

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD **THURSDAY, MAY 9, 2019, ST. LOUIS COUNTY PUBLIC WORKS, LOWER-LEVEL TRAINING ROOM, VIRGINIA, MN.**

10:30 A.M. – 12:05 P.M.

Board of Adjustment members in attendance: David Anderson, Alternate
Steve Filipovich
James McKenzie
Dave Pollock
Roger Skraba
Ray Svatos
Diana Werschay, Chair

Board of Adjustment members absent: Sonya Pineo

Also present: Thomas Stanley, St. Louis County Attorney's Office.

Decision/Minutes for the following public hearing matters are attached:

NEW BUSINESS:

- A. Mark Sutich – S15, T60N, R19W (Unorganized)
- B. Paul and Jessica Larson – S16, T52N, R18W (Alborn)

OTHER BUSINESS:

Motion by Skraba/Svatos to approve the minutes of the April 11, 2019 meeting.

In Favor: Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay - 6

Opposed: None – 0

Abstained: Anderson - 1

Motion carried 6-0-1

Mark Sutich

A variance was granted to Joseph Sutich on property in 1981 for a dwelling to be located 88 feet from the shoreline. One of the conditions of variance approval was "*That the cabin be limited to one story construction and include only the 16x30 original cabin and the 8x14 addition to the rear.*" The Board of Adjustment will need to make the determination of whether that variance was intended to limit the construction on the property. If the Board of Adjustment determines that the condition was not intended to limit construction on the property, the applicant's after-the-fact request for an addition to exceed what was allowed by the 1981 variance may be heard.

The Board of Adjustment determined that future variance proposals may be heard for other additions to the dwelling or other structures on the property.

Motion by Skraba/Svatos to move forward with the after-the-fact variance request. The decision is determined to be not conclusive enough to state that no additional variances should be allowed.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay - 7

Opposed: None – 0

Motion carried 7-0

NEW BUSINESS:

Case 6184 – Mark Sutich

The first hearing item was for Mark Sutich, located in S15, T60N, R19W (Unorganized). The applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D. to allow more than one addition to a principal dwelling, where only one is allowed and after-the-fact relief from Article III, Section 3.4, to allow a nonconforming addition to remain at a reduced shoreline setback, where 88 feet was allowed by a previous variance. *Jared Ecklund*, St. Louis County Planner, reviewed the staff report as follows:

- A. The request is to allow more than one addition to remain on a dwelling where only one addition is allowed.
- B. The 8 foot by 14 foot addition to the rear is allowed to remain because it was approved by the 1981 variance decision.
- C. A 10 foot by 17 foot addition was added to the front/lakeside of the dwelling without permit or variance approval.
- D. The dwelling is located 80 feet from the shoreline, where 88 feet was allowed by the 1981 variance approval.
- E. The 10 foot by 17 foot lakeside addition was not referenced in the 1981 variance decision or the site sketch.
- F. After-the-fact approval is required for the second addition to remain on the front/lakeside of the dwelling and for the shoreline setback of the dwelling to remain at 80 feet.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. The 1981 variance decision on the property only approved an addition to the rear of the dwelling; the landowner is requesting after-the-fact approval for a 10 foot by 17 foot addition that was added to the front of the dwelling, but without variance approval.
 - a. The 1981 variance decision approved a request with a condition “That the cabin be limited to one story construction and include only the 16 x 30 original cabin and the 8 x 14 addition as requested.”
 - b. The addition to the front of the dwelling was not included in the 1981 variance application site sketch and was not referenced in the decision.
 - 2. Objective LU-3.1 of the Comprehensive Land Use is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 - 3. Objective LU-3.3 of the Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd. 10.

