plan as it maintains the ruralness of the community. The applicant has thought through the placement of the barn while protecting the stream. It meets the DNR's setbacks. They have the proper landscaping in place to mitigate impact to the stream. They are using it in a reasonable manner in that they are maintaining the original homestead and none of the neighbors have a problem with it. The circumstances are unique due to the layout of the land and the existing buildings. It will not alter the essential character of the neighborhood because it's been in existence with horses and outbuildings - they are just improving it. Angela seconded.

Blane agreed with Dave. But he said that the Commission painstakingly went through the Ordinance and updated those setbacks for good reasons. Water is one of our most valuable resources and it is difficult to recover once it is sullied. Sometimes others' requirements don't fit our Township and it makes sense to have stricter requirements.

Liz said that it was her recollection that when the Commission decided on the stricter setbacks, the understanding was that someone with different circumstances could apply for a variance. If the setback was 150 ft, it would meet requirements for a routine land use permit and the Commission wouldn't have the opportunity to review it. In this instance, if the setback were 150 ft, the applicants could have had nothing between the barn and the stream

and waste could go straight into the stream without raising any flags. The 200 ft setback requires that they come talk to the Commission about it and the Commission can evaluate whether it's protective enough.

Angela agreed. The goal was to have the option of being more protective on a case-by-case basis. She said that it does make a difference to her that they are in compliance with the County and DNR setbacks and are not asking for a large variance.

Liz said that the Township is a unique area. The north shore has more trout streams than anywhere else in the County.

Blane said that the streams here run directly to Lake Superior. The Commission heard a variance recently that they denied. It is not clear to him why the Commission sometimes adheres strictly to the Ordinance and sometimes doesn't. He asked how, in this instance, the circumstances were not created by the property owner.

Liz said that hearing was for a variance for a short-term rental and STRs have only been allowed recently. Most governmental units are still trying to figure out how to get a handle on them. In addition, no variance hearing sets a precedent for another.

Dave said that in the example Blane mentioned, that applicant had at least three negative comments against their proposed use. In this instance the applicant's proposed layout does not create additional impervious surfaces, utilizes the driveway that is already in place, doesn't infringe on the pasture, and doesn't require more fill.

Liz said that the house and the other structures were built at the turn of the century, so the layout of the farmstead was predetermined. Blane felt that was further argument that the burden was created by the applicant. That the buildings were placed in 1906 is irrelevant.

Justin said that he appreciates Blane's point. But he agrees that the circumstances are unique to the property because of the location of the existing buildings.

Tony noted that a character of the farmstead is that the buildings are clustered. So, it makes sense to continue that instead of placing a building apart from the farmstead.

Angela felt that the applicants demonstrated a forward-thinking approach to protecting the stream. The variance could be allowed without creating any inconsistencies.

Tony asked if they would need to apply for a permit for a business if they were to decide to start a business boarding horses. Liz said that would be considered a home-based business. They would also have to meet the animal units per acre requirements, which is currently one horse per acre. Liz said that someday down the line, someone else will own that property. 20 horses could be allowed on 20 acres.

Rachael said she is putting in four tie stalls. She may have as many as four horses as some age out. She does not have enough pasture for many horses.

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

A high-frequency short-term rental application is on the agenda for May's meeting. Liz showed the map of the area. The Commission set the notification area for the required one-quarter mile radius of the property as well as all property owners on Stoney Point Drive and Alseth Road south of the Expressway.

Liz presented a letter from a Township resident regarding the Hoepfner's short-term rental application that was heard and denied in January. The applicants subsequently applied for and got an over-the-counter low-frequency short-term rental permit. A low-frequency short-term rental is defined as "rental of a principal, single-family dwelling for less than or equal to thirty days that does not occur more than four times per calendar year." The resident believes that the home is being rented more than that based on on-line reviews. They were also troubled that none of the many concerns regarding using the property as a HFSTR that emerged during the hearing were addressed before allowing the LFSTR permit.

