

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

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

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

Absent: Tony Mancuso.

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

The agenda was approved as presented.

First on the agenda was the resumption of the Zurcher hearing for an interim use for a hosted short-term rental located at 1392 Stoney Point Drive. The initial hearing was held in May and was adjourned to the July meeting to give Andrew time to make progress on his stormwater plan. Andrew was present.

Andrew said that since May, he has transferred the construction stormwater permit coverage from Odyssey into his name, which he said he should have done when they bought the property from Odyssey. He has started the process of getting the DNR permit. He said the 50 ft rule is not a “thing” according to the DNR. He has filled out the application and was told it will take 30 to 60 days for approval. The DNR is concerned about the creek and wetlands on the site, as well as the lake. At some point, someone from the DNR will come out to the site to inspect it. This may be the first of many permits he needs, which is why it seems to take a year to get permitted.

Justin recalled that the Commission wanted to see him moving forward on the necessary steps to come into compliance. He would be in favor of allowing the rental for one year and reassessing the progress then.

Andrew said that he has been told that they can't work past October. He has also been told that winter is the best time to do the work. He probably won't be ready for a year. In the meantime, he will maintain best management practices for controlling erosion.

Liz clarified. Under a construction stormwater permit, if construction is stopped for 7 or more days, best management practices (BMPs) must be in place to control erosion and contain sediment. The site must be inspected every 7 days or within 24 hours of a rain event to ensure that runoff, erosion, and sediment control BMPs are still functioning properly and any that are not must be repaired or replaced. Records must be kept of the inspections.

Dave asked Andrew if he was in compliance with everything the MPCA listed in their warning letter. Andrew said they got the plan into their name.

Liz said that she emailed Andrew regarding compliance issues that needed to be addressed. She asked him if the silt fence and erosion control mat have been fixed since she sent that email. Andrew said they had.

Andrew said that he submitted the stormwater plan to Alex (?) and Ted Smith. They said it was looking okay. So, they have something in place, but it may need to be tweaked depending on what the DNR wants.

Liz asked when it will be submitted to the Township. Andrew said that he had emailed it, but Liz said she hasn't received it. Andrew said he will resend it right away.

Angela said that what she is hearing is that all he has done so far is transfer the title, which should have been done when he bought the property. Otherwise, he says he has just talked to a number of people. No stormwater plan

has been submitted. He has been sent reminders by Liz. A HFSTR is an exception to the use the land is designated for, which is residential. If the Commission granted the use, it would be in good faith that he would be complying with the required parameters. She is not confident in that. He was already renting the unit and was discovered through investigation. He did not have a stormwater plan in place for construction. He may be making progress, but she doesn't feel that the amount of progress merits approval of this use. His land is washing into the lake. It would not be serving the public well to grant an increased use of the property at this point.

Andrew said that his property is adjacent to a popular public area without much oversight and he has experienced a lot of trespassing and has been robbed four times. His wife doesn't want to be there by herself. He needs the income from the rental. The only concerns his neighbors have voiced about the rental is that it not become commercial. He has a lot of contacts now and feels like he has the right people helping him through the stormwater process, but it's slow. He said that he can do all of the required work except the large rock. They are not going to be financially able to do the work soon. They are very frustrated.

Andrew also noted that last September, when they started renting, they read the Town's Ordinance and it said that they did not need a permit for the rental if they lived on the property. Now it has changed.

Justin said that the Ordinance regarding short-term rentals, including rentals where the owner is on-site, has been in place for a number of years and does clearly require permits for this use.

Nate said that the Commission wanted to see progress, and he thinks Andrew has met this goal. He has gotten the title and fixed the erosion control measures. The stormwater plan has been submitted. Given this, he thinks the rental should be allowed for 12 months. If substantial progress has not been made after that time, the permit would not be renewed.

Andrew said that he has had problems with the erosion blanket and silt fence on the lower part of the property. The silt fence just doesn't hold, seems to create more pollution instead of less, and is potentially harmful to wildlife. Liz agreed that they could work together to figure out something that would work better.

Andrew said that he hopes to have the permit from the DNR by fall and will have learned by then what other permits will be needed. He was told that there is good access to do the work. But he has also heard that prices for this kind of work have skyrocketed over the last 15 years, which is another consideration. He definitely doesn't want another summer of maintenance.

