

**Town of Duluth  
Planning Commission  
Meeting Minutes  
May 23, 2024**

The meeting was called to order at 6:30 pm by Vice Chair Blane Tetreault.

In attendance: Blane Tetreault, Pam West, Justin Osadjan, Tony Mancuso, Nate Nesgoda, and Dave Meyer.

Absent: Angela Wilson.

Also attending: Liz Strohmayr, Planning Director, Beth Mullan, Secretary, and ArMand Nelson, Town Board liaison to the Planning Commission.

The agenda was approved as presented.

**Sievert Variance Public Hearing**

Liz introduced the hearing and the process. Julie and Butch Sievert were present. They were applying for the following variances to build a home at 5842 North Shore Drive:

- A 14 ft variance from the required 110 ft setback from the road to place the building 96 ft from North Shore Dr,
- A 5 ft variance from the required 20 ft setback from the side yard lot line to place the building 15 ft from the side yard, and
- A 65 ft variance from the required 110 ft setback from Lake Superior to place the building 35 ft from the Lake.

The property is in zone district SUR-2 and consists of two nonconforming parcels that when put together are conforming in lot size and width. The proposed home site meets the dimensional requirements except for those for which a variance is requested.

Liz showed the area map, the zoning maps, and a closeup site photo. There is a cabin on the lot that will be taken down. She showed the proposed location for the home. She showed an aerial photo of the lot that included the DNR's determination of the ordinary high water mark (OHWM) and measurements of the depth of the property from the OHWM to the road centerline at different locations on the property.

Liz showed the criteria that must be met for approval of a variance and the applicants' responses to those criteria as stated in their application.

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

*Applicant's response:*

A variance is requested in order to construct a new year-round home on the lots to replace the existing 16' x 35' cabin. The home plans are relatively modest and depict a 32' x 40' two-story home with an attached 20' x 34' garage.

The variance would be consistent with the purpose of the ordinance, specifically to enhance ecosystems for future generations. A new home will allow the current and future owners to enjoy the unique connection with the ecosystem that comes with living on the shores of Lake Superior. The site will be occupied year-round and will be cared for by the owners. This is the highest and best use for the property, and is consistent with the uses of the neighboring properties north of Stoney Point. The ruralness of the Township will be unaffected because the use will be unchanged, other than to increase the amount of time during the year that the property can be occupied, which is consistent with the objectives of the ordinance.

The home would fit the purpose of its SUR-2 zoning, which is "to provide for almost entirely residential uses on an urban scale of development." The home would be strictly residential and for the use of a single family only. It would also meet the CLUP goal for Lake Superior Shorelands Land Use Areas, which is to "to provide for predominantly residential and limited mixed uses." It would also meet the accompanying CLUP policy of "maintain[ing] the current densities of development" by replacing a single residential building with another.

Construction of a new home will not result in a material adverse effect on the environment. The proposed site is centrally located within two contiguous lots and was chosen in part to minimize tree removal. The trees between North Shore Drive and proposed home will remain undisturbed, with the objective of making the home as inconspicuous as possible from the road.

*"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;*
- c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.*

*Applicant's response:*

The constrained lot sizes make it impossible to simultaneously comply with the road and lake setback requirements. The setback requirements did not exist when the lots were platted. The certificate of survey attached as Exhibit C shows that if a 42' deep structure was placed on the lot and the 100' lake setback requirement was met, then the structure would only be 68' from North Shore Drive and Lake Superior is only 210'. Coincidentally, the combined setback requirements also total 210'. No structure of any size could be built that would comply with both setback requirements. Strictly applying new setback requirements to old lots would render the lots and others unbuildable. The location of the proposed home attempts to strike a balance between the two setback requirements, and would be farther from the lake than the existing cabin that is 40' from the lake. The proposed home would also be further from the lake than homes on some of the nearby lots.

