

# Town of Duluth

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Special Meeting of Town Board Supervisors  
Purpose: Variance Appeal Hearing  
July 10, 2024

**Applicants:** Howard and Julie Sievert

**Appellants:** Howard and Julie Seivert, Represented by Daryl Fuchihara

**Location:** Duluth Town Hall, 6092 Homestead Road, Duluth, Minnesota 55804

**Time:** 6:00 p.m.

**Town Board Members Present:** Rolf Carlson, Saprina Matheny, Jim Ward, and Stacia Grayson.  
Absent: ArMand Nelson

**Community Members Present:** Carole Bille, Charles Bille, Nathan Nesgodia, and Beth Mullan.

**Procedure:** The variance appeal hearing was called to order at 6:01 p.m. with the Pledge of Allegiance.

Chairman Carlson made introductory remarks and explained the process on how tonight's hearing will proceed.

**Planning Director Review of Variance Request:** Planning director Liz Strohmayer began by reviewing the communications agreement for the meeting. She reviewed the order of how the night would progress. Planning Director Strohmayer shared a PowerPoint, with information pertaining to the Seivert request. In those slides she shares an image of the lot in question. She reviewed the three-variance requests made by Sieverts. She also explained what each of the requests were.

Question Supervisor Matheny: Is the garage included in that square?  
Answer: Yes, it is an attached garage.

Planning Director Strohmayer continued her presentation and showed information regarding the ordinary high-water level and the road set back. Planning Director Strohmayer further explained the criteria for a variance. Planning Director Strohmayer asked if the Board would like her to read though the criteria question that the Sieverts answered on their original variance application. The Board members did not need her to read the responses as they had read though the questions prior to the meeting. Planning Director Strohmayer also asked the public in attendance if they would like her to read though the application, no requests were made. Planning Director Strohmayer explained that the three variances the Sieverts requested on their original application were: 14 feet from the road setback, 5 feet side yard setback, and 65 feet from the lake. Planning Director Strohmayer moved on to review the finding of facts for the denial. She reviewed the motions that were made. Which can be found in the finding of facts for the denial. (Attached) She explained why the commission moved to split the first question and

stated that this is common so there is no need for one whole encompassing motion for approval at the end. She explained what the request was from the DNR including moving the structure site.

**Question from the Town Board:**

Question Supervisor Matheny: Are we looking at the variance application or the DNR recommendations?

Planning Director Strohmayer: She doesn't have an answer, she can reach out to Mr. Witty. She recommends that they look at the Sieverts application.

Question Supervisor Grayson: Do we need to make any changes?

Planning Director Strohmayer: That is up to the Board.

Daryl Fuchihara: The Sievert's original application is the site they are appealing for. Not the altered setbacks the Planning Commission developed.

Supervisor Grayson and Matheny: We should hear it as the original variance of 14-foot road setback, 5-foot side yard setback, and a 65-foot setback from Lake Superior.

**Appellant Comments:**

Daryl Fuchihara: He introduced himself as he is representing the Sieverts. He would like to touch on a few highlights as the information presented was very thorough. There are two areas he would like to address specifically. One question was would the type of house and use fit in? Will it be consistent with the area? The Sieverts home would be residential and used year-round. The house is average in size when compared to the other houses in the area from Stoney Point to Knife River. The view of the lake for the neighbors would not be affected at all. He stated that the Sieverts own property on the inland side of the road as well, so the view would not have been affected. They purchased this land 25 years ago, he stated that they paid to install the sewer services with the sanitary district. He refers to the Bille case. He discussed the lake set back. The existing house on the property would be demolished and the house placed behind that location. He feels that this would be in line with the other homes in the area. He feels that it would be concerning if the Sieverts house were placed closer to the road with people traveling sixty plus miles per hour. He asked the Board to look at the site sketch they provided in their email.

The Sievert's requested that their variance be approved.

**Public testimony:**

Nathan Nesgoda: Nathan is on the Planning Commission. He stated that he has mixed feelings. He referenced the decision the Commission made. He said he would have felt better if the house was located closer to the road as it is not an interstate, and the speed limit is fifty miles per hour. He is concerned about setting precedents. He is also concerned about protecting the water of Lake Superior. He stated that there were 3 setback variances, and he would have been more likely to vote in favor if there was less of a setback request from the lake. He did not that there is a driveway on the property that has no permit for.