Angela moved that the Commission consider the submitted request for a hosted short-term rental with the following contingencies if the request is approved. 1) That the property owner maintain erosion control as directed by the Planning Director with BMPs in place until construction begins on the stormwater plan. 2) The applicant must submit a stormwater plan to the Planning Director within the next 30 days. Nate seconded. The motion was approved unanimously.

Angela moved to split the question for the criteria. Blane seconded. The motion passed unanimously.

Angela moved that the proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance because it meets the dual purpose of supporting tourism while maintaining the rural nature of the community. Blane seconded. The motion passed unanimously.

Justin moved that the use is compatible with the existing neighborhood because the lake shore is an area where several short-term rentals are located and it has the support of neighboring property owners. Nate seconded. The motion passed unanimously.

Dave moved that the use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district because it has already been in operation without detrimental effects to the surrounding area. Justin seconded. The motion passed unanimously.

Nate moved that the location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area because there are multiple short-term rentals and mother-in-law apartments in the area and the use supports the surrounding community. Blane seconded. The motion passed unanimously.

Justin moved that the proposed use will comply with the wetlands requirements in Article III, Section 6 of this Ordinance because the petitioner is mitigating issues he inherited with purchase of the property and approval of the interim use permit is contingent upon that mitigation. Nate seconded. The motion passed with Blane, Pam, Justin, Dave and Nate voting in favor and Angela voting against.

Angela moved that the total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional/interim use would occur because there will be no additional construction that will create further impervious surface area. Blane seconded. The motion passed unanimously.

Pam moved that the topography, vegetation and soil conditions are adequate to accommodate the proposed use because the applicant is working on meeting requirements to protect them and the permit will be contingent on that protection. Justin seconded. The motion passed with Blane, Pam, Justin, Dave and Nate voting in favor and Angela voting against.

Blane moved that the proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures because the applicant is applying mitigation measures to minimize impacts on public waters. Pam seconded. The motion passed with Blane, Pam, Justin, Dave and Nate voting in favor and Angela voting against.

Angela moved that adequate utilities, access, drainage, stormwater retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance because the applicant has committed to developing and following mitigation plans. Dave seconded. The motion passed with Blane, Pam, Justin, Dave and Nate voting in favor and Angela voting against.

Angela moved that the proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems because it is contained within the existing structure and there is no additional impingement on the area around the building. Blane seconded. The motion passed unanimously.

Justin moved that the location of the site is appropriate with respect to existing or future access roads because no future road construction is anticipated nor are new buildings proposed. Angela seconded. The motion passed unanimously.

Blane moved that the demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met because it is an existing single-family home and the use will not increase the demand. Dave seconded. The motion passed with Blane, Pam, Justin, Dave and Nate voting in favor and Angela voting against.

Angela moved that having met the 12 criteria for an interim use, the interim use for a hosted short-term rental be granted with the following conditions: 1) the interim use be for a period of one year commencing upon receipt of the stormwater plan by the Planning Director; 2) the stormwater plan be submitted within 30 days; and 3) the property owner maintain erosion control as directed by the Planning Director with BMPs in place until construction begins on the stormwater plan. Nate seconded. The motion passed with Blane, Pam, Justin, Dave and Nate voting in favor and Angela voting against.

Forde/Hannah HFSTR IUP Extension Hearing

Liz presented the hearing request. Sean Forde and Genise Hannah have applied for an extension of the Interim Use Permit for their high frequency short-term rental at their property at 5420 McQuade Road. The applicants were not able to be present, but Sean was available by phone in the event any questions arose. The interim use was granted effective September 1, 2021 and an extension was granted effective September 1, 2022. Per the initial permit and subsequent extension, they are allowed to rent 200 nights per year. Their rental records show that they rented 155 nights this past year.

Liz read the criteria from the Ordinance for approval of an extension of an Interim Use Permit and the applicants' responses to those criteria.

- 1) Demonstrated compatibility with the neighborhood.
Applicants' response: We have maintained open communication and relationships with our closest neighbors.
- 2) Any detrimental effects documented during the period of the interim use.
Applicants' response: NA
- 3) Any increased costs to the Town as a result of the interim use.
Applicants' response: NA

The applicants added the following note:

While keeping open communication with the neighbors and with our management team. We have received 52 reviews with a large majority stating how the location is perfect for their family to take in the North Shore and Duluth/ Two Harbors. The only issue with a neighbor was management team keeping dumpsters closed and maintained. We addressed this with a better bear guard and an additional pick-up each month. No complaints since.

