

**Town of Duluth  
Planning Commission  
Meeting Minutes  
May 25, 2023**

The meeting was called to order at 6:33 pm by Chair Angela Wilson.

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

Absent: Pam West and Dave Meyer.

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

The agenda was approved as presented.

**Zurcher Variance Hearing**

Liz introduced the hearing, explaining the process and presenting the application. Andrew and Tiffany Zurcher were present. They were requesting an interim use for a hosted short-term rental located at 1392 Stoney Point Drive. The description of the request, from the application is “It will be used as a short stay vacation space. There is one bedroom and we allow up to 5 guests. It could be rented between 100 and 150 nights a year.” The property meets the dimensional requirements for their zone district, SSUR-1. Liz showed an aerial map of the general area and of the site. She showed the site sketch from the application as well as a drawing of the layout of the rental unit, which is a part of the overall home.

Tony said that he visited the site and it looked like they are adding a third floor. Do they intend to have any additional rental units on that floor?

The Zurchers said they were adding a third floor that will include an office and storage area. There will be no additional rental space.

Liz went through the application. They expect to rent a maximum of 150 days per year. Check in would be at 3 pm and check out at 11 am. Parking will be at the side of the house. An increase in traffic would be expected, but would only be one car in “an already high traffic area.” They do not plan on having a sign, but can provide one if needed. Regarding activities that might generate dust, smoke, smells, pollution, etc., they state in the application that there could be a campfire, but they already have campfires. There will not be noise from the rental that could be heard on adjacent properties. Waste water will be handled by DNSSD. They have a well for their water supply. Waste disposal will be through North Shore Sanitary with recycling at Duluth Township. There is a small creek that runs through the property sporadically.

Liz then read the criteria for conditional / interim uses, which must all be met for approval, and the applicant’s response to those criteria.

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

*Applicant states:* Yes.

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

*Applicant states:* Yes. It already exists within the house.

**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.

**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.

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

*Applicant states:* Yes.

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

*Applicant states:* No.

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

*Applicant states:* Yes.

**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:* No.

**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:* Yes.

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

*Applicant states:* Yes. (This was a mistake on the application; applicants meant to state “no.”)

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

*Applicant states:* Yes.

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

*Applicant states:* No and yes.

Beth summarized the Community Participation Report. There were 27 property owners in the notification area. Of these 16 were not contacted by the applicant because they were not home, did not return messages or there was no home on the property and the applicants did not have phone or email for them. Of the 11 neighbors they contacted, 8 were supportive or had no problem with the proposed use. The remaining 3 were supportive as long as 1) they follow Township guidelines, 2) as long as guests don't trespass, or 3) that it doesn't lead to too many rental properties.

### **Public Comment**

Only one comment was sent to the Town and Beth read that:

We have no problem with the proposed.

There was no one present in the audience to provide comments.

Tony asked if the rental would be advertised through an on-line service. Andrew said that they planned to use Airbnb. If there's an issue, Airbnb takes care of it.

Angela said that she was concerned about the situation with their stormwater management. She noted that they started building in 2017 and asked when they finished building. Andrew said that the building was still in process. Angela said that the proposal increases the use. Their noncompliance with providing and complying with a stormwater plan concerns her.

Andrew said that it is new to them and they are still figuring it out. They paid less for the property because it didn't have stormwater improvements.

Liz said that she let the Commission know that there's a non-compliance issue with stormwater on the property. The noncompliance is not related to the current request for an interim use so should not affect the outcome. She gave a history of the site. The Zurchers started building the house in 2017 with an approved permit. Their lot is a part of a subdivision totaling eight lots. One of the original conditions for approving the subdivision was that each lot have its own stormwater plan. When the original subdivider started selling the lots, some of them had completed rock revetments, but most didn't. The lots were for sale for quite a while. The lots that already had revetment work completed were probably more expensive. When someone develops a lot within a subdivision, they are required to let MPCA know. They are required to follow the stormwater plan that is in place for their lot or hire an engineer to create another plan. Upon purchase of the property, they were supposed to be provided with a copy of the stormwater plan. The Zurchers said they didn't receive one. So, they built without following a stormwater plan. The Planning Director at that time, Sue Lawson, stopped in a couple of times to ask when they were going to do the work required by the stormwater plan.

Andrew said that they have something that SAS designed. But they don't have anything regarding the shoreline. Liz said the original plan shows where you can and cannot disturb the soil. They disturbed a major area outside that plan. They have also changed the angle of the slope. The original stormwater plan does not support what they did. Sue told them they had to provide a new or updated plan from a qualified engineer. She sent them a letter informing them of this. The Town's attorney also sent a certified letter requesting the new stormwater plan. To date, the Town hasn't received the new stormwater plan. In addition, the MPCA is now involved and has told them in addition to needing the proper permits, they must also immediately correct for failing or nonexistent erosion control BMPs.