Julie Sievert: We didn't install the driveway. The driveway was installed by the Duluth North Shore Sanitary District, (DNSSD), when they installed the sewer system. It is not where we would have liked to install the driveway.

Question Matheny: You didn't intentionally put the driveway there?

Sieverts: The DNSSD installed it when they installed the sewer.

Question Matheny: Will you maintain the driveway?

Sieverts: No, we want to move it to the center of the lot.

Carol Bille: It was my property that we went to the supreme court with. The shoreline is a straight rock shoreline. Their understanding of the Sieverts have three times the amount of property they have. The Comprehensive Land Use Plan has not changed. She doesn't understand why someone who has three times the amount of property is not allowed to build. She encourages the Board to grant all three variances. She doesn't feel like they wouldn't fit in. They are not building an astronomical size house, and they own the property on the inland side of the road and wouldn't impede someone's view of the lake. They should be able to build on their property and wouldn't be infringing on anyone else's property.

Charles Bille: There is only so much you can do with the lots in that area. They should be able to build. If you look north (east) of their property. You will see that there are many houses that are much closer to the lake. It is bedrock and it is not going anywhere. There is no such thing as clear cutting your own property and they can take down as many trees as possible.

Planning Director Strohmayer suggested that the Board read the written public comment letters that were submitted to the Clerk's office.

There were four letters received Chairman Carlson read each of the letters.

Letter from Bri Speldrich from the DNR, attached.

Letter from Rebecca Norine, attached.

Second letter from Rebecca Norine, attached.

Letter from Lawrence Burkhard, attached.

In the letter from Burkhard he referred to the roadside art sale and was worried that would continue.

Julie Sievert explained that the artwork that was sold there was from the gentleman who lived in their cabin, who was a disabled vet. He just passed away and there will not be any more artwork for sale there. Mrs. Sievert stated that her great grandparents came here from Norway, her father was a fisherman, and she was born here. Mrs. Sievert stated that they owned The Inn on Gitche Gumee. She loves this land, the lake, she has respect for the Native American culture. The rooms in the Inn had themes related to the animals and things in this area. She was born and raised. She asked where Ms. Norine was from. They had saved money and had prepared for their retirement to get to this point in their life.

Howard Sievert: They had paid more than fifty thousand in real estate taxes. They are not building a mansion or anything like that. Why are we paying taxes if we are not able to build on their land?

Planning Director Strohmayer made a point of order that we should clear up the public testimony before we move on as there is still someone who wishes to make a comment.

Question Supervisor Matheny: Is there a better or bigger map of the Ordinary High-Water Level for that area?

Planning Director Strohmayer: It can be pretty drastic from parcel to parcel. Some can be farther back than others. I can reach out to the DNR for a larger map of the area.

Charels Bille: He requests that the Board take the letter submitted from Rebecca Norine with a grain of salt. If you stand at the end of their driveway, they are not affecting her view of the lake. They had nothing but negative things to say about his parents. Ms. Norine was a part of the lawsuit that they lost.

Beth Mullan: Beth referenced the Bille case. She read from 2021 district court decision "The Court is hard-pressed to speculate as to what variance would be denied when a deviation so far from the intent and spirit of the Ordinance and with such a significant deviation from the dimensional requirements is allowed" Was overturned because higher court said they tended to side with local municipality, which was the Town Board. In addition, one of the lawsuits that went to the MN Supreme Court was over timing of the servicing of papers, not the actual variances.

Julie Sievert: Why do we have to go through this? We have had this property since 1999. We had paid taxes on this for 25 years. It seems awful that we're not asking for much, we want to be away from the lake, we don't want to be close to the road. She has not seen any erosion over the years into the lake, its bedrock. We talked with the DNR, and we agreed to the rainwater garden.

Howard Sievert: I don't understand why they stated that the Bille's took all the trees off the lot. There were hardly any trees on that lot to begin with. We have a lot of cedar trees on our lot.

