

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, APRIL 20, 2023.**

9:01 AM – 12:25 PM

Board of Adjustment members in attendance: Tom Coombe  
Steve Filipovich  
Dan Manick  
Pat McKenzie  
Dave Pollock  
Ray Svatos  
Diana Werschay, Chair

Board of Adjustment members absent: None

Also present: Matthew Johnson, Director of Planning and Community Development.

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

**NEW BUSINESS:**

- A. Gerald Johnsen, S33, T63N, R16W (Greenwood)
- B. Patrick Norman, S19, T63N, R12W (Morse)
- C. Brian Lobbestael, S22, T53N, R13W (North Star)
- D. Ursalyn Fena and Jerome Bakke, S25, T56N, R15W (Colvin)

**OTHER BUSINESS:**

**Motion by McKenzie/Svatos** to approve the minutes of the March 9, 2023 meeting.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Motion carried 7-0**

*Jenny Bourbonais*, Land Use Manager, stated this will be her final public hearing as her final day with St. Louis County is April 28, 2023. *Donald Rigney*, St. Louis County Senior Planner, will be stepping in as Acting Secretary and will run the Board of Adjustment hearing today.

*Jenny Bourbonais* introduced one of the newer Land Use Planners, Skyler Webb, who will likely be presenting cases in the future.

**NEW BUSINESS:**

**Gerald Johnsen**

The first hearing item is for Gerald Johnsen, property is located at S33, T63N, R16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.2 B., to allow a second principal structure on a parcel that does not have

sufficient area to equal the minimum dimensional standards so the property can be divided at a later date into conforming lots. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing a second dwelling on a parcel that does not have sufficient area for a principal structure to be placed so that it can be divided at a later date into conforming lots.
- B. There is an existing 18 foot by 26 foot (468 square foot) nonconforming dwelling on the parcel, which is the first principal dwelling.
- C. The proposed new dwelling will be 900 square feet and meet all other ordinance requirements.
- D. Due to the 900 square foot dwelling size, it is the second principal dwelling.
- E. The property has good screening from the lake and to the west. There is minimal screening to the east.
- F. The property is relatively flat before sloping towards the lake. There is a total of 16 feet of elevation change on the property.
- G. There is floodplain on the property; however, it will not impact the request.

*Ada Tse* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62 states that there shall be sufficient lot area per principal structure to equal the minimum dimensional standards and the structures can be placed so the property can be divided at a later date into conforming lots. The current parcel is 188 feet wide and 1.08 acres in size where 300 feet in width and two acres in size is required to allow two principal structures.
- 2. Zoning Ordinance 62 states that a change in use of a nonconforming principal dwelling to an accessory dwelling is not allowed unless all accessory dwelling standards are met. The existing dwelling does not meet the required shoreline setback.
- 3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 4. Objective LU-3.1 of the St. Louis County 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.
- 5. Objective LU-3.3 of the St. Louis County 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. There are no unique physical circumstances of the property.
- 2. A variance is not the only option as there is alternatives.
  - a. Alternative: Relocate the existing dwelling to a location that conforms to all required setbacks and change use to accessory dwelling. The proposal would then be allowed with a land use permit.

- b. Alternative: Construct a dwelling that conforms to accessory dwelling standards. Applicant has already obtained a land use permit issued April 1, 2022 (LU-004122) for a 700 square foot accessory dwelling.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round homes.

D. Other Factors:

1. On April 1, 2022, a land use permit was issued for a 700 square foot accessory dwelling. The permit is still active and will expire on April 1, 2024.
2. The septic system has a valid Certificate of Compliance until June 10, 2024, that would accommodate the proposal.
3. 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.

*Ada Tse* noted two items of correspondence from Craig and Brenley Nelson and Bill Aune LLC in support of the variance request. These items were provided to the Board of Adjustment prior to the hearing.

#### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance to allow a second principal dwelling on a parcel that does not have sufficient lot area per principal structure include, but are not limited to:

1. All other Zoning Ordinance requirements shall be met.
2. St. Louis County On-site Wastewater SSTS standards shall be followed.
3. In the event that the 18 foot by 26 foot nonconforming dwelling is destroyed or replaced, it shall require appropriate permits and all setback and accessory dwelling requirements shall be met.