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

*Applicant's response:* Yes

Julie said that she was born in Duluth and grew up on the North Shore. Her dad and grandfather were fishermen off Stoney Point. She and Butch bought this property in 1999. In the meantime, they operated the Inn on Gitchi Gumee for 36 years. It has always been their dream to build on this property.

Butch added that they worked hard to get to this day. It wasn't always easy to pay the property taxes but they managed. They sold the Inn and are now financially able to build on the property. The cabin was occupied until recently. They did not charge rent for it until recently when rising property taxes made them charge half rent.

Tony asked if the cabin could be rebuilt or improved.

Butch said that it's falling down. It has had some remodeling, but he didn't think it was rebuildable.

Liz added that the cabin is in really rough shape and is extremely close to the lake. It's dangerous to be on the lake side of the cabin. Nate had visited the site and agreed.

Justin asked about the dimensions of the cabin. Butch said that it was 32 by 22 sq ft.

Nate said that he saw that the property was transferred in 2011. Was that a purchase or a consolidation? Julie said that they previously had a contract for deed on the property and got a loan for it in 2011.

Justin asked if the property is in the erosion hazard area. In the letter from the DNR, it says that it is "mapped as having low erosion."

Liz said that on the Town's zoning map, it is in the erosion hazard area, but it is actually in a small area of ledge rock. The Town has adopted a larger view of the map.

Pam asked if they included the smaller lot when they determined setbacks and other calculations. Butch said they did. There is a home on the adjacent lot towards Two Harbors and they want to be as far away from that as possible. The driveway was put in when the sewer was put in and they didn't have any say on its location.

Liz said that they would not be able to legally split the two parcels, even if they adjusted the lot lines, because it is not possible to create two legal parcels from that piece of land.

Dave asked if they have been working with the DNR. Butch said that they hadn't. Dave said that per the letter from the DNR, the DNR recommends denying the variances. The setback from the lake seems to be their biggest concern. It is not a very deep lot.

Nate said that the proposed setback from the lake is actually closer to 17 ft from the OHWM as the DNR delineated it.

Tony asked if they had considered moving the home site closer to the road. Doing so would require more of a variance from the road but less of a variance from the lake. Butch said that they didn't want to be closer to the road because of the road noise. Their proposed site is 25 ft above the water level.

Pam said that she was concerned with being so close to the lake. Setbacks from the lake are meant to keep buildings and sediments associated with buildings from washing into the lake. Butch said that there will be much less runoff with a home that is landscaped and taken care of. Currently if it rains, it washes out. If they build there, that won't happen anymore. They've had the property for over 30 years and the lake has never threatened the cabin.

Tony said that when the Planning Commission makes decisions a precedent of sorts is set. People point to other homes that are 35 ft from the lake as consistent with the neighborhood. He is not sure it is justified to be 35 ft from the lake just to be further away from the road. But it's a nonconforming lot and each nonconforming lot is different.

Butch said that they would be willing to move the house closer to the highway, but they would prefer not to.

Justin asked if there was anything on the adjacent lot towards Duluth as their home would be 15 ft from that lot. Liz said that there is a house on the lot. Julie and Butch said that it's an old cabin that is not used anymore. Windows are missing.

Liz read a letter to the Commission from the DNR recommending denial of the variances (see attached).

### **Public Testimony**

Beth read a letter against the proposal from neighboring property owner, Rebecca Norine (see attached).

There was no one present to comment.

### **End of Public Testimony**

Julie said that when the Billes' built their house, they were granted variances to do so. They were taken to the Minnesota Supreme Court over those variances by Rebecca Norine and others. Mr Bille has since died and Mrs Bille has been stuck with the legal fees. It was very difficult for her.

Butch said that their home won't be as tall at the Billes' home. They were in favor of allowing the variances that allowed the Billes to build there. They have paid taxes for over 30 years. To have someone complain who won't even be able to see their home doesn't make sense to him. It is all rotten scrub down to the lake. They will keep the cedar trees. They are willing to move the home closer to the road but don't want to.