Planning Director Strohmayer: I would like to provide some clarifying comments. I'm not trying to impose bias; these are more clarifying things. What I have always told the Commission and why I'm reiterating again, is that the Town Board generally deals with Town Board business and doesn't, on a day to day, deal with Planning and Zoning stuff, as most people in this room probably don't. Each decision is based on its own merits and the current ordinance and not looking back and setting precedents based off others and instead looking at a case-by-case scenarios. Just a clarifying point in the case of Bille's, this was very different scenario, this is three variances instead of six and we can go around all night. This is a separate lot and a separate case. The Zoning Ordinance was updated 2022 and the Comprehensive Land Use Plan was done one to two years before that 2020-2021. This area was plotted out in the 1920s and 1940s and was designed as spaces for cabins. This is not unique to just the Sievert's, there are a lot in that area, which are non-conforming or needed variance. This was looked at during the Ordinance update to address the nonconforming lots. I'm pretty sure this parcel was non-

conforming when they purchased it. It has been at least non-conforming since she joined the commission in 2016. The Sievert's have a couple of options on what they can do with the parcel when it comes to building. They have had quite a few conversations with both Planning Director Strohmayer and Sue. Choices are: They can do nothing, apply a for variance, which they did and since it was denied, they can appeal it; they can amend and reapply for their variance with different setbacks.

Question Supervisor Grayson: Can they go back for another variance after tonight?

Planning Director Strohmayer: Yes

There is one more option in our ordinance that is protecting non-conforming structures. Section 3 A. 1. Which not applicable and Section 3 A. 2 in order to add an addition to it, there are a lot of limitations with that, one is that they could increase it by 25%, they can remodel it, they can't replace the original foundation, or the end truss walls, they could gut it and replace sheetrock so they could add 25% so they could add about an extra bedroom. They have other options, whether they are good options for them or what they would want. If you have seen that structure, she feels that these options for the structure would not be good. They have been speaking with Sue and Planning Director Strohmayer about potential projects for at least two years.

Howard Sievert: They have been planning this for years, we worked with Sue before starting with Planning Director Strohmayer.

Daryl Fuchihara: The concern of the three setbacks of course two are unavoidable because of the overlap as there is not enough space. I think that the one on the western boundary, the idea was that making a proposal on that site would create a smaller disturbance, less tree removal. He felt that there would be a bigger disruption to the land to move the site to another location. As for the DNR he feels that it is improper that a state agency to be commenting and to try and influence what the Town Board would decide. It's clear that if the DNR had their way they would ban development. I understand that it is a part of their mission to protect and preserve as much as they can. It is not their decision and not up to the DNR to say what can be done, it is up to the Town Board.

Planning Director Strohmayer: We are required, whenever there is a variance around Lake Superior or Trout Stream, to notify the DNR, just like they are to notify us.

Daryl Fuchihara: Referencing the letter submitted by Lawerance Burkhard, with the house being out of character with the existing surrounding buildings, it's not the case and it needs to be looked at on a case-by-case situation. He touched on the Court of Appeals decision; the Appeals Court decision approved the Bille's house. Please recognize that they have tried to do everything they can to put this, (house), in an appropriate spot.

**Motion:** Stacia moved to split the question for the appeal variance: Saprina seconded. The motion passed.

Supervisor Grayson: From hearing all of the information she thinks, in general, we would like to help you and allow you to build. Feels there are limitation, she thinks that the structure with the long-term potential, the storms are not getting smaller, and the waves are getting bigger, and

that respecting the DNR's guidelines make a lot of sense to her and things that haven't been eroding are eroding. You're not building a big house and that makes sense.

Supervisor Matheny: In her opinion, you should be allowed to build on your property that you own and clearly this property will require some kind of variance will be needed. Her hold up is the OHWL with the increasing sizes of waves from Lake Superior. The 100-foot setback would not likely be feasible, and she would be flexible on that. She struggles with the OWHL, she feels placement closer to the road makes sense. The safety issue of the road can be argued, that there would be a safety issue from the lake waves. As we would not like to be closer to the road, I think it would be balanced from the noise from the road would be significant during the summer months versus the winter months. Balanced against the larger and longitudinal need of protecting the lake and the character of the lake and its shoreline and I would prioritize that in terms of where that fits within the criteria.

Howard Sievert: The high-water mark has not affected the cabin for 50 years and we are behind that.

Supervisors Ward: I don't want to see this at a dead end, I want to see you build down there.

Supervisor Carlson: My impression is that the main thing the Planning and Zoning Commissions had a problem with was the setback from the lake.

Planning Director Strohmayer: Nate is here and maybe he can explain.

Nathan Nesgoda: For mine and I believe Justin wanted to preserve the size of the house.