B. Practical Difficulty:

1. The lots in this area are somewhat small and do not allow significant development without variance. At the time the lots were platted, they may not have been intended for large year-round dwellings.
2. The 1981 variance allowed the dwelling to be located 88 feet from the shoreline.
 - a. The main portion of the cabin is located approximately 90 feet from the shoreline.
 - b. The addition that was added to the front reduced the shoreline setback to 80 feet which increased a nonconformity beyond what was allowed in the 1981 variance decision.
3. An alternative to the request is to convert the front (lakeside) addition of the dwelling to an open deck.
 - a. An open deck is not considered an addition and would not violate the variance decision or the current ordinance requirements.
4. The only other alternative that does not require variance is to remove the addition that was added to the front of the dwelling.
5. The applicant's septic system is located approximately 20 feet to the rear of the dwelling.
 - a. The location of the septic system would not allow the structure, with the after-the-fact addition, to be moved back to meet the 88 foot setback that was allowed in the 1981 variance decision.

C. Essential Character of the Locality:

1. This area of Lake Leander has a significant amount of development along the shoreline.
2. Several of the principal structures in this area are larger than the applicant's dwelling.
3. There are also several dwellings in this area that are similar in size to the applicant's dwelling.
4. The area has likely changed since the previous variance was approved in 1981.
 - a. The scale of the development and the size of the structures around the lake have increased since the 1981 variance hearing.
5. There have been several variances approved in this area of Lake Leander.
6. The development around the lake is a mix of seasonal and year-round residential properties.

D. Other Factors:

1. A significant amount of fill has been added near the area of the proposed addition to create an access path for equipment to reach the sauna structure. The fill consists of very fine sandy material that has started to erode down the slope toward the lake. Much of the fill material has deposited around the sauna, but some has been deposited into the lake.
 - a. At the time of the site visit there was not any erosion or sediment control in place near the shoreline. Erosion and sediment control practices should be implemented as soon as possible to prevent more sediment entering the lake.
 - b. It is also important to remove the fill and restore the area as soon as any approved work is completed on the structure.

- c. It is advised that a stormwater and erosion control plan shall be submitted, approved by the Planning and Community Development Department, and implemented prior to any further variance requests be heard by the Board of Adjustment and no later than May 31, 2019.
- d. A variance proposal for a garage addition to the dwelling and for a sauna replacement at a nonconforming location may be sought after the land alteration issue is remedied.

Jared Ecklund noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow, after-the-fact, more than one addition to a principal dwelling, where only one is allowed and to allow, after-the-fact, a nonconforming addition to remain at a reduced shoreline setback, where 88 feet was allowed by a previous variance, the following conditions shall apply:

1. A stormwater and erosion control plan shall be submitted, approved by the Planning and Community Development Department, and implemented prior to any further variance requests being heard by the Board of Adjustment and no later than May 31, 2019.
2. The structures shall be unobtrusive earth-toned colors, including siding, trim and roof.
3. The stormwater from the structures shall not discharge directly into the lake or onto adjacent lots.

Mark Sutich, the applicant, stated the property was originally in two pieces, one part owned by his grandparents and one part owned by his parents. There had been a dwelling located on each property. The 1981 variance was to move the cabin to the approved 88 foot setback. The dwelling on his grandparents' property was removed.

The intention is for a small, year-round home. They purchased the property from his sisters in 2010. They have future plans of adding a garage to the south side that has a second story bathroom. Their current bathroom is underneath the cabin and can only be accessed outside. They would like to raise the basement walls to get heating and electrical systems in place. They have added a septic system behind the cabin. They have drilled a well. They are aware of the drainage problems that need to be addressed. Their sauna has been sinking into the ground and will need to be fixed. The current addition was originally a deck. It was then transformed into a screen porch and windows were added later. The addition is now part of the cabin and includes living space. There is an exterior door separating the main cabin and the addition and they would like to keep the addition as-is. The construction was completed before they bought the cabin.

There is a drainage between their property and the adjoining neighbor's. There had been a property line dispute that has since been resolved. The neighbor once had an elaborate drainage system, but the property sold. When the new neighbor plugged up their drainage system, water was leeching onto their property. They are still draining gallons of water per day but that drainage has always been there. They are willing to work on the erosion and stormwater management plans with the land use permit and move forward. They just did not have time because it was winter by the time they were done with the work.

No audience members spoke.