Blane said that this situation is unique because the home is kind of a second home for them even though it is not their primary residence. However, when they originally applied, they said they were hoping to move back in two years to live in the home full-time.

Liz said that the Commission has to hear this request under the Ordinance it was granted under and at that time there was no primary residency requirement for a short-term rental.

Angela said that granting an extension is based on the criteria for an extension, not on the CUP criteria under which it was granted. All the same, she asked if the rental could still be considered to be in compliance with the CLUP. They indicated in the original application that the short-term rental was a temporary measure to be able to pay the bills and keep the house until they could move back. They indicated that renting it as a long-term rental would not work because they said they needed the home to be available to them to live in when they were back in the US over the summer and at holidays. Based on their rental records, they have only been here 2 weeks of the past year. However, because the Commission did not set any conditions regarding those points at the original hearing, the extension cannot be denied based on failure to follow through on those points.

Justin said that he would like to know what their long-term plans are at this point.

Liz said that although we could check in with them to see what their plans are, we cannot approve or deny the extension based on that.

Justin said that what the neighbors say is an important part.

Angela said that she felt "demonstrated compatibility with the neighborhood" included their original plans to stay in the house, live there eventually and be a part of the community.

Public Testimony

Beth read two letters:

- 1) As we previously stated (July 28, 2021) regarding this short-term rental application, we remain concerned about renters possibly using nearby posted properties for hunting purposes. As long as it is clearly communicated to renters that posted properties are not to be used for any purpose - particularly hunting - then we are not opposed to the renewal of this request.

Thank you.

Mary and Branden R

- 2) Concerning the Sean Forde and Genise Hannah HFSTR Extension Hearing: I live across from the Forde/Hannah property on McQuade road. As you may remember I was against a high frequency short term rental business across the street from my home. My feelings have not changed. My hope is that the committee does not increase the rentable nights per year as was brought up in the August 25th meeting last year. The flow of renters coming and going has been very numerous. I also hope the permit will continue to be renewable on a yearly basis. My fear is that this property will remain as a rental property and not become the permanent residence it was said to be purchased for. If this is truly a temporary situation, then I hope the permit remains for one year at a time.

Thank you for your consideration in these matters,

Judie S

No one was present to comment.

Liz said that no complaints have been received.

Justin asked if we could we ask them to respond to the comments we received. Liz said yes.

Nate asked for clarification on when they anticipated moving back. Justin noted that situations can change.

Angela moved to adjourn the hearing to the August meeting in order to get further response regarding concerns. Blane seconded and the motion passed unanimously.

William Turnquist Variance Hearing

Liz introduced the variance request. Bill Turnquist has applied for a variance from the setback from a road to build a storage shed on his property at 1406 Shilhon Road. The required setback for Shilhon Road is 100 ft. The requested variance is to place the structure at 65 ft from the road, a variance of 35 ft. Bill was present for the hearing.

Liz read the request from the application:

To put a 20 ft by 10 ft metal shed at 65 ft from the centerline of Shilhon Road instead of 100 ft from the centerline. I have a 10 ft by 10 ft there now but would like to replace it. The area has class 5 parking established there.

The shed, if placed as requested, would meet all of the other dimensional requirements.

She showed the vicinity map, an aerial photo of the site and the sketch of the proposed location and setbacks.

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: With the layout of my home and parking area where it has been since I moved here 41 years ago I would not need to do any clearing or ground disturbance and am not in violation of any terms in the ordinance except setback.

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: Replacing a 10 ft by 10 ft shed with a 20 ft by 10 ft shed in same location. Property is laid out close to the road. Has been since I moved here 41 years ago. All a, b & c.

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

Applicant response: Yes.

Angela asked if he has already moved the shed. Bill said that he has pushed it back. He has owned the property for 40 years and the home and shed were already in place at the front of the property. Because of the layout of the property, that location is the only one that will work for him for plowing the property. He needed to replace the shed and could not locate a building smaller than 10 ft by 20 ft with a door that would accommodate his plowing equipment.

Justin asked if the new shed will be closer to the road and if it will be in the same orientation. Bill said the distance from the road would be the same as well as the orientation with the doors facing his house.

There was no public testimony.