Planning Director Strohmayer: There were three takeaways that I got, basically the feedback from the Commission after they made their decision. Which, they invited them to come back with an altered variance request. Take a way one: For Justin specifically said the size, to him, was significantly larger than the size of the original structure that is there and the natural esthetic. The size of the house was modest but the size for that lot and the history of that lot was different for him. The next was that several members were concerned about the proposed structure as close to the lake as they requested and would like to meet in the middle to be closer to the road. Then the other feedback was from Pam and that she would like to see it shifted far enough east to meet the side yard setback, by five feet.

Supervisor Ward: I think that is where I'm going. Is there a reason that you need to be at the five-foot setback?

Howard Sievert: It's much more than that. Not a measured thing. No one has measured that. The pin on the road about five feet from that pin to where the driveway starts. Then it is another fifteen feet. So, we are over that.

Julie Sievert: We agreed on that at the last meeting, and it was turned down. One lady stated that if you didn't have a garage, it would be ok. Who in Minnesota doesn't have a garage. Then someone didn't want us to have a second floor. What's wrong with having a second floor? We would not be blocking anyone's view.

Howard Sievert: We are much lower than our neighbors.

Supervisor Matheny: I personally would have had a much harder decision if you would have come with the first proposal versus the second proposal.

Julie Sievert: We were trying to work it out with the Planning Commission when we were here before and they voted against it.

Howard Sievert: One person didn't want us to have a garage, one person didn't want us to have a second story, and one person didn't want us to build a big house. Here's the deal, it's not a big house, it's 40'x 28'. We got a family too. We are going to build that cabin. If you try to stop us, we will build that cabin and we will go through a bunch of stuff on the other lot.

Daryl Fuchihara: You're going to build the cabin; you will follow the process.

Howard Sievert: Yes, absolutely.

Planning Director Strohmayer: Are you talking about the lot up here, (on the north side of Scenic Drive)

Julie Sievert: Yes.

Planning Director Strohmayer: By eyeballing the property, it appears to be the same size and just doesn't border the lake.

Supervisor Matheny: I do understand that it's hard to have a different group. But you had feedback from the Planning Commission trying to work things out and now there is a different group to make a decision.

Julie Sievert: Yes, we were agreeing with them, when we met. Now things have changed. Why do we have to move our house farther away from the lake? We were trying to have a balance and not be so close to the road. It's far enough from the lake. We have had this for twenty-five years. It's in line with the cabin. We go down to the lake to watch the waves hit against the rock. It's all rock.

Supervisors Ward: You are not on one of the clay cliffs.

Julie Sievert: Right.

Supervisor Ward: Fifteen years ago, the lake was at an all-time low and it would take fifty years to come back. Last year we are at an all-time high. This year it is down by almost fifteen inches. I don't have an issue with the lake setback.

Supervisor Grayson: I think that is where my hesitation lies. I know it seems that we are fighting over ten feet, but I do think it is important. I don't want you to build a house and have issues. I realize that the cabin has been there, and I haven't seen it. I personally struggle with can I protect the lake, what are we talking the difference? 25 feet between where the DNR wants it versus their original proposal.

Planning Director Strohmayer: Planning commission heard it for 55ft setback, they originally had proposed 35 feet. They moved the structure 20 feet closer to the road and away from the road.

Supervisor Grayson: I think I'm having the same struggle. If we could hear that, I believe we would have a different discussion. I don't know if we have that flexibility. But as proposed, the original setback proposal, I do struggle. You have already agreed that you would be willing to set it back.

Julie Sievert: Yes, they turned us down.

Supervisor Grayson: I think the setback was ok but the rest of it they turned down. We are a different group of people. I think that is the bigger hold up.

Julie Sievert: So, the setback was okay from the lake?

Planning Director Strohmayer: What setback?

Supervisor Grayson: The fifty-five foot.

Howard Sievert: The more you set it back the closer you get to the road.

Supervisor Carlson: The fifty-five foot back it what the Planning Commission denied.

Supervisor Grayson: If we can go off of that, then we would have a different conversation.

Supervisor Matheny: I would be on the same page as Supervisor Grayson saying we would have a different conversation.

Supervisor Grayson: I don't know what kind of legality we have as far as approving or denying. If we can move forward with that understanding, I would be happy to move forward.

Supervisor Matheny: Can we make a decision on the original variance and move to have a second question on the variance as denied?

Planning Director Strohmayer: I'm not quite understanding.

Supervisor Matheny: So essentially, we have two variance hearings. One is what we have tonight with the 35ft. and go through the five questions on that. Then split a second question into the same five question with the 55 foot setback.

