

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

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

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

Absent: Pam West and Blane Tetreault.

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

The agenda was approved as presented with the change to move the photo to the beginning of the meeting.

The Commission stepped outside and took a group photo for the newsletter.

**Continuation of Forde/Hannah HFSTR IUP Extension Hearing**

This is a continuation of the hearing from July 27. Sean Forde and Genise Hannah are requesting 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 present, but Sean was available by phone if need be. The interim use had originally been granted effective September 1, 2021 and an extension was granted effective September 1, 2022. At the July meeting the Commission had questions about what the applicants' expectations were regarding moving back to the area. At the original hearing the applicants had said that the HFSTR rental was temporary while they taught overseas. Sean emailed the following response to that concern.

I'll give a brief response to the question but would love the opportunity to verbally explain and respond to any additional depth to their question.

5420 McQuade is our home, while yes we work in South Korea, Duluth is our home base and home for when we are back in the US. We do plan on moving back to the US and making McQuade our full-time home, however being in education internationally and now pigeonholed to pretty much Duluth and Two Harbors makes the move back a lot more strategic and complicated. We have to inform our school of departure for the coming June by the end of October, while US schools don't post openings until around May. That means when we do make the choice there very well might not be positions for us in either Duluth or Two Harbors and risk moving back unemployed as a family of 4. It's quite complicated and tough to type into a message, so I hope to be able to explain the situation further on the 24th.

Liz noted that when they got the permit, it was not required, as it is now, that the owner be a primary resident of the dwelling to be used as a short-term rental for 9 months of the year. One of the concerns at the initial hearing was that the owners, who live overseas much of the year, would not be readily available to oversee the rental. There was another concern from a neighbor over privacy and safety.

Dave said that the Commission basically has to take the applicants' word regarding their future intentions. He didn't feel that it would be difficult to get a job as a teacher in the area, but it would be hard to commit to moving back without knowing whether or not you had a job. Could the Commission set a deadline for the end of the rental?

Tony felt that it was up to the applicants to plan around the timing difficulties detailed in the email.

Justin noted that the application has to be considered on the basis of the Ordinance under which the permit was originally granted.

Liz said that the following criteria have to be met for extension of an Interim Use

- 1) Demonstrated compatibility with the neighborhood.
- 2) Any detrimental effects documented during the period of the interim use.
- 3) Any increased costs to the Town as a result of the interim use.

Angela felt that the first criteria, demonstrated compatibility with the neighborhood, was germane because this HFSTR is in an established residential neighborhood. There are no other STRs in the area. Some areas on the shore are more suitable for STRs because the use is more common in that area and many of the homeowners there are not full-time residents. Her impression at the original hearing was that the applicants wanted to use the home as a HFSTR while they arranged to move back here and live in the home. She still felt that the rental is not compatible with its neighborhood – short-term rentals have a very different “energy” from year around residential homes. She felt the extension could be denied based on this first criterion. She empathized with the neighbors’ concerns. Based on the rental records, the applicants are not using the home as their home base while they are in the States as they originally indicated they would. In addition, the rental parties tend to be large.

Nate said that he considers the neighborhood as a larger area. There are STRs in this larger area and in residential neighborhoods and there have not been problems. There have been concerns, but there will always be concerns. It is a bigger house, so it allows for higher occupancy. The residents immediately next door have not communicated any issues. He sees it as having no detriment to the area or the market.

Dave said that it is impossible to know the entire situation that contributes to the owners wanting to continue the use as a HFSTR. Those reasons are beside the point. We have allowed it to this point and there haven’t been problems. He assumes they are using a rental management company. He thinks it would be appropriate to give them another year.

Angela said they could still rent the home as a long-term rental or a low-frequency short-term rental. If their goal was to be here summers, they could rent it to visiting professors. They said they needed more flexibility than that. They may be relying on it for income, but she didn’t feel that was a valid reason for renewal.

Justin said that they presented their ultimate goal as being a part of the community. He would be willing to extend the rental for one year but doesn’t know about continuing to do that into the future.

Nate asked what the Commission would do if this was the initial application for the use.

Angela said that they would have to live in the home for at least 9 months out of the year and would only be able to rent it for 90 days a year.

Nate asked what the concern was if the use was allowed to continue. Is it that the house is held back from someone who could live here?

Angela said that this structure is a home designed to be a residence. She counted and there have been 276 unique individuals who have stayed in the property over the course of the year. That is not what a residential home or neighborhood is meant for. The home is not a home to people who are contributing to the community and developing relationships in the neighborhood. It was a great concern from a close neighbor at the original hearing that strangers coming to stay the neighborhood made them feel vulnerable. When you live in the country you have the expectation that it will be private and you will know your neighbors. 276 unique individuals coming through is not compatible with that neighborhood.

