

**Town of Duluth
Planning Commission
Meeting Minutes
June 27, 2024**

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

In attendance: Angela Wilson, Justin Osadjan, Tony Mancuso, and Nate Nesgoda.

Absent: Pam West and Dave Meyer.

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

The agenda was approved with the addition of reviewing the DNR's proposal for trap sediment removal at French River.

Szarke Variance Public Hearing

Liz introduced the hearing and the process. John Szarke was present. He was applying for a variance from the side yard setback from the required 25 ft to 3 ft in order to build a garage on an existing concrete pad at his home at 5445 North Shore Dr. The property is in zone district SSUR-1.

Liz showed maps of the vicinity and the site. The concrete pad where John proposes to place the garage originally extended over the lot line onto the neighbor's property. A garage existed on the pad that was in disrepair and torn down before they purchased the property. A contractor took 6 ft off the edge of the pad such that it no longer encroaches on the neighbor's property and is now 3 ft from the property line.

John said that those neighbors are Len and Carole Schire and they are supportive of the variance.

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

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

Applicant's response:

The proposed garage will be built on existing concrete pad. Prior to us purchasing the lot in 2018 a garage in disrepair was there and was torn down prior to purchasing the property.

"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:

A. The new garage will be built on existing concrete pad.

B. The placement of the existing concrete pad was developed many years before current owner purchased property in 2018.

C. The variance will not alter the essential character of locality.

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

Applicant's response: Yes

John said that the planned garage was a two-car garage, 24 by 32 ft in size.

Tony asked who removed the part of the pad that encroached on the neighboring property. There is often a thickened edge along the edge of a concrete slab to support the structure. That thickened portion may have been cut off. John stated that the contractor working on their house at the time, a reputable mason, did it. There was a layer of blocks around it but there were no blocks along the edge that was cut off.

Angela asked if he planned to have a contractor build the new garage. John said that he did.

Nate asked if the garage site was set back far enough from the watercourse that runs through the property. Liz said that the watercourse is not one identified by the DNR so it is considered an unclassified watercourse with a defined bottom, requiring a 50 ft setback which it does meet.

Public Testimony

The only comment received was submitted by John with his variance application and was from Len and Carole Schire:

We are Carole and Len Schire. Our address is 5474 Nordling. Our property is adjacent to the cement slab for proposed garage on existing slab at 5445 North Shore Drive. We support the request to have a garage built on the existing slab at 5445 North Shore Drive.

No one was present to provide testimony.

End of Public Testimony

Angela moved that the variance request be approved because the variance is in harmony with the general purposes and intent of the Ordinance in that it is a structure that is permitted in the zone district. It is consistent with the Comprehensive Plan because it is replacing a building that was previously on the concrete pad and it is a garage that is consistent with the existing use of the property as a single-family residence. Regarding practical difficulties, the proposal is reasonable, the only issue being the proximity to the property line; the plight of the property owner is due to circumstances unique to the property - specifically that the concrete pad existed prior to the time the property was purchased by the current owner; and the variance will not alter the essential character of the locality because it minimizes the amount of surface disturbance needed for the purpose of building a permitted garage on the premises and it replaces a previously existing building. Justin seconded. The motion passed unanimously.

The Commission looked at the DNR's request for comment on their proposed trap sediment removal at French River. Liz said the only concern she had was that there was nothing regarding BMPs in the materials. Bri told her that those are included in the application for the permit. The state will require certain BMPs that apply to dredging, hydraulic fluids, etc. The Commission agreed that Liz could simply communicate to Bri that they had no issues with the proposal.

The minutes from the May 23 meeting were approved as presented.

Stone Variance

Liz introduced the variance request. Taylor and Patrick Stone were present. They were applying for a variance from the requirement that the height of an addition not exceed the height of the original non-conforming structure for an addition to their home at 2091 Paul Road.