Planning Director Strohmayer: The Planning Commission has never done that before.

Supervisor Carlson: We generally vote up and down. If the variance changes, then they need to go back thorough it and state that this is what we want to do now. This is our upgraded plan.

Supervisor Matheny: I think it can get a little fishy when the actual variance they denied was the fifty-five foot.

Planning Director Strohmayer: For all intents and purposes, my understanding is that you can hear it based off the original application. But they are appealing the decision from the Commission and their decision was based off of different variances from the original application. I would think you can hear it either way. To be honest, they are appealing the Planning Commission decision, and they changed the three setbacks. It's my opinion, because I'm not sure what you can or can't do, that it is of my opinion that you would want to hear it based on the Planning Commissions alterations and their final decisions.

Beth Mullan: I agree that this is an appeal of the Planning Commission's decision, and their decision was based on the DNR's proposed setbacks and not the original.

Daryl Fuchihara: Going back to the Planning Commission decisions as they did not make any rulings on setbacks, they were talking about the character not conforming with the actual comprehensive plan. I don't think it is that narrow. I think the Town Board has discretion to decide what it wants to do here. If they felt that the proposed setbacks were not proper and something else was proper. I don't see why they can't make that finding and forcing the whole process to start over.

Planning Director Strohmayer. They asked for one variance type, I think the Planning Commission we would deny it but would hear it differently this way. With the spirit of intent of saying we don't want you to go through this again just to ask you to move a variance this way, you are here tonight we will hear it this way. They have done this in the past to be nice as every has been notified, neighbors and everyone is showing up that night. If it is just an issue of a line.

Daryl Fuchihara: I don't see anything in the decision of the Planning Commission that talks.

Supervisor Grayson: I think the first motion passed for the DNR sensitive shore area, that is my understanding.

Planning Director Strohmayer: They moved to approve the variance request with an altered road and lake setback.

Supervisor Grayson: It looks like the Planning Commission made four motions, two passed and two were denied.

Daryl Fuchihara: If I may, I think the purpose of this is to review the actions of the Planning Commission. The Town Board has the discretion to review all of it, agree or disagree with all of it. They are the authority to make decisions on it.

Supervisor Matheny: So, we should review each of these individually.

Planning Director Strohmayer: My understanding is from the applicants they want to have it heard from the original variance request of thirty-five feet. I feel that we need to have some clarity.

**Motion:** Stacia moved to hear appeal based on the Planning Commission's original motion to approve the variance requests for the home as proposed by the DNR, the road setback at 76 ft, and the lake setback at 55 ft, and the 5 ft setback for the side yard as applied for. The revised setback from the lake moves the house out of the shore impact zone. The existing cabin site must be revegetated with natural plantings and runoff must be directed away from the lake with best management practices and to strike her first motion; Saprina seconded.

**Motion:** Saprina moved to split the question into five parts, Stacia seconded. The motion to split the question was approved unanimously.

**Motion:** Saprina moved that the proposal is in harmony with the general purposes and intent of the Ordinance because it is a nonconforming lot of record, and it meets the DNR's request to site it out of the sensitive shore area; it revegetates the cabin site and addresses stormwater. Stacia seconded. The motion passed unanimously.

**Motion:** Stacia moved that the proposal is consistent with the Comprehensive Plan because the shoreline is zoned for smaller parcels in close proximity, so it doesn't alter the fabric of the neighborhood. It is consistent with the shoreline use as it currently exists and is zoned for. Jim seconded the motion.

Discussion: Saprina reviewed the comprehensive plan. Saprina feels that the fifty-five-foot setback strikes a better balance with the comprehensive plan and is more in line.

The motion passed unanimously.

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

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

The motion, including the amendment passed unanimously.

**Motion:** Stacia moved that the plight of the property owner is due to circumstances unique to the property not created by the property owner because the lot is nonconforming, and they have to conform to the nonconforming lot to build on the property. Saprina seconded. The motion passed unanimously.

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

Discussion: Stacia from what I listen to and what I have viewed, I just want to state I realize this is building a larger structure and perhaps larger than some may want but this request does not seem unreasonable. It is different and is changing, the Sieverts have worked with us, and we are working with you.

The motion passed unanimously.

The original motion passed unanimously.

**Decision:** The Town Board has overridden the Planning Commission decisions.

The Clerk's office will send notice to DNR with the Board's finding of facts.