Dave moved that the proposal is in harmony with the general purposes and intent of the Ordinance because there was already a shed in that location. The request allows the applicant to utilize his property and the buildings on it in an efficient manner. It does not require cutting of trees or extending the driveway. It is consistent with the Comprehensive Plan as it meets all of the other setbacks. The applicant proposes to use the property in a reasonable manner not permitted by the zoning ordinance having already moved one shed to meet the criteria and by utilizing the existing space for the larger building. The circumstances are not created by him because the current cleared area and driveway have been in place since he purchased the property. The variance, if granted, will not alter the essential character of the locality because it is only a slightly larger building in the same location. Angela seconded.

Blane felt it would improve the property, meets the intent of the CLUP and will not affect the essential character of the neighborhood. It is the only location he could place the building with respect to the mound, cleared area and garden.

Angela noted that if the shed were placed further back to meet setbacks, it would be necessary to remove a number of good healthy trees.

The motion passed unanimously.

Bill thanked the Commission and said he would submit his LUP application the following day.

Dollar Conditional Use Public Hearing

Liz introduced the hearing and presented the application. Molly and Ricky Dollar are requesting a Conditional Use Permit to construct seven or more apartment units to use for long-term rental in an existing building at 5135 North Shore Dr, thereby changing the use of the building from Commercial to Planned Unit Development,

Residential. The permit would be after-the-fact as they have already constructed five of the apartments and have rented them.

The Dollars stated the following in the application:

We wish to convert some of the existing space within the current building into long term rental units. These would be 1-2 person units, providing much needed housing in the area. We would utilize the existing lot in the front of the building and along South side of the building for parking. We plan to reclaim the gravel area in the back of the building and turn it back into green space and garden areas. There would remain some space in the back for utility vehicles and equipment (Toolcat, lawn mowers, snow plows) for lawn care and snow removal. There is space in the lawn for people to enjoy.

Liz said that the Ordinance language for PUDs is oriented towards an undeveloped parcel intended to be build out with a planned site design, not towards converting a building that already exists.

Liz read the description for Zone District SC-1A, Shoreland Commercial:

This district is intended for concentrated, commercial development that promotes the efficient delivery of goods and services. Development largely supports the local community and surrounding areas. The availability and accessibility of consumer goods and services enhances the Township's economic base and liveability.is:

She showed an aerial view of the property and the site sketch with setbacks. The Dollars are replacing the existing commercial use of the building with residential units. They asked for 7 or more apartments because there is a step up from 6 or fewer units to 7 or more units in the Ordinance fee schedule and they wanted room to grow.

In their application the Dollars indicated that there will be no employees; there will likely be a maximum of 10 to 12 vehicles coming to the site per day; traffic and noise will be reduced as compared to the previous use; parking spots are already in place, but less parking will be needed than for previous use; no signage will be needed; no dust, smoke, smells, pollution, noise, etc. will be generated by the use; and there will be no new structures. In addition, there will be no increase in outdoor work or storage areas other than what they already use to repair and maintain the building and an occasional trailer with materials on it.

Molly said that with the restaurant and bar, they usually had about 40 employees. With the economy and the changing situation over recent years, they found they could not maintain that number. They currently have 8 employees. They also felt the need to ease into a simpler life.

Ricky said that they would remove the sign once the catering business was finished.

Liz read the criteria from the Ordinance that must be met for approval of a conditional use and the Dollars' responses to those criteria from their application.

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

Applicant states: Yes, the majority of the surrounding area is residential and respectful of the North Shore Environment.

Is the proposed use compatible with the existing neighborhood?

Applicant states: Yes, the surrounding neighborhood is residential.

Will the proposed use 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, trend is towards residential.

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

Applicant states: Yes, no wetlands are affected.

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

Applicant states: The amount of impervious surfaces will be decreased and returned to green space and gardens.

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

Applicant states: Yes, gravel parking areas will be returned to green space.

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 effect on public waters.

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, much less water and utility use than a restaurant running 7 days a week.

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

Applicant states: It will decrease health and safety concerns; less traffic, less noise, less signage, etc.

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

Applicant states: Building already exists.

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

Applicant states: Demands would decrease.

Justin asked if they planned to preserve the food service business or potentially sublet the restaurant space.

Molly said that they will continue the food service for an additional year and a half, to fulfill existing contracts and will then be done with it. They would not sublet the restaurant space.

Ricky said that they are not necessarily converting the whole building to apartments. The main room downstairs is used as a contingency space for Grandma's Marathon and will continue as that.

Molly said that they may create a community room. It would be primarily for the residents, but it could also be used by someone from the public for a smaller event.

Liz noted that a residential PUD would not allow for that.

Justin asked if renters were required to sign a lease. Molly said they were and the leases were for a minimum of one year.

