



**CITY OF DULUTH**  
Community Planning Division

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<b>File Number</b>	PL17-015		<b>Contact</b>	Kate Van Daele	
<b>Type</b>	Interim Use Permit- Accessory Vacation Dwelling Unit		<b>Planning Commission Date</b>	July 11, 2017	
<b>Deadline for Action</b>	<b>Application Date</b>	June 16, 2017	<b>60 Days</b>	August 15, 2017	
	<b>Date Extension Letter Mailed</b>	June 23, 2017	<b>120 Days</b>	October 14, 2017	
<b>Location of Subject</b>	139 Howard Gnesen Road				
<b>Applicant</b>	Doug McCorison		<b>Contact</b>		
<b>Agent</b>	Greg Gilbert, Counsel		<b>Contact</b>		
<b>Legal Description</b>	See attached.				
<b>Site Visit Date</b>	June 22, 2017		<b>Sign Notice Date</b>	June 27, 2017	
<b>Neighbor Letter Date</b>	June 27, 2017		<b>Number of Letters Sent</b>	17	

**Proposal**

Applicant proposes to use their house as a vacation dwelling unit. A vacation dwelling unit allows for periods of occupancy of 2 to 29 days, with a minimum stay of two consecutive nights.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Single Family Home	Traditional Neighborhood
<b>North</b>	R-1	Single Family Home	Traditional Neighborhood
<b>South</b>	R-1	Single Family Home	Traditional Neighborhood
<b>East</b>	R-1	Single Family Home	Traditional Neighborhood
<b>West</b>	R-1	Single Family Home	Traditional Neighborhood

**Summary of Code Requirements**

UDC Section 50-19.8. Permitted Land Use Table. A Vacation Dwelling Unit is an Interim Use in an R-1 District.

UDC Section 50-37.10. B... Council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The... Council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.10.1. P, a development agreement regarding the design, construction, and operation of the special use, to protect the Comprehensive Land Use Plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to meet.

UDC Section 50-37.10.E...the Council shall only approve an Interim Use Permit , or approve it with conditions, if it determines that: (1) A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location, (2) The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain, (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the Interim Use Permit as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures of improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No Interim Use Permit shall be issued until a development agreement confirming these points is executed.

4) C-1



**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Governing Principle #8 – Encourage mix of activities, uses and densities

Future Land Use – Traditional Neighborhood

Characterized by a grid or connected street pattern, houses orientated with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

Based on complaints and Staff's vacation rental enforcement program, it appears that the Applicant may have been renting the property as a short-term vacation rental since 2014 without proper City approvals. As a result, Applicant has been mailed three enforcement letters to cease and desist renting the property. In July, 2016 the City Auditor's office created a tourism tax permit on Applicant's behalf and assessed estimated taxes for the vacation dwelling use that had been documented on the site. Applicant paid this assessment in October, 2016. Since that time the tourism tax payments for unpermitted vacation rental have been tardy.

Applicant first submitted an application in January, 2017. The application was found to be incomplete. During this time, it became apparent that structures on the site may have been constructed without building permits. Through conversations with the Applicant's attorney and one further incomplete application determination, the application was finally completed. Because of these continued challenges in contacting the applicant and receiving timely and adequate response, there is a concern as to Applicant's capability in implement standards of this permit, and to provide adequate response to neighbors under the requirements for vacation dwelling IUPs.

C-2



### Review and Discussion Items

- 1) The applicant's property is located on 139 Howard Gnesen Road. The dwelling unit has three bedrooms, which would allow for a maximum of seven people. The home is 1,850 square feet with a 26' x 22' detached garage.
- 2) Permit holders must designate a managing agent or local contact who resides within 25 miles of the City and who has the authority to act for the owner in responding 24 hours a day to complaints from neighbors or the City. Permit holder must provide the contact information for the managing agent or local contact to all property owners within 100 feet of the property boundary.
- 3) Applicant currently appears to reside on the property in one of two structures that may have been constructed without building permits. The two structures are a large decorative lighthouse (see photos in the attachment) and a studio that was built over the garage. Though the garage was constructed as part of a building permit issued in 2002, the permit stated that the structure is not for residential use and that *"the foundation is not frost protected, and that heat is not maintained."* No building permit appears to have been issued for the large decorative lighthouse. However, according to a current for-sale listing for the property, there are pictures of a one-bedroom dwelling unit in the decorative lighthouse which is referred to as a *"one of a kind guesthouse"*. Under the requirements of the Building Code, Applicant may not occupy non-building code permitted structures and should vacate the property while guests are renting the property.
- 4) Two parking spaces are required for this unit. These spaces are located in the unit's garage. Additional parking is located in the applicant's driveway outside of the home.
- 5) The site plan submitted indicates that there is natural screening throughout the property. Large trees and shrubs can be found on each side of the property that provide dense screening between to the neighbors to the northeast and south. The useable exterior space has been buffered from all adjoining properties in accordance with the UDC requirements.
- 6) A time limit on this Interim Use Permit is needed minimize negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3. U.7. states that Interim Use Permit's shall expire upon change in ownership of the property or in six years, whichever occurs first.
- 7) Applicant has obtained a tourism tax permit and fire operational permit. The lodging license, hotel/motel license, and State I.D. number have not been provided for review.
- 8) Applicant must comply with Vacation Dwelling Unit Regulations (included with staff report), including providing information to guests on city rules (included with staff report as "Selected City Ordinances on Parking, Pets, and Noise").
- 9) The applicant has been operating without an Interim Use Permit dating back to December 22, 2014. To date there have been 54 reviews from 12/22/14 – 7/1/17 on his VRBO.com listing. This violates UDC Section 50-39.1. A.12 which states that "...without the approvals or permits required by this chapter, in violation of the provisions of this chapter, or in violation of any other applicable provisions in this chapter."