The setbacks are road 76-foot, lake setback 55-foot, and side yard of 5-foot.

**Adjournment:** Saprina moved to adjourn at 7:59 p.m. Stacia second. The motion passed.

**Attachments:**

Two Letters from Bri Speldrich, DNR

Letter from Rebecca Norine, neighbor

Letter from Lawrence Burkhard, neighbor



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

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

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

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

Dear Planning Director:

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Bri Speldrich  
DNR EWR - Area Hydrologist Duluth

*Enclosures: Attachment A*







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

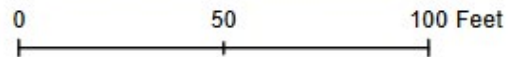


# Attachment A



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

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



\*All locations and dimensions shown are approximate.



## 5842 North Shore Drive Variance

Date: May 22, 2024

To: Planning Department, Duluth Town Hall

From: Rebecca Norine, 5848 North Shore Drive

Re: Variance Request from Howard and Julie Sievert

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

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

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

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

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

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

Date: July 1, 2024

To: Town of Duluth Board of Supervisors

From: Rebecca Norine, 5848 North Shore

Drive

Re: Appeal of Variance Request Denial from Howard and Julie Sievert

I am an owner of the cabin at 5848 North Shore Drive and appreciate the opportunity to comment on the appeal of the decision to deny the variances submitted by Howard and Julie Sievert regarding 5842 North Shore Drive, legal description: Lot 17, Block 3 Greenwood Cliffs and Lot 16, except that part lying Easterly of a line drawn between and equidistant from the east and west of said lot, Block 3, Greenwood Cliffs.

I wrote on May 22, 2024, in opposition to the variance request, and my position is the same regarding this appeal. I believe constructing a house with the need for these significant variances puts them at odds with the Duluth Zoning Ordinance and the Comprehensive Land Use Plan.

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

As I stated in my 5/22/24 letter, in 2017 the Billies at 5846 North Shore Drive requested and were finally granted 6 variances to build a 1400 square foot house on a .3-acre lot. Despite opposition from many neighbors, including ourselves, the Town Board granted the variances by a narrow margin. So now there is a large house right next to our property. Trees were clear cut to the lake to afford a better view. Bright yard lights and security lights were turned on. For us, the “ruralness” core value was ignored.

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

Therefore, I oppose this appeal and object to the impact this project would have on the neighborhood and land. Thank you for your consideration.

July 9, 2024

Town of Duluth Board of Supervisors  
6092 Homestead Road  
Duluth, MN 55804

Dear Supervisors:

I'm in total agreement with the Planning Commission's May 23, 2024 DENIAL of Variance for the applicant/owner Howard and Julie Sievert located at 5842 North Shore Drive, Duluth, MN 55804. In their appeal on July 10, 2024, I believe the DENIAL of Variance must be upheld.

There are numerous issues associated with the Sieverts' variance request. **First**, the new structure is out of character with the existing structures in the Greenwood Cliffs area. They are proposing to build a two-story structure whereas nearly all the Greenwood Cliffs structures on the lakeside are single story and much more "cabin" like. **Second**, the request for 65 ft. variance from the 110 ft. setback from Lake Superior is not reasonable nor protective of the lake (Note, I agree with the MN Department of Natural Resources assessment of the variance request). **Third**, there has been an ongoing roadside sale of artwork on this property in the summertime by the owners. This is not consistent with the zoning of "residential" property, and I anticipate the continuance or expansion of this improper practice with a new structure.

I strongly believe the Sieverts should rethink the plans and come up with a plan/design that is much more consistent with the Greenwood Cliffs area.

Thanks and regards,



Lawrence Burkhard

5820 North Shore Drive  
Duluth, MN 55804

# FINDINGS OF FACT AND DECISION

## TOWN OF DULUTH ST. LOUIS COUNTY, MINNESOTA JULY 10, 2024

### GRANTING of Appeal

On July 10, 2024, at a special meeting, the Town Board of the Town of Duluth met to consider the Appeal of Howard and Julie Sievert of the denial of the variances to build a home on their property at 5842 North Shore Drive:

- A 34 ft variance from the required 110 ft setback from the road to place the building 76 ft from North Shore Drive,
- A 5 ft variance from the required 20 ft setback from the side yard to place the building 15 ft from the side yard and,
- A 45 variance from the required 110 ft setback from Lake Superior to place the building 55 feet from the Lake.