Public Testimony

Susie Lannon spoke. She owns the property two doors down from Molly and Ricky. She supports what they are doing 100%. Ever since they have owned the property, they have improved it. They have done a great job.

There was no other public testimony.

Angela asked how long they have owned it. Molly said 14 years.

Beth summarized the community participation report. There were 31 neighbors within the notification area. Of those 31, the Dollars were able to talk with 13. They left messages with the other 18, but did not hear back from them. All of the responses they received were positive. Beth said this was a typical response rate for a community participation report.

Angela moved to split the question to address the criteria individually. Dave seconded. The motion passed unanimously.

Angela moved that the proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance because it is furthering the residential nature of that area of the Township and is respectful of the North Shore environment. Blane seconded. The motion passed unanimously.

Blane moved that the use is compatible with the existing neighborhood because the neighborhood currently consists of residential properties. Angela seconded. The motion passed unanimously.

Nate moved that the use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district because it will conform to the surrounding area of residential homes. Angela seconded. The motion passed unanimously.

Angela moved that the location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area because the use will make the area more residential and less commercial. Blane seconded. The motion passed unanimously.

Justin moved that the proposed use will comply with the wetlands requirements in Article III, Section 6 of this Ordinance because the existing building is already in compliance. Angela seconded. The motion passed unanimously.

Pam moved that the total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional/interim use would occur because impervious surface area will be decreased and returned to green space and gardens. Angela seconded. The motion passed unanimously.

Dave moved that the topography, vegetation and soil conditions are adequate to accommodate the proposed use as they are returning impervious surface areas, gravel and parking, to green space. Nate seconded. The motion passed unanimously.

Nate moved that the proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures due to the fact that all construction is limited to the interior of the building. Angela seconded. The motion passed unanimously.

Angela moved that adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance because the proposed use will consume less water and use fewer utilities than the previous use. Blane seconded. The motion passed unanimously.

Justin moved that the proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems because the proposed use will decrease environmental nuisances and the sign will be removed when the food service business is done. Dave Meyer seconded. The motion passed unanimously.

Pam moved that the location of the site is appropriate with respect to existing or future access roads because the building already exists and there will be no new construction or new roads. Angela seconded. The motion passed unanimously.

Dave moved that the demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met because the demands will decrease from the previous use as a restaurant. Angela seconded. The motion passed unanimously.

Angela moved to grant the conditional use for a Residential Planned Unit Development, as requested, because the proposal meets the 12 criteria for a conditional use. Dave seconded. The motion passed unanimously.

Concern from the Audience: Susie Lannon asked about the Beachway property near her on the Scenic Drive. She asked if anything can be done about the property. It is a terrible mess and there is trash everywhere. It has been eight years and it needs to be cleaned up. Liz said it is on the Town's radar, but she does not yet know what the course of action will be.

Dais Variance Public Hearing

Liz presented the hearing. Del Dais is requesting the following three after-the-fact variances to build two accessory structures on his property at 5404 North Shore Drive: a variance from the required setback from the road, a variance from the required setback from Lake Superior, and a variance from the minimum lot size. Del was present for the hearing.

Liz showed the vicinity map and presented the requested variances. The property is located in zone district SSUR-1. The required road setback for North Shore Drive is 110 ft and the existing setback is 96 ft for both structures. The required lot size for the zone district is 2 acres. The property is .95 acres, requiring a 1.05 acre variance. The property is located in an erosion hazard area. In these areas, the required setback is 125 ft from the top of the eroding bluff. The existing setback from this point for the first structure is 70 ft and 60 ft for the second structure.

She showed an aerial photo of the property and sketches provided by the applicant showing setbacks and topography. The applicant measured the setback from the lake from the water line. Liz showed an aerial photo with setbacks as she measured them from the top of the eroding bluff line.

Liz showed photos demonstrating erosion rates along the property. The first photo shows a rock revetment that has been in place for over 20 years on the north end of the property. It is in front of the house but not the proposed structures. The photo shows that it is still working. The second photo shows the part of the property without the rock revetment. In this area, the erosion rate has been shown to be roughly a foot of shoreline per year. The photo bears this out and Del agreed that this has been the case.

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: 110 ft road setback vs 96 ft actual and lake setback 125 ft vs actual 97 ft are not in compliance. In 2024 a lake retaining wall is planned. The RV will be stored in the shed year around and used 4 times a year so it will not impede the road setback. RV is 25 ft long. Considering the use of the shed, it should not affect the Comprehensive Plan.