Liz asked the Hoepfners for their rental records and, since they received the low-frequency permit, they have been in compliance. An additional concern stated in the letter was that the home could potentially be rented for 120 days per year which could present a bigger impact than a HFSTR. They felt like this was a loophole for short-term rentals and essentially allows for commercial use of a property without a review process. Liz said this was true, but she felt, based on what other LFSTRs in the Township have done, that that would be unlikely. The Commission can consider this when they revise the Ordinance.

Blane understood the frustration of denying a HFSTR and then allowing the LFSTR without addressing any of the concerns the Commission had for the HFSTR.

Liz said that the HFSTR requires a hearing and the LFSTR is over-the-counter. It is all we have in the Ordinance to work with at this point. The permit is effective for one year from when it is issued. She has chosen to work with them to help them be in compliance and move from that point forward. If they violate the terms, the permit will not be renewed.

Angela felt that their low-frequency rental allowance of four times per year should be considered done for the year based on their rental records. They don't have a history of making an effort to comply with the rules. They were told that they weren't in compliance prior to the hearing for the HFSTR but continued to rent as a HFSTR until the hearing.

Dave made a motion to empower the chair, Angela, and vice chair, Blane, to write a letter in response to the resident. Nathan seconded. The motion passed unanimously.

Liz said that the MN Department of Health requires a motel license for a STR that rents for periods of less than seven days at a time. They require notification from any governing agency when a permit is granted for such a rental. So, the process would be that the Town would grant the permit, and then that permittee would go to MN Department of Health and apply for the motel license. This would apply to LFSTRs also. It is complicated because the Department of Health won't consider a license until the applicant has a permit from their local governing entity. It then takes from 30 to 90 days, according to MN Department of Health, to process the license. The Commission could put a condition on a STR that it not go into effect until they have the license from the Department of Health.

Nathan was concerned that people might be deterred from getting the proper permit from the Township if too many restrictions and follow-ups are placed on it, like requiring to see their MN Department of Health motel license. It is likely that the more hoops we create, the less compliance we'll have.

Liz said that there is not time to constantly check for people who are not complying. To a certain extent, it has to be on their honor. Enforcement in the Township has traditionally been focused on addressing complaints or egregious infractions. We try not to go looking for problems. However, she has recently reviewed on-line STR rental sites like Airbnb and VRBO and sent letters to Township property owners that are advertising STRs without a permit. It is fairer to all to try to bring these rentals into compliance. But it can be a very complicated and drawn-out process. This will be a start.

Angela said that it is part of the social contract of living in our community. But she agrees with Nate that compliance levels fall off if it is too difficult to be in compliance. It is worthwhile to make it attractive to be in compliance.

Liz feels that a major component of her role is to educate. A lot of Township residents don't even know that there are rules or why they exist. A lot of people start a STR casually for a little bit of extra cash. Most don't know about the MN Department of Health requirements.

Dave suggested the Commission review the Ordinance on a yearly basis. The last time we did it, it was overwhelming. Perhaps we could keep up on it better if we did it annually.

Liz said that a public hearing is required to change anything in the Ordinance, even so much as a typo. So, it is something to consider when it gets quiet again.

The March minutes were approved with the following change to line 329: insert "almost" in the phrase, "this happens every time."

Directors Report

Liz said she sent letters out to six property owners advertising HFSTRs in the Township without a current permit. She has heard back from three of them. One is Andrew Zurcher and we have received an application from him and will most likely hear it next month. The other two have been in existence since before there was anything in our or St Louis County's ordinances on short-term rentals. St Louis County is addressing short-term rentals similarly to how they addressed gravel pits when they started regulating them -- basically anyone who had a gravel pit needed to get a permit for it. She is still researching the issue.

Liz said she met with Deb Aho at her property and looked at her options. She gave her a map showing the building envelope. Her options are still to either move the building site or apply for a variance.

Concerns from Audience.

None.

The meeting adjourned at 8:58.