Liz said that a second variance may be required – a variance from the requirement that a non-conforming structure be enlarged only once. She explained that the second variance depended on how the Commission chose to view the history of the nonconforming structure. The Stones purchased the properties a few years ago, inheriting some problems they were not aware of. A previous owner had been granted a variance in 2004 to build a 700 sq ft structure sited 150 ft from the river. He then proceeded to build a much larger structure with a wraparound porch. He placed the structure approximately 60 ft from the river. Since then, the property has changed hands multiple times. Other outdoor structures were added over that time. Liz showed an aerial photo of what was originally permitted vs what was done without permits. It is a nonconforming lot and the home does not meet the side yard setback or the river setback. She showed a survey that Taylor and Patrick had done. She showed a rendering of the home with the proposed second floor addition showing the increased height from 16 ft to 28 ft.

Nate asked the size of the footprint of the proposed addition. Patrick said it was about 500 sq ft. It is over the kitchen, bathroom, bedroom and part of the screened porch, covering about two-thirds of the existing living area.

Tony asked if the covered porch was ever permitted. It had not been permitted.

Angela asked if they planned to remove it. Patrick said no, they were going to remove the deck.

Nate said that he felt the proposal was the best choice for expanding the home, given the circumstances.

Patrick said that there was already a lot of impervious surface area on the property and he didn't want to add to that or remove any forested area for an addition.

Justin asked if they knew about any of these issues when they bought the property. Patrick said they did not. They had a realtor and an inspector who they assumed took care of checking for things like that.

Justin said that they bought it in good faith then. Patrick said yes. He said that they knew it was small, but didn't think it would be an issue to add a second floor.

Tony said that it's technically the second addition to an unpermitted structure. Liz said that the porch was probably added at about the same time the cabin was built.

Angela asked when the Stones purchased it. Patrick said May of 2022.

Nate said that he felt it was hard to grant a variance when the structure is so close to the river. They did have the option to sell the property and purchase something more suitable.

Patrick said that it's hard to get started with something when you're young. He said they were really fortunate to get this place. He met the previous owner while flyfishing on the river. He is very conscious of impacts to the river.

Taylor said that they put in a new septic system in anticipation of adding to the home.

Tony asked if they could reinforce the footers and support beams and enclose the open porch space. They wouldn't need a variance to do that. Liz said that she discussed that with them, but there was no way to effectively tie in utilities. It was more complicated than it initially appeared.

Justin said that they bought the home in good faith and then found out later that it's not in compliance. He said that he would generally support the variance. It's a smart way to enlarge the house and it doesn't increase its proximity to the river. Nor does it change impervious surface area.

Patrick said they poured concrete to keep rainwater away from the home and plan to put a french drain around the house to direct rain down a gradual slope towards a small pond that will allow rainwater to seep down the slope instead of running directly to the river.

Tony asked how high the home was above the river. Patrick guessed it was 40 ft or more.

Nate wondered how long the bank in front of the house was likely to last. Liz showed aerial imagery from 1937 and 2013. It has not changed significantly. Taylor said that the water does not hit that bank – it mostly just flows by. Patrick said that the river does hit the neighbor's bank pretty hard.

Liz said that they were planning on removing the rickety stairs going down to the river. She said it would be preferable to replace those stairs rather than to allow trails to develop going down to the river. Pathways increase erosion and runoff compared to stairs. Also, vegetation can grow under stairs, helping to stabilize the slope.

Public Testimony

One email had been received from the owner of the neighboring property. Beth read it.

I am part owner of the property shown in your letter. My siblings and I have decided to sell the property. I don't know how the variance will impact future owners?

There was no one present to comment.

End of Public Testimony

Liz said that there are other similar lots in the area that are not developed. They are also nonconforming lots of record.

Patrick said that the house on the adjacent property has a second level and they can't see it from their home, so it doesn't seem likely that their second floor addition will be visible to neighbors.

Liz read a letter from the DNR commenting on the proposal. (See attached.) Liz summarized – the DNR is essentially requesting that the Town deny the variance.

Justin said that he felt that this proposed addition should be considered the first addition to the nonconforming structure, given the circumstances. Angela agreed.

Tony said that he disagreed with some of what the DNR said. He did not believe the addition would increase runoff. Angela said that an argument could be made regarding the effect of water falling from 16 ft vs 25 ft. Nate said that gutters would alleviate that concern and would be a good idea anyway.