Tony noted that it's all bedrock, so there won't be erosion. But it would be better if the home were more centered and closer to the road. He would like to see them be able to follow their dream. It's a difficult lot. But the home needs to be further from the lake.

Liz showed the location the DNR proposed. Nate asked how close it would be to the road in that location. Liz said it looked like about 55 ft.

Butch noted that the closer you get to the highway, the steeper the driveway becomes. They would also have to cut some cedars if they went further up.

Justin asked about the reference to a separate garage in the letter from the DNR. Butch said that the garage is attached; there is no separate garage.

Liz said they could gain some room by placing the home closer to the center of the two lots. Butch said they want to be as far away from the other house as possible.

Justin asked if they would be willing to split the difference between what the DNR suggested and what they have requested. Butch said he doesn't want to build the home 40 ft further back. He would be willing to move it back 20 ft.

Liz showed a rendering of the house.

The Sieverts said the house was going to be a single level except for a small section that would be two stories with a shed roof and solar panels.

The Commission asked if they could only look at the variances as requested or if different variances could be considered. Blane said that there have been instances where the Commission has had applicants return with an amended request. Liz said that the Commission can consider variances other than what was initially proposed.

Tony asked how many feet they would have to move the house to be behind the DNR's shore impact zone. Liz said about 20 ft.

Nate asked if it would be setting a precedent to do that. Is it what we want as a Township? It's not the only nonconforming lot in the area.

Butch said when they put the sewer in they had no idea there would be a problem with building on the lot. Nate said that it is the responsibility of the purchaser to know the zoning rules before buying a property.

Dave said that the Commission looks at each case individually and lots are not identical in how they are nonconforming. He hoped that a compromise could be found.

Liz said that if the house were shifted 20 feet back to be behind the shore impact zone, it would be about 76 ft from the road and about 55 ft from the lake.

Dave asked the Sieverts if that would work for them. Butch said absolutely.

Liz said that the DNR requested some conditions if the variances were approved. 1) That the footprint of the existing cabin be replanted with native vegetation, that the home be screened from Lake Superior by vegetation, and that the required vegetation be maintained. 2) That all runoff from impervious surfaces be directed away from the lake with a rain garden or BMPs. In reference to a third condition regarding rehabilitation of old septic systems, Liz asked if the Sieverts were aware of any old systems on the site. They said no, a chemical outhouse was used by the last inhabitant.

Dave noted that this property slopes all one way to the lake. There are not many options to send stormwater another way.

Liz said that in this case, the best BMP would probably be a rain garden. A rain garden collects the water and allows it to drain slowly. It captures sediment in stormwater before it reaches the lake.

Tony asked the Sieverts if those requirements were okay with them. They said they were.

Tony moved to approve the variance requests for the home as proposed by the DNR, the road setback at 76 ft, and the lake setback at 55 ft, and the 5 ft setback for the side yard as applied for. The revised setback from the lake moves the house out of the shore impact zone. The existing cabin site must be revegetated with natural plantings and runoff must be directed away from the lake with best management practices.

Blane seconded.

Tony moved to split the question. Dave seconded. The motion to split the question was approved unanimously.

Tony moved that the proposal is in harmony with the general purposes and intent of the Ordinance because it is a nonconforming lot of record and it meets the DNR's request to site it out of the sensitive shore area; it revegetates the cabin site and addresses stormwater. Dave seconded.

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

Tony moved that the proposal is consistent with the Comprehensive Plan because the shoreline is zoned for smaller parcels in close proximity so it doesn't alter the fabric of the neighborhood. It is consistent with the shoreline use as it currently exists and is zoned for. Dave seconded.

The motion failed with Tony and Dave voting in favor and Nate, Blane, Justin and Pam voting against.

Tony moved that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance because it has been used with a cabin for over 25 years, the limitations of the property make variances necessary to use the property, and it is similar to other properties in that area. Justin seconded.