The applicants were present and the Commission heard testimony from all interested parties wishing to speak and now makes the following Findings of Fact and Decision.

Appellant and Owner: Howard and Julie Sievert

Property Address: 5842 North Shore Drive, Duluth MN 55804

Parcel Number: 315-0060-00690 and 315-0060-0070

Zone District: SUR-2

Legal Description: LOT 17 and WLY ½ of LOT 16, BLOCK 3, GREENWOOD CLIFFS  
TOWN OF DULUTH

### Applicable Zoning Criteria - Town of Duluth Zoning Ordinance Number 6

#### Article V Section 2: Land Use District Titles and Purpose Statements

##### Shoreland Urban Residential - SUR-2

The purpose of this district is to provide for almost entirely residential uses on an urban scale of development. Mixed uses are extremely rare and those that do occur are consistent with the urban residential nature of the district.

#### Article X Section 3: Variances

**E. Criteria for Decisions.** The Planning Commission shall always act with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building or use detrimental to a neighborhood.

1. Variances shall only be permitted

a. When they are in harmony with the general purposes and intent of the Ordinance, and

b. When the variances are consistent with the comprehensive plan.

2. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance.

3. "Practical difficulties," as used in connection with the granting of a variance, means that Findings of Fact and Decision, Sievert Variance, May 23, 2024

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; and

c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

4. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes section 216C.06, subdivision 14, when in harmony with the Ordinance.

5. The Planning Commission may not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zone where the affected person's land is located.

6. The Planning Commission may permit as a variance the temporary use of a one family dwelling as a two-family dwelling.

7. The Planning Commission may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Town Board Members present at meeting: Rolf Carlson, Stacia Grayson, Jim Ward, Saprina Matheny

Procedure:

Chairman Carlson made introductory remarks and briefly went over the process

Planning Director Liz Strohmayer reviewed the variance request and decision

Questions from the Board

Comments from the appellants and their attorney

Review of Public Comments (in person and written submissions)

Board Questions and Deliberation

Adjournment

Decision:

Basis for Decision:

In considering the variance request, we agreed that we would base our decision on the same variances that the Commission ended up deciding on, rather than the original variances sought by the Seiverts (specifically, we were considering a 76 ft road setback and a 55 lake setback, rather than the 96 ft road setback and 35 ft lake setback originally sought). Following the general practice of our Planning and Zoning Commission, the Town Board split the question into 5 steps. (Original motion to grant appeal and approve variance moved by Grayson, seconded by Ward, subsidiary motions to split the question moved by Grayson, seconded by Matheny, carried, and to specify the setbacks we should be deciding on moved by Grayson, seconded by Ward, carried).

We concurred with the Commission on 3 of the 5 criteria, namely that:

- 1) The proposal was in harmony with the general purposes and intent of the ordinance because it is a nonconforming lot of record and it meets the DNR's request to site it out of the sensitive shore area and it revegetates the current cabin site and addresses stormwater (moved by Grayson, seconded by Ward, carried).
- 2) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance because it has been used as a cabin for over 25 years, the limitations of the property make variances necessary to use the property, and it is similar to other properties in the area. Lot sizes in this area make variances necessary (moved by Ward, seconded by Grayson, carried).
- 3) The plight of the property owner is due to circumstances unique to the property owner not created by the property owner because the lot is nonconforming (moved by Grayson, seconded by Ward, carried)

On another of the criteria, the Commission Had been evenly split, namely:

- 4) The variance, if granted, will not alter the essential character of the neighborhood or locality because many of the lots on the shoreline in that area are small and have many structures that do not meet current setbacks.

The Board found that the variance would not alter the essential character of the neighborhood (moved by Ward, seconded by Grayson, carried).

Finally, on one criterion, the Board differed from the Commission.

- 5) The proposal is consistent with the Comprehensive Plan because the shoreline is zoned for smaller parcels in close proximity so it doesn't alter the fabric of the neighborhood. It is consistent with the shoreline use as currently exists and is zoned for.

The Board found that the proposal was consistent with the Comprehensive Land Use Plan (moved by Ward, seconded by Grayson, carried).

Since the Board found that the 5 criteria were met, the Sieverts were granted their appeal.

---

Rolf Carlson, Chairman, Town of Duluth Supervisors

Attested By:

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Nicole A. Chatterson, Clerk, Town of Duluth