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: a. Low usage of the shed should not (affect) the Zoning Ordinance. b. Property location/size makes it difficult to comply to Ordinance. c. If variance is not granted, the RV will set outside, causing an eye sore for the public.

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

Applicant response: The land is zoned residential so a personal RV storage shed should comply with the zoning.

Del had prepared a presentation and Liz projected it to the screen while Del went through it.

The first slide showed Del's history with the property. They purchased the property in 2020. They come up to the property 4 or 5 times a year and have a number of "toys" for enjoying the area as well as a motorhome and Del feels strongly that they should be stored inside and not clutter up the yard. He went ahead and built the first shed and had started the second one when it was brought to the attention of the Town. He is now applying for the variances necessary to get permits for the buildings.

He showed photos of the house and garage and shed from the road. Everything is contained in the shed and garage and the yard is neat. He showed the original shed when he bought the property. He removed it and put a newer one in its place. He added a woodshed and started the RV shed. He showed a photo of the RV in place in the mostly finished shed.

He showed a photo of the shed with respect to the property line. There is a lot of concrete in place, apparently a remnant of when the property was an entertainment hot spot in the Township in the 30s or 40s.

He showed a photo of the corner of the RV shed towards the house for comparison of setbacks from the road.

Del showed a survey of the property. He showed a topo of the 2001 revetment plan with the property lines and shed drawn on it. The topo shows that the slump had already occurred before the rock went in. It is now stable except for erosion at the actual shoreline.

Dave said that he didn't want to trespass, but when he visited the property, it looked to him like the land drops off pretty quickly behind the sheds and he was worried about how the shoreline is eroding.

Del said that it varies by year how much erosion is occurring at the actual shoreline. He said he had the survey done three years ago in December. He plans to put a wall in to protect the property from erosion and complete the last 40 ft of revetment. The wall will be 8 ft high by 80 ft long. He got a quote for this work in 2021 for \$200,000, which included permitting through the DNR. He has been consulting with Ted Smith about alternatives because of the price, but wants to see how the variance hearing turns out before moving on. He said that when the seawall goes in, it will no longer be an erosion hazard area and the required setback will be 100 ft. He said that he is at 97 ft now, so he will be very close to meeting that.

Another slide cites a neighbor who is in the environmental business who concurred that the erosion work would be effective and that there would not be an environmental impact from the sheds because they are being built on existing cement slabs.

The last slide, shown below, summarized Del's reasons that the variances should be approved.

- Provides the ability for owner to utilize a property valued \$95,000 by the County. Completing the 40 feet of sea wall for approximately \$200,000 will complete the stabilization of the 5410 NSD lot.
- Would allow the ability to have a storage shed to store items listed on page one. Without the shed, the items would be stored on the property exposed. This would make an “eye sore” for the neighbors and all the traffic passing the property. It will also cause weathering damage to the exposed items. Covering the items with tarps will make the “eye sore” worse. The potential for theft and damage will increase exponentially.
- Per page 12 - “DIMENSIONS”, both side setbacks are met. Front setback (highway side) was within 12.7% of the specification and the storage shed is actually set back farther than the adjacent 5404 house built in 1992. The 2 acre area specification for the lot is double of the actual lot size however when you consider usable land area versus shed size, the shed covers only 7.5% of the usable land. The lake set back of 125 feet versus 97 feet measured is 22.4% under the specification. Since 90 feet of the 130 foot shore line (69.2%) of 5410 lot was rip rapped in 2001, the erosion concern that created the 125 foot setback should be reduced. The rip rap of 5404 NSD lot was completed in 2001. Referencing the 2001 Stabilization drawing shows that the rip rap nearly stopped the upper slope dirt sliding on the 5410 NSD lot.
- Since the surface area on which the shed is built is 6 inch thick concrete constructed on the 5404/5410 NSD lots in the (40’s?) by a theater group, the water drainage from the storage shed will not change the existing flow of the water runoff.

Justin asked if he built the sheds himself. Del said that he did.

Blane asked if he reviewed the Town’s Ordinance prior to beginning construction. Del said that he did not. He apologized and said he was not used to needing permits where he lived. He first became aware of the need for permits when Liz came out to talk to him. He submitted the variance application right away.

Angela asked when he put the buildings up. Del said the first one was two years ago. He just started work on the RV shed. It does not yet have a roof on it. Except for reinforcing what he had already put up, he stopped work on the structure after Liz talked to him.