Violation letters from the Community Planning office for illegally renting the property on November 11, 2015, December 1, 2015, August 19, 2016. Applicant has not refuted these notices, which represent violations of UDC Section 50-39.1. B related to continuing violations: "Each day that a violation occurs or remains uncorrected after receipt of notice of the violation from the city shall constitute a separate violation."

- 10) No comments from citizens were received regarding this zoning application.
- 11) Staff has received a letter from the Manager of Construction Services in regards to the safety concerns and building code violations of the applicant living in a non-building code permitted structure or structures.

### Staff Recommendation

Based on the above findings, staff recommends that Planning Commission recommend approval based on the following:

- 1) All renting stops until the applicant obtains a lodging license, hotel/motel license and a State I.D.
- 2) Evidence of the three licenses and I.D.'s needs to be sent to staff before a permit will be issued.
- 3) Accessory units including the garage and lighthouse must be brought to code if they are continued to be used as residences.
- 4) The Interim Use Permit shall not be effective until the applicant has received all required licenses and permit for operation. The resolution cannot be affirmatively considered by the City Council until all required documentation is provided to City Staff,
- 5) The applicant shall adhere to the terms and conditions listed in the Interim Use Permit documents and provide evidence of compliance, which will be included in the resolution.
- 6) The applicant must disclose to all guests, in writing, that quiet hours shall be observed between the hours of 10p.m. and 8a.m.
- 7) Trash burning on the property is prohibited.





# City Planning

139 Howard Gnesen Road

## Legend

- Bike
- Multi-Use - Paved
- Mountain Biking and X-Country Skiing
- Climbing
- Trout Stream (GPS)
- Other Stream (GPS)

## Zoning Boundaries

Zoning Boundaries



Aerial photography flown 2016

Prepared by: City of Duluth Planning Division, April 11, 2017; Source: City of Duluth.

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

1-4



**Legend**

-  Trout Stream (GPS)
-  Other Stream (GPS)
- Water Distribution System**
-  30 - 60" Water Pipe
-  16 - 24" Water Pipe
-  4 - 6" Water Pipe
- Sanitary Sewer Collection System**
-  Sanitary Sewer Collector
-  Sanitary Sewer Interceptor
-  Sanitary Sewer Forced Main
-  Storage Basin
-  Pump Station
- Gas Distribution Main**
-  8" - 16" Gas Pipes
-  4" - 6" Gas Pipes
-  0" - 4" Gas Pipes
- Storm Sewer Collection System**
-  Storm Sewer Pipe
-  Storm Sewer Catch Basin
-  Vacated ROW