Andrew said that they didn't disturb anything that they weren't allowed to and felt that they hadn't been properly informed.

Liz said that in order for them to be in compliance with the Township, they have to submit a new stormwater plan from a qualified engineer, establish a timeline for completing it, and cover exposed soil. The MPCA, as well as the Army Corps of Engineers and MnDNR may have additional requirements.

Tony suggested they get together with SAS and ask for a revised plan. They might not have to start over completely. The MPCA requires a geotech engineer. SAS would likely be able to recommend one.

Liz said that once there is an approved plan, then need to submit a time-line for completion of the plan. In the meantime, they will have to check the temporary erosion control as required and report back until the final stormwater plan is completed.

Tony said that he felt he was okay with the application in general, but because of the stormwater situation, it doesn't meet the criteria for item 8 which is impact to public waters. Liz clarified that the criteria is if the *use* will impact public waters, not the previous construction.

Angela said that they plan to rent one room of the existing structure. Do they anticipate that people will just sleep there or are they likely to use the property?

Andrew said that there is a fire pit at top of the slope that the renters can use. Tiffany said that otherwise, there is nothing else to do there except maybe walk to Stoney Point.

Angela asked if renters will have lake access or if they plan to not allow people down to the lake, possibly by roping it off.

Andrew said if renters want to go down to the beach they could, but it's quite a steep climb. They have the public beach side roped off from their property and plan to rope off the other side, which is privately owned. His neighbor on Lot 6 is concerned that people might come onto his beach. Tiffany said that a lot of people and loose dogs wander onto their property from Stoney Point. They would not have bought the property if they had known what the impact of being next to Stoney Point would be. Andrew added that people actually come into their yard to urinate.

Angela asked if their access is from Stoney Point Drive. Are there any easements? The Zurchers said that was correct and there were no other easements.

Justin asked if they would consider withdrawing their application and reapplying when they are in compliance with the stormwater requirements.

Tony suggested approving the interim use with the condition that the stormwater work be done within 90 days.

Angela said that was an option, but she felt there would be too much uncertainty regarding how long it would take. And they couldn't require that say, steps 1 through 5 be completed, because no one knows what the steps are.

Nathan noted that it could be an incentive to get the stormwater plan in place.

Angela said that the Commission could proceed and go through all the criteria knowing that it may be denied. Her inclination would be to give them the option to table it to June or July.

Andrew said that they would not be able to complete the stormwater work by then. He is doing the work and will need to have the work approved.

Nathan asked if the MPCA had further requirements. Liz said they haven't provided that information yet.

Blane asked if they were otherwise ready to rent the unit. The Zurchers said they were.

Justin said that by state statute, we are required to verify all of the criteria. The criteria requiring that adequate utilities, access, drainage, stormwater retention, etc. be in place or are to be provided cannot be verified.

Andrew said that because they are already approved for occupancy, this is not a problem.

Tony said that a livable structure approved for occupancy doesn't address stormwater.

Nathan asked if the rental impacts that criteria. Does the rental increase anything?

Angela said she would not be able to agree that that criteria is adequately met. The wording of the criteria assumes that there's a baseline compliance and we don't have that here. The Commission doesn't have to find that there's an increased impact from the proposed use in order to deny it based on that criteria.

Justin asked if there were other options. Liz said that they could rent long-term or get a low-frequency short-term permit. However, they have already been renting the unit and the Town recently issued a

LFSTR to another resident in a similar situation and there were complaints about that. The Commission also has the option of placing conditions addressing that criteria on an approved interim use.

Justin said a LFSTR would provide them a means to rent some until the stormwater situation was resolved. He said that we have to affirmatively state that the property is in compliance and we know that it's not.

Andrew said that nothing will change. They've already done what needs to be done; they just need to get the final approval.

Nathan said that he would want to see a plan and contract in place and some motion forward on it.

An informal poll amongst Commission members indicated that they would not likely approve the application as presented. Liz said that the Commission could continue through all of the criteria and vote on approval of the application, or the hearing could be adjourned and set to resume at a later date.

Angela said that if the Commission denied the application, the Zurchers could appeal the decision to the Town Board.

Andrew said that they were applying for a permit for the living space, not the property. Could they add an additional fence to comply with the criteria?

Angela said that would not be adequate. They need to provide a new stormwater plan as well as show progress on it. If there is no plan, there's no adherence and the plan that was in place is no longer valid.