The Board of Adjustment discussed the following:

- A. This variance hearing is only for the after-the-fact 10 foot by 17 foot addition on the front of the cabin. Other structures have not been applied for and are not part of this current variance request.
- B. Inquired if the structure could be moved back at all. *Mark Sutich* stated the septic system is behind the dwelling and would not allow the dwelling to be moved back to the 100 foot lake setback. The drainfield was angled so that if there was a garage, they would not have to worry about driving or plowing snow on the drainfield.
- C. If the applicant can remove the addition and convert it back into a deck, can the applicant apply for future variances? The applicant may not want to put more money into the property and could change their mind on any future plans.

FIRST MOTION

Motion by Pollock to deny a variance to allow, after-the-fact, more than one addition to a principal dwelling, where only one is allowed and to allow, after-the-fact, a nonconforming addition to remain at a reduced shoreline setback, where 88 feet was allowed by a previous variance, based on the following facts and findings:

A. Official Controls:

- 1. The 1981 variance decision on the property only approved an addition to the rear of the dwelling; the landowner is requesting after-the-fact approval for a 10 foot by 17 foot addition that was added to the front of the dwelling, but without variance approval.
 - a. The 1981 variance decision approved a request with a condition “That the cabin be limited to one story construction and include only the 16 x 30 original cabin and the 8 x 14 addition as requested.”
 - b. The addition to the front of the dwelling was not included in the 1981 variance application site sketch and was not referenced in the decision.
- 2. Objective LU-3.1 of the Comprehensive Land Use is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 3. Objective LU-3.3 of the Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd. 10.

B. Practical Difficulty:

- 1. The lots in this area are somewhat small and do not allow significant development without variance. At the time the lots were platted, they may not have been intended for large year-round dwellings.
- 2. The 1981 variance allowed the dwelling to be located 88 feet from the shoreline.

- a. The main portion of the cabin is located approximately 90 feet from the shoreline.
 - b. The addition that was added to the front reduced the shoreline setback to 80 feet which increased a nonconformity beyond what was allowed in the 1981 variance decision.
3. An alternative to the request is to convert the front (lakeside) addition of the dwelling to an open deck.
 - a. An open deck is not considered an addition and would not violate the variance decision or the current ordinance requirements.
4. The only other alternative that does not require variance is to remove the addition that was added to the front of the dwelling.
5. The applicant's septic system is located approximately 20 feet to the rear of the dwelling.
 - a. The location of the septic system would not allow the structure, with the after-the-fact addition, to be moved back to meet the 88 foot setback that was allowed in the 1981 variance decision.

C. Essential Character of the Locality:

1. This area of Lake Leander has a significant amount of development along the shoreline.
2. Several of the principal structures in this area are larger than the applicant's dwelling.
3. There are also several dwellings in this area that are similar in size to the applicant's dwelling.
4. The area has likely changed since the previous variance was approved in 1981.
 - a. The scale of the development and the size of the structures around the lake have increased since the 1981 variance hearing.
5. There have been several variances approved in this area of Lake Leander.
6. The development around the lake is a mix of seasonal and year-round residential properties.

D. Other Factors:

1. A significant amount of fill has been added near the area of the proposed addition to create an access path for equipment to reach the sauna structure. The fill consists of very fine sandy material that has started to erode down the slope toward the lake. Much of the fill material has deposited around the sauna, but some has been deposited into the lake.
 - a. At the time of the site visit there was not any erosion or sediment control in place near the shoreline. Erosion and sediment control practices should be implemented as soon as possible to prevent more sediment entering the lake.
 - b. It is also important to remove the fill and restore the area as soon as any approved work is completed on the structure.
 - c. It is advised that a stormwater and erosion control plan shall be submitted, approved by the Planning and Community Development Department, and implemented prior to any further variance requests be heard by the Board of Adjustment and no later than May 31, 2019.

- d. A variance proposal for a garage addition to the dwelling and for a sauna replacement at a nonconforming location may be sought after the land alteration issue is remedied.

Motion failed due to lack of second.