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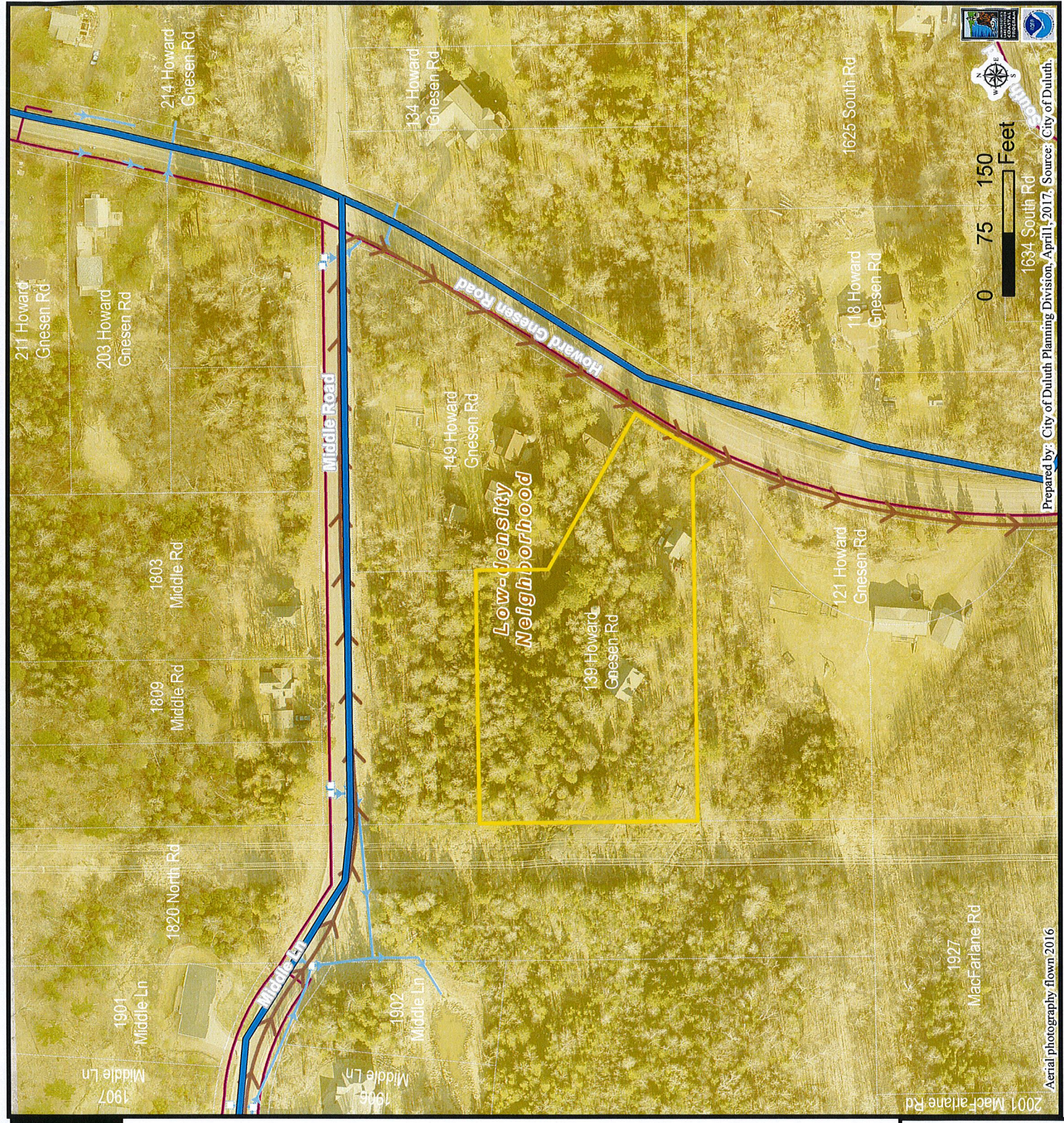




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- Storm Sewer Collection System
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Future Land Use
- Preservation
- Recreation
- Rural Residential
- Low-density Neighborhood
- Traditional Neighborhood
- Urban Residential
- Neighborhood Commercial
- Neighborhood Mixed Use
- General Mixed Use
- Central Business Secondary
- Central Business Primary
- Auto Oriented Commercial
- Large-scale Commercial
- Business Park
- Tourism/Entertainment District
- Medical District
- Institutional
- Commercial Waterfront
- Industrial Waterfront
- Light Industrial

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PL17-015 Legal Description

LOTS 94 THRU 98 EX THAT PART LYING N OF THE FOLLOWING DESCRIBED LINE COMM  
AT NW COR OF LOT 95 THENCE S00DEG05'54"W 237.32 FT TO PTOF BEG THENCE  
S59DEG17'14"E 217.85 FT TO A PT ON THE HOWARD GNESEN RD CENTERLINE  
R.O.W. LYING 33 FT WLY FROM PRESENT RD CENTERLINE THERE TERMINATING & EX  
NLY 150 FT OF LOTS 9697 & 98

C-7



10' Middle Road.

MIDDLE ROAD

N 89°57'54" E  
300.00' Plat  
& Measure

N 89°57'54" E

NORTON'S ACRE OUT-LOTS

SCALE 1/8" = 100'

RECEIVED

APR 06 2017

CONSTRUCTION SERVICES  
AND INSPECTIONS

Nearest Neighbor

NEISING DRIVE

Edge of Pavement

33.0' to C/L

SMALL POND

Rental Area

Deck  
Parking

Fire Ring

Walking Trail

K 90'

L 15'

R 145'

L 105'

R 186'

L 100.00'

L 100.00'

L 100.00'

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217.85

N 89°17'15" W

LOT 95

LOT 94

14.41'

10'

100.00'

100.00'

100.00'

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100.00'

100.00'

100.00'

100.00'

N 89°57'54" E

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