Nate agreed that there are different expectations when you live in the country.

Tony said that if he were in the neighbors’ shoes, he wouldn’t want it. Is there any reason we can’t let them know that this is the last extension?

Liz said that wasn't typical. It would be more appropriate, if the Commission were to approve the extension, to let them know that there were a lot of concerns and that the approval passed with a narrow margin. We cannot add new conditions to the extension.

Angela said that her intention was to vote against it, as she has in the past. It would be good to let the owner know the amount of uncertainty so they know to not necessarily be reliant on getting the extension in the future.

Justin agreed with Angela. He wondered if the Commission could reduce the number of allowed rental days to bring it more in line with our current rules. The new Ordinance best serves the community.

Liz said that is a gray area. The basis for reducing the number of allowed rental days would require concrete evidence to support it. In general, the existing conditions cannot be changed when extending a permit.

Angela said another option would be to deny it and request that they apply under the new Ordinance.

Liz said the reason the Commission has generally settled on an annual extension for these interim HFSTRs is because it gives the Town an opportunity to check in on the use and an opportunity for the neighbors to express concerns. It is not the time to ask "do we still feel like this is a good fit with community" without evidence of new incompatibility. An argument would have to be made that something has changed such that it does not meet the set criteria for extending an interim use. It's already a permitted use.

Nate moved that the interim use permit be extended for one year, and that the applicants be made aware of the overall concerns. Justin seconded. The motion passed 3 to 2 with Tony, Dave, and Nate voting in favor and Angela and Justin voting against.

Angela said that for the record, she was voting against extending the interim use because she felt that this high-frequency short-term rental is not fundamentally compatible with the residential neighborhood in which it is located, particularly in light of the absentee owners.

Justin said he voted against it because he believes there is meant to be a social contract between neighbors and that that is absent in this situation.

The minutes from July 27 passed with one correction, to clarify the following phrase regarding the title being transferred "*Andrew said that since May, he has transferred the title (stormwater permit coverage?) from Odyssey into his name...*"

Angela noted that one of the two sheds that was ordered to be removed following the denial of the variances for them at the July meeting has not yet been removed. Liz said that she would touch base with him.

Concerns from audience.

None.

## **Directors Report**

Liz said that Andrew Zurcher submitted an insufficient stormwater plan. He put the plan together himself and it is required that stormwater management plans be completed by a qualified professional, which he is not. It was a condition of the approval for his interim use for a hosted HFSTR that the stormwater plan be submitted within 30 days. Today would be day 28. In addition to this issue, he has not completed the requirements listed in the warning letter from the MPCA. Liz spoke with the DNR and they have concerns. There is a 60-day permit review period to allow other agencies to comment on a submitted permit application. Following that, there may be additional information they need before reaching a decision on it. Permitting may also be needed from the U.S. Army Corps of Engineers. She will reach out to him one more time. If he does not meet the 30-day deadline, he will have to reapply for the interim use permit.

Liz said she just got a question from someone who has purchased a home on Greenwood Road. They wanted to know if they can convert a shed that is already on the property to a guest cottage, live in the guest cottage and rent the main house, either long-term or short-term. It's a conforming property. Liz told her that a guest cottage is a noncommercial dwelling for temporary guests. Otherwise, it was not clear to Liz if the Ordinance covered this. It involves the definitions for primary residence and subordinate dwelling, the spirit and intent of the Ordinance, and would ultimately be the decision of the Commission. It is not allowed to rent out a subordinate structure. Would living in the cottage turn it into the primary residence?

Nate said that the value of the property is in the home, not the shed.

Tony said that this was similar to the situation with the cabin rental that was applied for on McQuade. The owner lived in a small structure that shared a roof with the cabin when he had renters in.

Justin said you have to live in the home you intend to rent as a HFSTR for 9 months out of the year. For a hosted short-term rental, we don't police where the owners actually sleep during a rental.

Liz said the answer is clear for renting either dwelling as a HFSTR. They would have to live in it for 9 months a year. They cannot rent one structure and live in another. What about long-term rental? Having two residences on one property requires an interim use permit.

Armand said that he was recently at a meeting of the DNSSD where a resident was building a house and intended to use the old house on the property for guests. They wanted to combine the two houses for the sewer. It was ruled that they had to get a separate sewer connection and pay the yearly fee it.

Liz said that someone can have a subordinate dwelling as long as they are not collecting rent for it.

Nate asked about a property near the old Clover Valley School site where a new driveway was going in and they were cutting trees and bringing in fill. The river is right there and it seemed questionable to him that there was room for that work if setbacks were maintained.

Justin said that a driveway, however rustic, had been in place there, so a driveway permit wasn't required.

Liz said that she would go by the site and take a look.

The meeting adjourned at 8:10.