Angela asked him when he expected to start work on the seawall. Del said that he still needs to talk to the engineer and get a second estimate. He said that a nearby neighbor put in a fancier wall for \$100,000 using the same contractor he got his \$200,000 estimate from.

Nate asked about the structure he put up attached to the garage. Del said he built that when he first moved in. Liz said she would check measurements on that structure.

Blane noted that the new structures are not any closer to the lake than the former structure had been. But the new structure is larger. Del said that the sheds were placed on an existing concrete pad. Liz said that because the former structure was nonconforming, he could have increased the size by 25% with a permit. But to replace it

and increase the size, as he has done, requires a variance. Angela said that the combined size of the buildings is about three times the size of the original nonconforming building.

Angela said that the setback from the lake is from the point at which you can see the land falling into the lake, which appears to be about 5 ft from the buildings. Liz said that her best guess of where that point was is represented by the red line on the aerial photo. There is no vegetation there and it is continuing to erode. In past situations, the edge has been considered to be where there are visible slump lines in the clay, regardless of where there is vegetation. That point would be 3 feet from the building.

Nate said that with the concrete already in place, maybe putting a gutter on the building would divert the water and keep it from beating up the little soil between the building and the edge of the bluff. Del said that the RV shed roof slants towards the lake. The other shed roof slopes toward the wood shed. He planned to gather all the water and pipe it towards the lake.

Nate said that the buildings are essentially floating and could be considered moveable.

Blane asked what the remedy would be if the variances are denied. Liz said that in general with variance requests, they can be approved, denied, changed or approved with contingency(ies). For instance, this variance could be approved with the contingency that a seawall be in place by such and such a date, otherwise the buildings must be torn down. A variance request can also be changed before approval to better fit criteria.

Blane asked why the setback has to be 125 ft. What is the risk of being closer to the lake? Liz said that whether the setback is 100 or 125 ft, it is for protection of that body of water. In the erosion hazard area, it is estimated that erosion advances at the rate of a foot a year which makes the angle of repose steeper. The clay slope will then start to slump – the top will slump over and down, correcting its slope to meet the angle of repose. Then the concrete slab will be exposed and will start to crack. It is just matter of time before the top of the bluff moves back and it is compromised. There is potential liability for the homeowner and the Township, as well as concerns for the lake.

Dave felt that if Del had applied for the variances from the lake setback prior to construction, that it was unlikely they would have been granted. He asked why Del didn't place the structures closer to the road. Del said that it was primarily because the pad was already in place there and the original shed had been there and lined up with the house.

Del said that after he puts the seawall in, he may backfill to make the slope shallower and to gain an additional 10 ft of flat land behind the buildings.

Dave said that without gutters, rainwater drops hard from 10 -12 ft. There will be issues with water coming straight off. An approved stormwater plan would be needed. Del said that on the first shed there is 1 to 1.5 ft of concrete past the walls and the rain hits that. The other doesn't have as much concrete and on this building, he intended to capture the water and get it down below slumping. It would probably require 100 ft of pipe.

Public Testimony

Julie V. spoke. She lives across the street from the property and has watched as this has progressed. She brought photos. First there was the addition to the garage. Then the big shed. And now another big shed. All of this has been done without permits. She showed photos of the property with the original shed which the assessor said was 15 ft by 18 ft, and of the garage before the addition. She then showed subsequent photos with the addition to the garage and the new sheds. The structures are 14 ft too close to the road, which is significant. The variance from the lot size is a big variance. It is an overdeveloped lot that has continued to be overdeveloped without permits. The variance request from the lake setback is against the CLUP's goal of protecting the lake. She doesn't think these encroachments should be taken lightly. They have lived there for 15 years and they respect the community and the Town's core values. The CLUP and Ordinance are in place to protect the community and the

lake. She hopes that the Commission denies the variances and requests that the buildings be removed. There was no thought given to the impact to neighbors and their views. There are trees on the property that are already slumping towards the lake. Allowing these variances would negatively affect the character and harmony of the neighborhood. She thought that the lot was unbuildable, but then the structures started going up. Her property value is affected by the view. Her property will lose value if the buildings are allowed to stand. She strongly opposes the variances.

Angela asked what the height was of the original building. Del said that it was shorter than the one that is in place now.