*Gerald Johnsen*, 2821 32<sup>nd</sup> Avenue NE, Minneapolis, the applicant, stated they have the approved land use permit for an accessory dwelling and have been working on the designs. As they were working on their plan, they determined that two bedrooms and two bathrooms would meet their need for their family to stay, which would be difficult to do when confined to 700 square feet. They could have a basement or a second story loft. It would be better for them to have a single story structure as he and his wife are both retired. The structure would be reasonably sized and allow them to have what they need within that size. Without a variance, they would build a 700 square foot structure and would add a second story loft for additional space.

The practical difficulty is the existing cabin is approximately 70 years old. There were eight cabins at the Moccasin Point Resort from the 1950s. Of those cabins, this is the only one that remains. They remodeled the structure inside but kept the exterior looking like a 1950s-style resort cabin. They want to keep and use the structure the same way it has always been used. If the structure was not so close to the lake, they might have been able to add additional square footage to get the additional space they need.

They are willing to not have a boathouse in order to keep the existing cabin on the property. If they removed this cabin and built a boathouse, that structure would be larger than what exists now. There would be a garage door facing the lake instead of a vintage cabin. They would be willing to suggest a condition to not allow a water oriented accessory structure to keep the cabin at its present location and add a second dwelling.

Vegetative screening to the east of the property is light because the Department of Natural Resources (DNR) boat landing is located on the adjoining property. There are plans by the DNR to add more screening on that property line. On the western side of the property is a private parking area and there are newer cabins beyond that. Their property is well-screened on all other sides.

While the existing cabin has water, they are unable to use that water in the winter as there is no basement and the pipes would freeze. A second dwelling would allow them to stay longer and use the property year-round. They will use local contractors.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked why the condition exists that if the nonconforming dwelling is destroyed or replaced, it shall require appropriate permits and all setback and accessory dwelling standards shall be met. State statute would allow the applicant to rebuild the same structure in its present location but would not be allowed to expand it. *Donald Rigney* stated replacing the structure in the same location would require a performance standard permit. However, standards would not allow for two principal structures on the property. The existing dwelling would need to be moved back to a conforming setback and then could be expanded up to 700 square feet in order to still meet accessory dwelling standards.
- B. Board member *Coombe* asked how far the existing dwelling is from the lake. *Ada Tse* stated the existing structure is 15 feet from the shoreline.
- C. Board member *Manick* asked if the approved land use permit would have any bearing on the discussion today. *Donald Rigney* stated that the 2022 land use permit is for an accessory dwelling. The applicant's request is for a larger structure which would make it a principal dwelling as it goes beyond the 700 square feet.
- D. Board member *Pollock* asked if the applicant is planning to subdivide the lots. *Gerald Johnsen* stated they are not. *Donald Rigney* stated that to add a second principal structure on a property would require double the acreage and double the lot width. The applicant's parcel does not have double the acreage or double the lot width. The existing cabin's use cannot be changed because it does not meet the shoreline setback requirement. The existing cabin is still considered a principal structure.
- E. Board member *Pollock* stated that a second principal structure would not be allowed on the property. There are many others that would want a second dwelling but are unable to.
- F. Board member *Werschay* asked if anything could be done to the cabin so that it would not be a principal dwelling. *Donald Rigney* stated this structure is the only principal structure on the property. In order for this structure to meet the definition of an accessory dwelling and meet all accessory dwelling standards, the structure would need to be moved to meet shoreline setback. The structure already meets height and size requirements. Once the

structure is moved back, the applicant would be allowed a new principal dwelling and that could be issued with a land use permit. *Gerald Johnsen* stated the other option is to convert the cabin into a boathouse. *Donald Rigney* added that the structure would still need a garage-style door on the front and the structure could not be used for human habitation. That would also require a change in use permit from a principal dwelling to a water oriented accessory structure.