DISCUSSION ON MOTION

There was discussion if they could add contingencies based on future variances. They may be able to put some limits on development but are asking for mitigation if there is more development.

DECISION

Motion by Filipovich/Skraba to approve a variance to allow, after-the-fact, a 10 foot by 17 foot addition, where only one is allowed and to allow, after-the-fact, a nonconforming addition to remain at a reduced shoreline setback of 80 feet, where 88 feet was allowed by a previous variance, based on the following facts and findings:

A. Official Controls:

1. At the time the cabin was moved back, it was moved to a 90 foot shoreline setback and away from the shoreline.
2. There is more land in front of the house than there is behind the house.

B. Practical Difficulty:

1. The lot is small in size.
2. While the applicant could convert the addition into a deck, the cabin is small in size and the addition does provide usable square footage for year-round use.
3. The location of the septic limits how far back the structure could be moved from the lake to meet the 88 foot setback allowed by previous variance.

C. Essential Character of the Locality:

1. The request will not change the essential character of the locality. Lake Leander is a developed lake and these lots are very small.

D. Other Factor:

1. In the event that the applicant wants to apply for additional variances in the future, the lakeside addition not included in the original 1981 variance should be converted into a deck to meet ordinance requirements.

The following conditions shall apply:

1. A stormwater and erosion control plan shall be submitted, approved by the Planning and Community Development Department, and implemented prior to any further variance requests being heard by the Board of Adjustment and no later than May 31, 2019.
2. The structures shall be unobtrusive earth-toned colors, including siding, trim and roof.
3. The stormwater from the structures shall not discharge directly into the lake or onto adjacent lots.
4. In the event that the applicant applies for future variances for additions to the principal dwelling, the lakeside addition not included in the original 1981 variance shall be converted into a deck and meet all other ordinance requirements.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Svatos - 6

Opposed: Werschay - 1

Motion carried 6-1

Case 6185 – Paul and Jessica Larson

The second hearing item was for Paul and Jessica Larson, located in S16, T52N, R18W (Alborn). The applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.6, to allow the depth of an attached deck extending towards the shoreline on a nonconforming principal structure to exceed 12 feet. *Donald Rigney*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing that a deck completed on July 11, 2017, without benefit of a permit, be allowed to remain as built.
- B. The deck is attached to a nonconforming dwelling and extends 21 feet towards the shoreline. The deck is 16 feet in depth with a 5 foot staircase extending towards the shoreline to equal 21 feet.
- C. The deck is currently located 126 feet at its closest point from the shoreline of Crooked Lake.
- D. Crooked Lake is designated as a Natural Environment lake which requires a 150 foot setback for all structures. No water oriented accessory structures are allowed on Natural Environment lakes.

Donald Rigney reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62 states that deck additions attached to a nonconforming principal structure and extending towards the shoreline may be allowed with a land use permit but shall not exceed 12 feet in depth.
 2. The after-the-fact deck has a depth of 21 feet that extends towards the shoreline. The deck platform is 16 feet in depth with a staircase extending an additional 5 feet towards the shoreline for a total depth of 21 feet.
 3. Crooked Lake is designated as a Natural Environment lake which does not allow water-oriented accessory structures and requires all structures be located 150 feet from the shoreline.
 4. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 5. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- B. Practical Difficulty:
 1. The lot is a peninsula. The property is unique in the sense that it is affected by the shoreline setback from three sides of the property.
 2. A variance is not the only option. There are alternatives that exist.

3. Alternative: If the depth of the deck platform is reduced to 12 feet from 16 feet in depth, an after-the-fact land use permit may be issued. The staircase may be allowed to extend towards the shoreline if reduced from 5 feet to 4 feet in width.
4. Zoning Ordinance 62 states that “practical difficulties” as used in connection with granting a variance means that the property in question cannot be put to a reasonable use under the conditions allowed by this ordinance.
5. The property will still have reasonable use if the alternatives allowed by the St. Louis County Zoning Ordinance were put into place.
6. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states:
 - a. “The plight of the landowner is due to circumstances unique to the property not created by the landowner.”
 - b. “Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance.”
7. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.iv states:
 - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, section 394.27 subdivision 7 and all acts amendatory thereof.