Liz said that a nonconforming structure can be enlarged only once, up to 75% if it meets all setbacks and up to 25% if it does not. The height cannot be increased in either circumstance. Angela said that if these structures were allowed, they would become completely new nonconforming structures, and as such, could potentially be enlarged by up to 25%.

Beth read 4 letters.

1) Ladies and Gentlemen of the Planning Commission,

We are strongly opposed to the approval of the three variances requested by Del Dais at his property on North Shore Drive. We are unsure whether this request is for his shabbily constructed metal “sheds” that he put up with his RV and construction trailers rounded up to hide the fact that he was building something or it is some other project he has planned. When he moved away the vehicles blocking the view of his construction activities, we were aghast and dumbfounded. The project he has built is an eyesore and a slap in the face to the neighbors who attempt to do things the right (legal) way not to mention it’s troublesome location. They should not be allowed and should be taken down!

The precedent set by allowing these buildings too close to the already slumping shoreline of Lake Superior would be a huge mistake by the township planning commission. It would open up the possibility of other properties arguing that “They did it, why can’t I?” And...”Why get approval...just put it up in the middle of the night. “ We are all governed by the same set of rules. Why should some out-of-town-party who visits once a year for two weeks be allowed to get away with this blatant disregard for zoning and protection of one of the world’s largest bodies of fresh water.

Please consider denying this request for the many reasons why it shouldn’t be granted. Let’s keep scenic drive “scenic”!

Sincerely, Allan and Mary Reed

2) From Anonymous:

Dear Township Administration:

This is in regards to the property at 5404 North Shore Drive. There is currently a large building under construction. Also there is an existing shed that has been recently added on to nearly doubling the size. It is questionable that these buildings meet construction requirements and setbacks. Please check to see that the new developments have been permitted. If not, I trust you’ll take appropriate action. Thank you.

3) Planning Committee.

We are not opposed to the variance requested by Del Dias. We are concerned with the timing of the variance notice. The building appears to be completed. We do not have the details on why the building is up before the variance process is completed, but we trust the Planning Committee will address this concern.

Jon & Beth Luikart

4) Hello Planning Commission

I am contacting you in regard to the variances proposed at 5404 North Shore Drive. I have one

opportunity to speak, and I feel compelled to do so. I am strongly opposed to the granting of the requested variances for the following reason.

1. There has been construction going on for 2 years on that property. There has been an addition added to the original attached garage.
2. The structure referred to as the existing shed has doubled in size.
3. The newest construction is taller than the others and therefore as the height increases my view decreases. This has an adverse impact on my property values.
4. These buildings are too close to the lake, too close to the road and the lot size is too small to accommodate all this construction.
5. I do not feel the owner has proven any hardship. If anything, I should be claiming hardship.

My view and property value has been adversely affected by this illegal construction. I have been in my house since 1996 and have seen the house get painted bright blue and now, I am looking at a white box that is situated 100 ft off the lake. When does it stop? Last thing I want is problems with my neighbors. I didn't ask for situation. However, I have to speak up to protect my interests.

Thanks for the opportunity to address this matter.

Regards, Daniel Nieman

Public testimony closed.

Angela moved that the variances be denied as they are not in harmony with the general purposes and intent of the Ordinance nor are they consistent with the Comprehensive Plan because the location of the structures does not protect the natural environment and is not in harmony with the community. The variances are not reasonable as they are not in compliance with the standards of the area. The variances would alter the essential character of the locality by obstructing the view of the neighbors and by endangering Lake Superior. It is a use that is not allowed under the Zoning Ordinance because the lot is significantly too small to support the size of construction proposed. Justin seconded. The motion passed unanimously.

Liz said that with that, the structures will have to be removed.

Del said that he still intended to protect the shoreline. After the revetment is completed could he approach with another proposal? Liz said that there were no limitations on that, whether or not he constructs the sea wall. He can ask for the same variances or propose something different. She encouraged him to continue with his revetment plans. There are numerous instances of properties purchased in the 60s or so that have eroded to the extent that the lot is no longer considered buildable.

The June 22nd minutes were approved as submitted.

Directors Report

Liz reported that there was nothing new outside of permits and questions coming in.

Old Business

It was decided that it was too dark for the Commission photo and it would be deferred to the next meeting.

ArMand announced that air conditioning had been approved for this part of the building.

Concerns from the Audience

None.

It was decided that the Commission would meet via Zoom to approve the decision documents for the hearings conducted this evening. Beth will be present at the Town Hall to allow for participation by the public.

The meeting adjourned at 10:02.