Angela moved that the Commission make a finding of fact that the current application for enlargement of a nonconforming structure be considered the first such application. This application will be the one enlargement of a nonconforming structure permitted under the Ordinance. Justin seconded. The motion passed unanimously.

Angela moved to approve the application for a variance from the requirement that the height of an addition not exceed the height of the original non-conforming structure. The proposed variance is in harmony with the general purpose of the Ordinance because the proposed addition will blend well with the surrounding natural environment

and is designed to make minimal impact beyond the existing nonconforming structure by expanding vertically instead of enlarging the ground floor area of the structure.

The proposed variance is consistent with the Comprehensive Plan because it preserves the rural nature of the property in that the proposed addition does not require a new structure or an expansion of the existing ground floor to meet the needs of the owner.

The proposed variance is a reasonable use because the expansion is the least invasive way to make the property more usable with attention to mitigating existing nonconforming structure challenges.

The plight is not created by the property owner because the structure was built by a previous owner. The property owners acted in good faith and exercised due diligence in their purchase of the property. Further the proposed variance reflects the owners' diligence to live in the rural community with minimal impact on the land.

The variance will not alter the essential character of the locality because the proposal expands only the height and not the ground floor of the structure.

As a condition of this variance, the property owner will remove the existing deck and install a robust planting of native species there to mitigate soil disturbance and erosion. Silt fencing and proper BMPs should be installed until the plants are 75% established. The planting of native species will be completed within 12 months of the completion of the building project.

Justin seconded.

The motion passed unanimously.

Old Business

Liz reported that the Sieverts decided to appeal the Commission's decision denying their variance request. She talked with them about modifying their application and resubmitting it, but in the end, they decided to appeal. The appeal will be held on July 10 and the Commission is welcome to attend.

Liz said that low-frequency short-term rentals (LFSTR) have been problematic. Since she started as Planning Director, three LFSTR permits have been issued and there have been problems with all of them. The first one was down on the shore and, as indicated by numerous online reviews, was rented many more times than allowed. Then there were the two properties, one on Stoney Point and the other on McQuade Road, for which high-frequency short-term rental permits had been applied for and denied. They both subsequently applied for and received LFSTR permits. It appears in both cases that they were rented more than 4 times last year. It is hard to prove. In addition, she got feedback from neighbors in two of the three cases who were unhappy because the use was allowed without a public process. She would like to propose that LFSTRs be taken out of the Ordinance or that they entail a public hearing and have parameters that make it simpler to enforce the terms.

Angela said that her impression was that LFSTRs were meant to allow people to occasionally rent their home for something like Grandma's Marathon or other local events. But that's different from what we're experiencing. If infractions are causing more work for Liz, then an argument could be made to eliminate them due to increased costs to the Township.

Liz said that there's no way of knowing how often these properties are actually being rented. Their listings on online rental sites are up year around and always show as having availability.

Nate said that notifying neighbors and having community participation is important to him.

Liz said that it was something to think about. There is a running list of items to address in the Ordinance. We could do it all at once later in the year.

There may be a variance in July for a property on Bergquist Road. The owner has a house on one parcel and just bought a second parcel that adjoins it. They want to put a 7200 sq ft pole building on it. An accessory structure over 2000 sq ft requires increased setbacks, so they will need a variance from side yard setbacks to place it where they plan.

Nate said that he noticed that there is still a structure, attached to the house, on the property on the shore that he thought was supposed to be removed along with the illegal outbuildings that were taken down. Liz didn't recall the Commission requiring him to remove that. Did he build it? Nate thought he did – it's similar in style to the outbuildings he was required to take down. Liz will look at it.

Nate asked about a property near him. Did they get a permit for the building they have started? And he thought there was an ordinance in the Town regarding junk cars.

Liz said he did have a permit for the building and when she talked to him during that process, he said he was in the process of cleaning up the property. The ordinance for junk cars is a Town ordinance and not a part of the Zoning Ordinance.

The findings of fact and decision documents for the hearings were drafted and approved.

The meeting adjourned at 9:30.