C. Essential Character of the Locality:

1. There have been no similar variances granted on nearby properties.
2. The applicant is not proposing a new use to the area.
3. Approval of a variance for an after-the-fact nonconforming deck without the demonstration of practical difficulty is not consistent with ordinance requirements.

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. The homeowner has not met the burden of demonstrating practical difficulty as reasonable alternatives exist.

E. Was the construction completed prior to applying for a variance? If not, what extent of the construction has been completed?

1. The existing deck exceeds the St. Louis County Zoning Ordinance standards and was completed on July 11, 2017 without the benefit of permit.
2. The applicant submitted a Land Use Permit immediately upon being notified that a permit is required for the replacement of a deck.
3. Upon discovery that the deck does not conform to Ordinance standards, the applicant elected to seek variance opposed to reducing the depth of the deck.

F. How would the county benefit by enforcement of the ordinance if compliance were required?

1. The county would benefit by enforcement of the ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
2. Approval of an after-the-fact variance for a deck that was constructed without benefit of permit and without sufficient practical difficulty is not in keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.
3. To allow a structure that was built without benefit of permit, to be brought into compliance through variance, may set a precedence.

Donald Rigney noted one item of correspondence from John and Cheryl Engen in support of the variance request. This item had been handed out to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow, after-the-fact, the depth of an attached deck extending towards the shoreline on a nonconforming principal structure to exceed 12 feet, the following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.

Paul Larson, the applicant, stated they purchased the cabin from his parents four years ago. When the deck needed to be replaced, the contractor did not apply for a permit. They were not present when the deck was constructed and would have applied for a permit had they known. The new deck is smaller than the original deck and is more usable. The deck cannot be seen from the lake. They utilized the original cement pad for the landing and the stairs go to the same location as the original staircase. To remove the deck would waste deck resources and they would need to remove vegetation to build a new deck that would have the same use and square footage. When they inquired about putting in a solar system, they found out they did not have a permit for a deck and applied for a land use permit. When they found out they did not meet the setback requirements and were beyond the 12 foot depth, they applied for a variance. There are other houses and garages located on the lake that are closer to the shoreline than their structure.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired what constitutes a Natural Environment lake. *Jenny Bourbonais*, Acting Secretary, stated that the designation is based on the size of the lake and its depth.
- B. Inquired how old the cabin is. *Paul Larson* stated the cabin was built in 1975. *Donald Rigney* stated there was a conditional use permit allowing residential use on the property. At that time, zoning did not allow for residential uses without a conditional use permit.
- C. Inquired if a deck replacement requires a land use permit. *Jenny Bourbonais* stated yes, if a deck is torn off and replaced, that does require a land use permit.
- D. Inquired if the staircase could be moved to the side. *Donald Rigney* stated the deck still extends 16 feet where 12 feet is allowed. The issue is the size of the deck.

- E. Inquired if the structure could be moved back; however, as the property is on a peninsula, it would make it difficult to construct a deck that would meet all setbacks. If the applicants want a big deck and had a conforming structure, it would have been built on the road.
- F. Discussed that a 12 foot deep deck is allowed with a 4 foot staircase. The existing deck is 16 feet deep along with a 5 foot staircase which is a 21 foot deck. The size difference is what is being considered. Practical difficulties need to be linked to the depth difference between the deck allowed and the deck that exists.
- G. Contractors should be held responsible for failing to get land use permits, but landowners are also responsible.