Justin made an amendment to the motion that the lot sizes in this area make variances necessary. Blane seconded.

The motion, including the amendment passed unanimously.

Pam moved that the plight of the property owner is due to circumstances unique to the property not created by the property owner because the lot is nonconforming and they have to conform to the nonconforming lot to build on the property. Justin seconded.

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

Tony moved that the variance, if granted, will not alter the essential character of the locality because many of the lots on the shoreline in that area are small and many have structures that do not meet current setbacks. Dave seconded.

The motion failed due to lack of majority, with Tony, Dave, and Nate voting in favor and Justin, Pam and Blane voting against.

The original motion failed because two of the necessary criteria were not approved.

Justin said that his vote on the second criteria might change if the house were slightly smaller and was a single story. He feels like homes on shore should be replaced with similarly sized homes.

Liz told the Sieverts that if they wished to appeal, it had to be within 15 days. An appeal of a Planning Commission decision goes to the Town Board. They could also reconfigure their plans and apply for new variances.

Pam said that she understood that they preferred to not be close to the existing neighbor and the road. But they could better meet setbacks if they placed the home closer to the midpoint of the lots. There is more room between the road and the lake there. For her 55 ft from the lake is a big deal. They may be diligent in their care of the property, but what about the next owners?

The Sieverts asked if it would have made a difference if the garage were not attached to the house. Pam said that she couldn't speak to that. The bottom line was that the proposed home was too close to the lake.

Nate said that he also thought it was too close to the lake. He thought a variance from the road would be more appropriate than one from the lake.

Blane said that the CLUP emphasizes the rural nature of the Township. Removing the cabin to build a home on the property does not increase the density of the area or result in a net gain in runoff. He agreed that a slightly smaller home that was situated further from the lake would be more in keeping with the CLUP.

Julie asked specifically what size house would be acceptable.

Liz said that each variance request was unique and it was impossible to say.

Butch pointed out that the house next door has three stories. All they requested was a loft.

Butch asked if they could rehabilitate the cabin and add onto it by 25% without a variance. Liz said they could.

### **Old Business**

None.

Nate said that AnDrew Zurcher reached out to him with some concerns. He seemed to be confused about the denial of his short-term rental. Nate told him to call Liz. Liz said that a letter was sent to AnDrew stating that he is still not in compliance and needs to submit a proper stormwater management plan and remove any listings for his rental. He claimed that he got a permit for the rental, but when Liz asked him for a copy, it was just a receipt from the clerk's office showing he submitted the application. She said that he is getting requests from three different agencies, the Township, the DNR, and the MPCA, so that may result in some confusion.

### **Director's Report**

None.

### **Concerns from the Audience**

None.

This was Blane's last meeting. Commission members expressed their appreciation for his work and a break was taken for treats.

The meeting was reconvened to approve the decision and findings of fact document for the Sievert hearing. The meeting adjourned at 9:05.

### **Attachments:**

Letter from Bri Speldrich, DNR

Letter from Rebecca Norine, neighbor



Ecological and Water Resources Division  
525 Lake Ave S, Suite 415  
Duluth, MN 55802

May 14<sup>th</sup>, 2024

Liz Strohmayer – Planning Director  
Duluth Township Planning & Zoning  
6092 Homestead Road  
Duluth, MN 55804

**Re: Variance request for relief from Lake Superior OHWL setback at 5842 North Shore Drive**

Dear Planning Director:

Thank you for the opportunity to review the Sievert's application for a variance to construct a new residence with attached garage at 5842 North Shore Drive. Please submit the following comments and recommendations from the Minnesota Department of Natural Resources (DNR) to the Town of Duluth Planning Commission for consideration and make them part of the record for the meeting scheduled May 23<sup>rd</sup>, 2024.

The Sievert's have requested relief in the form of a variance from the 100-foot Ordinary High Water Level (OHWL) setback from Lake Superior to construct a new residence with an attached garage (structure). The new structure will be located approximately 35 feet from the OHWL of Lake Superior. We have reviewed the application for compliance with shoreland requirements and recommend **denial** of any variance that allows new development within the shore impact zone.