Andrew said that he agrees that it needs to get done. He wants that, too. He was told by someone at SAS that what he was doing was okay. Liz said that if that were so, the updated plan would need to reflect it. For now, even before they obtain a new plan, BMP erosion control must be in place.

Andrew said that he would opt to apply for a LFSTR permit and continue the hearing once he had the new stormwater plan.

Beth said that to continue a hearing, a date and time had to be set for the continuation. Due to notification requirements, that could not be changed once set. In addition, notification of extension of the 60-day rule would have to be given.

Tony moved to adjourn the hearing to the July 27 Commission meeting at 6:30 pm. Written notice of the extension of the 60-day rule will be sent. The motion was seconded by Angela. The motion passed unanimously.

### **Catenary Tunnels**

Liz said the Commission needed to make a determination on whether agricultural catenary tunnels meet the definition of the Ordinance for a structure and thereby require a land use permit.

She provided a description of a catenary tunnel: A catenary tunnel is a type of high tunnel, the sole purpose of which is for growing crops, that is designed to be moved from area to area in a field. The poles slide over rebar stakes that are pounded 2 feet in the ground for fast installation and removal of the unit. The plastic covering is often pushed up to the peak during favorable weather during the growing season and is often removed for the winter. There is no concrete or impermeable surface area within the tunnel. It is not to be used for any other purpose, including storage.

She said it does not meet the definition of a greenhouse in our Ordinance because it does not have lights or other mechanical systems. In general terms, they operate no differently than a cold frame or low-

tunnel. The only difference is that they are tall enough to stand in, whereas cold frames or low tunnels are not.

Liz said she called St Louis County and they felt if it didn't meet the definition in the Ordinance for a structure, then it would not require a permit. They also said that if it is in a temporary location, no permit would be required.

Tony asked if a permit is required for temporary structures that are used as garages, such as ShelterLogic garages.

Liz said that a permit is required for those. Generally, although considered temporary, ShelterLogic storage units are set in one place and aren't subsequently moved.

Nathan asked about shipping containers. Liz said that if they are temporary, they would not require a permit.

Angela asked if it makes a difference if they are permanent vs temporary.

Nathan said that the County taxes temporary buildings.

Blane said that he didn't see a big difference between a high tunnel and a cat tunnel.

Justin said that at one time Sue said that high tunnels require a permit.

Liz said that shipping containers and ShelterLogic structures tend to be put in place and stay there. Cat tunnels are moved depending on where in the field the crop is and the Town doesn't tell people where they can put their crops. It's a season extender.

Angela said that most will probably be truly temporary but someone else may put in electricity or another mechanical system or maybe footers. If the ribs were taken down during the off season, they would be even more temporary.

Justin said the Town has been proactive in supporting agriculture, so there is a precedent for being more lenient with farmers. But someone on the shore could put one up and that could be more problematic.

Tony said that if the true intent of the tunnel is extending the growing season, then he would not see a problem with requiring that it be taken down for the off season.

Nate said that he agrees with supporting farmers, but he wants to be fair. If a Menards temporary garage requires a permit, then these should too. Requiring permits also helps ensure setbacks are met.

Justin said that rather than create another law, it might be most straightforward to treat it like a greenhouse – it is similar in many ways to a greenhouse.

Beth noted that a land use permit requires a set location for the structure and cat tunnels are meant to be moved as needed. Angela suggested that the area over which the cat tunnel would potentially be moved be specified on the application instead of a set location.

Angela moved that the Commission define cat tunnels as a type of high tunnel that is designed to have the ability to move from area to area in a field. The sole purpose of the cat tunnel is to extend the growing season and it will not be allowed to be used for other purposes, including storage. Cat tunnels are considered temporary structures. Cat tunnels will be subject to the same requirements as greenhouses except that setbacks can be reduced by agreement between all affected parties. Tony seconded. The motion passed unanimously.

It was decided to table taking a new photo of the Commission to next month.

The April 27 meeting minutes were approved as presented.

### **Director's Report**

Liz said that she sent out HFSTR enforcement letters to residents in the Township who were advertising short-term rentals without having a permit for them. The Zurchers were among those she sent a letter to. Since then, we have received interim use applications for a number of the rentals, so the letters have been effective. A couple of these folks have had their rentals since well before STRs were defined or addressed in the Ordinance. So, these rentals are considered grandfathered and will not require permits. The next step for these grandfathered rentals is to create a record for each use - i.e., how often the rentals occur, the number of rental units, etc. That way, if the use is changed or expanded, the Town will have a record.

Angela asked if it will carry with the property. Liz said that she will look into that.

### **Concerns from the Audience**

None.

The meeting adjourned at 9:15.