FIRST MOTION

Motion by Pollock/McKenzie to deny a variance request to allow, after-the-fact, the depth of an attached deck extending towards the shoreline on a nonconforming principal structure to exceed 12 feet, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62 states that deck additions attached to a nonconforming principal structure and extending towards the shoreline may be allowed with a land use permit but shall not exceed 12 feet in depth.
- 2. The after-the-fact deck has a depth of 21 feet that extends towards shoreline. The deck platform is 16 feet in depth with a staircase extending an additional 5 feet towards the shoreline for a total depth of 21 feet.
- 3. Crooked Lake is designated as a Natural Environment lake which does not allow water-oriented accessory structures and requires all structures be located 150 feet from the shoreline.
- 4. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 5. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

B. Practical Difficulty:

- 1. The lot is a peninsula. The property is unique in the sense that it is affected by the shoreline setback from three sides of the property.
- 2. A variance is not the only option. There are alternatives that exist.
- 3. Alternative: If the depth of the deck platform is reduced to 12 feet from 16 feet in depth, an after-the-fact land use permit may be issued. The staircase may be allowed to extend towards the shoreline if reduced from 5 feet to 4 feet in width.
- 4. Zoning Ordinance 62 states that "practical difficulties" as used in connection with granting a variance means that the property in question cannot be put to a reasonable use under the conditions allowed by this ordinance.
- 5. The property will still have reasonable use if the alternatives allowed by the St. Louis County Zoning Ordinance were put into place.
- 6. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states:

- a. "The plight of the landowner is due to circumstances unique to the property not created by the landowner."
 - b. "Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance."
 7. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.iv states:
 - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, section 394.27 subdivision 7 and all acts amendatory thereof.
- C. Essential Character of the Locality:
1. There have been no similar variances granted on nearby properties.
 2. The applicant is not proposing a new use to the area.
 3. Approval of a variance for an after-the-fact nonconforming deck without the demonstration of practical difficulty is not consistent with ordinance requirements.
- D. Other Factors:
1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
 2. The homeowner has not met the burden of demonstrating practical difficulty as reasonable alternatives exist.
- E. Was the construction completed prior to applying for a variance? If not, what extent of the construction has been completed?
1. The existing deck exceeds the St. Louis County Zoning Ordinance standards and was completed on July 11, 2017 without the benefit of permit.
 2. The applicant submitted a Land Use Permit immediately upon being notified that a permit is required for the replacement of a deck.
 3. Upon discovery that the deck does not conform to Ordinance standards, the applicant elected to seek variance opposed to reducing the depth of the deck.
- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The county would benefit by enforcement of the ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
 2. Approval of an after-the-fact variance for a deck that was constructed without benefit of permit and without sufficient practical difficulty is not in keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.
 3. To allow a structure that was built without benefit of permit, to be brought into compliance through variance, may set a precedence.

In Favor: Filipovich, McKenzie, Pollock - 3

Opposed: Anderson, Skraba, Svatos, Werschay - 4

Motion fails 3-4

DISCUSSION ON MOTION

This is a self-created hardship and there is no practical difficulty in order to make it conforming. There is nothing to prevent the applicants from modifying the deck to make it conforming. The contractor should have known a permit was needed.

DECISION

Motion by Skraba/Svatos to approve a variance request to allow, after-the-fact, the depth of the existing, attached deck extending towards the shoreline on a nonconforming principal structure at 16 feet where 12 feet is allowed with a 5 foot staircase to equal 21 feet, based on the following facts and findings:

A. Official Controls:

1. The variance request is partially in harmony with the general purpose and intent of official controls.
2. The deck does not meet the depth requirement; however, the staircase landing is in the same location as the previous deck's staircase landing.

B. Practical Difficulty:

1. The lot is a peninsula. The property is unique in the sense that it is affected by the shoreline setback from three sides of the property.
2. It would be difficult to place a structure with a deck to meet all setback requirements without variance.

C. Essential Character of the Locality:

1. The variance will not alter the essential character of the locality. This is just replacing a deck where the previous deck was.

D. Other Factor:

1. The landowner hired a professional contractor to do the job. The contractor did not get a land use permit and should have. When the applicant contacted the county and found out there was no permit, they applied for a permit and then a variance once they found out the deck did not meet depth requirements.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.

In Favor: Anderson, Filipovich, Skraba, Svatos, Werschay - 5

Opposed: McKenzie, Pollock - 2

Motion carried 5-2

Motion to adjourn by Svatos. The meeting was adjourned at 12:05 p.m.