We recognize the unique nature of this lot and acknowledge that it will be impossible to redevelop this property without granting some form of variance given the 110-foot road centerline setback and the 100-foot OHWL setback. That said, we believe that it is imperative to protect sensitive areas on the lot where development has the greatest potential to adversely impact the state's public waters, water quality, and shoreland aesthetics. In this case, it is entirely possible and reasonable to construct a new structure outside of the sensitive shore impact zone. The shore impact zone is the area halfway between the required structure setback and the OHWL. This area should be protected from development in every case in which it is possible to do so.

Variances shall only be permitted when they are in harmony with the general purpose and intent of the official control and when consistent with the comprehensive plan. Variances may be granted when the applicant establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

The Sievert variance request involves constructing a new structure within the shore impact zone and removing an existing seasonal cabin from within the shore impact zone. Shoreland controls minimize erosion and sedimentation into public waters by limiting density and by requiring placement of structures away from the shore. This means reducing, over time, the number of non-conforming structures within the shore impact zone that fall short of meeting current shoreland standards. Removal of the existing cabin from within the shore impact zone is appropriate and consistent with this goal, but allowing construction of a new structure within the shore impact zone is not.

Essential character is whether the resulting structure or land disturbance will alter the hydrology, soil stability, vegetation, aesthetics, and landscape features on the site. It also includes whether new development would be out of place or scale or otherwise inconsistent with the surrounding area. The owner stated in their application that the new structure will enhance ecosystems for future generations and that it will not result in adverse effect on the environment; however, these statements are unfounded. The construction of the new residential structure will more than triple the amount of impervious surface coverage on the lot and will require additional disturbance and removal of vegetation within the sensitive shore impact zone. This will increase stormwater runoff and the application does not indicate how this increase in runoff will be properly managed. Increased stormwater runoff and additional disturbance within the shore impact zone at this site may cause increased erosion along the shoreline and sediment input into Lake Superior.

The Sierverts have not demonstrated that the new residence will not alter the essential character of the property. They stated that trees between the structure and North Shore Drive would remain undisturbed and the structure would be as inconspicuous as possible from the road; however, the new structure will be substantially larger than the existing cabin and will have very little vegetation to screen it from view of Lake Superior. In this case, increasing the structure's OHWL setback and further reducing the road setback is more appropriate as the structure will already be somewhat screened from the road via an existing privacy fence. Also note that the structure on the adjacent property to the east is of similar size and was positioned closer to the road and farther from the OHWL. Additionally, it appears that situating the new structure closer to the road in the location where they have placed a camper in the past would require less tree removal provided they reconfigure the existing fence.

The 35-foot setback from the OHWL they have requested is a substantial deviation from the required 100-foot setback. While achieving the 100-foot OHWL setback is not possible given the dimensions of this lot, the new structure could be setback significantly farther than 35 feet. While this stretch of shoreline has been mapped as having low erosion potential and appears to be protected by exposed bedrock, this substantially reduced setback is still concerning given the high energy wave conditions of Lake Superior. It is not unreasonable for the Planning Commission to require that no new structures encroach within the shore impact zone. This area is vulnerable to erosion and additional development would not only increase stormwater runoff but would reduce vegetative cover which is important for limiting erosion and enhancing shoreland aesthetics.

Based on this review, DNR makes the following recommendations regarding this variance request:

- Deny any variance that allows new development or vegetation clearing within the shore impact zone. We recommend that the applicant reposition the new structure so that it is entirely outside of the sensitive shore impact zone. [Attachment A](#) shows the shore impact zone, the proposed footprint of the new structure, and an alternative location for the new structure that should be considered.

- If the applicant revises their application and a variance is granted for construction of the new structure outside of the shore impact zone, we recommend that the following conditions be required as mitigation for granting the variance:
  - Require that the footprint of the existing cabin be planted with native vegetation, including trees, that will screen the new structure from view of Lake Superior. Require that this vegetation be maintained (prohibit mowing and vegetation removal).
  - Require that the applicant direct all runoff from impervious surfaces away from the shoreline. Require that the applicant construct a rain garden or other appropriate best management practice to treat the increased stormwater runoff.
  - It is not clear whether the existing cabin has a subsurface sewage treatment system (SSTS) or privy. If a system exists on the property, require that the system be inspected and abandoned in accordance with state rules if it is found to be non-compliant.

Please notify me within 10 days of the Planning Commission's decision on this application. If the Commission approves a variance for new construction within the shore impact zone when DNR has recommended denial, please include the following in your notification: a summary of the public record, testimony, and a finding of fact that supports the decision.

Thank you for the opportunity to comment on this variance request. Should you have any questions, please contact me at 218-302-3246 or by email at [brianna.speldrich@state.mn.us](mailto:brianna.speldrich@state.mn.us).

Sincerely,



Bri Speldrich  
DNR EWR - Area Hydrologist Duluth

*Enclosures: Attachment A*






CC:  
Cliff Bentley, DNR EWR District Manager  
Dan Petrik, DNR Land Use Specialist

Page 3 of 3

# Attachment A



Service Layer Credits: St. Louis County General Use Pictometry 2023, Minnesota LiDAR Based DEM - 3 Meter Resolution based contours (NAVD88)

-  Estimated OHWL
-  Property Boundary
-  Shore Impact Zone
-  Elevation Contour (ft)
-  Alternative Structure Location
-  Proposed Structure Location

0 50 100 Feet

\*All locations and dimensions shown are approximate.



## 5842 North Shore Drive Variance

Date: May 22, 2024

To: Planning Department, Duluth Town Hall

From: Rebecca Norine, 5848 North Shore Drive

Re: Variance Request from Howard and Julie Sievert

I am an owner of the cabin at 5848 North Shore Drive and appreciate the opportunity to comment on the variance request submitted by Howard and Julie Sievert regarding 5842 North Shore Drive: Lot 17 and WLY ½ of Lot 16, Block 3, Greenwood Cliffs, Town of Duluth.

It is my understanding there is a cabin structure on that property that has not been lived in for over a year. I believe, if they wished, the Sieverts might have elected to request permission to repair and improve that structure and be in adherence with the Duluth Zoning Ordinance. But they wish to construct a house, which puts them at odds with the Duluth Zoning Ordinance and the Comprehensive Land Use Plan. Therefore, I write in opposition to the approval of this variance request.

The 2002 Town of Duluth Comprehensive Land Use Plan articulates “the community’s blueprint for the future.” The core values it affirms include: **ruralness** (“ peace, quiet, and uncrowded living and the dark night skies that result from uncrowded living, privacy”) and **natural environment** (“our interconnectedness with the natural environment and recognize our responsibility to sustain it for the generations that come after us”).

In 2017 the Billies at 5846 North Shore Drive requested and were finally granted 6 variances to build a 1400 square foot house on a .3-acre lot. Despite opposition from many neighbors, including ourselves, the Town Board granted the variances by a narrow margin. So now there is a large house right next to our property. Trees were clear cut to the lake to afford a better view. Bright yard lights and security lights were turned on. For us, the “ruralness” core value was ignored.

At that time concerns were voiced that the future would find others applying to build homes in the Shoreland Overlay. And here we are. Rather than protect the rural nature of the relatively small Greenwood Cliffs area, it has the danger of becoming “the suburbs,” changing it immeasurably and forever. Adding another home to this area would seem to fall under the Comprehensive Plan policy to “limit or redirect development that puts at risk the carrying capacity of land or watersheds.”

Had this been a modest remodel of the existing cabin structure in the existing footprint at the existing height, I would not be writing. But as it is, I feel compelled to object to the impact this project would have on the neighborhood and land.