- G. Board member *Svatos* asked if the cabin could be removed. *Gerald Johnsen* stated they will not tear the cabin down. They will build a 700 square foot accessory dwelling and squeeze in a second story loft in the back of the cabin to gain additional height. They would keep the cabin height at 20 feet.
- H. Board member *Manick* stated there is no practical difficulty if the applicant is suggesting a backup plan. The applicant's alternative is not too outrageous.
- I. Board member *Coombe* stated that the applicant is only requesting 200 square feet beyond what a 700 square foot accessory dwelling allows. Board member *Manick* stated his issue is there would be two principal dwellings on the property. While the request is modest, there would still be two principal dwellings on the property.
- J. Board member *Coombe* stated there is a concern that this could become a vacation rental property. Board member *Pollock* asked if a stipulation could be added that no vacation rental could be applied for. However, if the property is in a zone district where vacation rentals are allowed, any landowner can apply for one. *Donald Rigney* stated a short term rental is not a part of this request.

## DECISION

**Motion by Pollock/Manick** to deny a variance to allow a second principal dwelling on a parcel that does not have sufficient lot area per principal structure, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62 states that there shall be sufficient lot area per principal structure to equal the minimum dimensional standards and the structures can be placed so the property can be divided at a later date into conforming lots. The current parcel is 188 feet wide and 1.08 acres in size where 300 feet in width and two acres in size is required to allow two principal structures.
- 2. Zoning Ordinance 62 states that a change in use of a nonconforming principal dwelling to an accessory dwelling is not allowed unless all accessory dwelling standards are met. The existing dwelling does not meet the required shoreline setback.
- 3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 4. Objective LU-3.1 of the St. Louis County 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.
- 5. Objective LU-3.3 of the St. Louis County 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.

6. The variance request is not in harmony with the general purpose and intent of official controls.

**B. Practical Difficulty:**

1. There are no unique physical circumstances of the property.
2. A variance is not the only option as there are alternatives:
  - a. Alternative: Relocate the existing dwelling to a location that conforms to all required setbacks and change use to accessory dwelling. The proposal would then be allowed with a land use permit.
  - b. Alternative: Construct a dwelling that conforms to accessory dwelling standards. Applicant has already obtained a land use permit issued April 1, 2022 (LU-004122) for a 700 square foot accessory dwelling.
3. Practical difficulty has not been demonstrated in complying with the official controls.

**C. Essential Character of the Locality:**

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round homes.
2. The variance request will not alter the essential character of the locality.

**In Favor:** Manick, McKenzie, Pollock, Svatos - 4

**Opposed:** Coombe, Filipovich, Werschay - 3

**Motion carried 4-3**

**Patrick Norman**

The second hearing item is for Patrick Norman, property is located at S19, T63N, R12W (Morse). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.7, to allow a structure to be located at a reduced road centerline setback where 85 feet is required and a reduced road right-of-way setback where 35 feet is required, and St. Louis County Zoning Ordinance 62, Article VI, Section 6.2 B, to allow a second principal structure on a parcel that does not have sufficient area to equal the minimum dimensional standards so the property can be divided at a later date into conforming lots. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to build a new 700 square foot dwelling on a parcel that does not have sufficient area for a principal structure to be placed so that it can be divided at a later date into conforming lots.
- B. The structure will be located 48 feet from the centerline of Grant McMahan Boulevard where a minimum of 85 feet is required.
- C. The structure will also be located approximately 15 feet from the right-of-way of Grant McMahan Boulevard where a minimum of 35 feet is required.
- D. The structure will conform to shoreline and property line setbacks.
- E. A 250 square foot accessory dwelling would be allowed on the property provided it met all ordinance requirements.
- F. The riparian part of the parcel south of Grant McMahan Boulevard is relatively flat with eight feet of elevation change from the road to the lake. The nonriparian part of the parcel north of Grant McMahan Boulevard contains steep slope.
- G. There is floodplain on the property; however, it will not impact the request.

*Ada Tse* reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62 states that the required setback from the centerline of a collector road is 85 feet; the applicant is requesting a reduced centerline setback of 48 feet.
2. Zoning Ordinance 62 states that the required right-of-way setback of a collector road is 35 feet; the applicant is requesting a reduced right-of-way setback of approximately 15 feet.
3. For zoning and permitting purposes, parcels are separated when intersected by a publicly maintained road.
  - a. Grant McMahan Boulevard is a public road which separates the parcel into two parcels for permitting purposes.
    - i. The riparian parcel with current development is approximately 0.78 acre.
    - ii. The nonriparian parcel which is undeveloped is approximately 1.92 acres.
4. Zoning Ordinance 62 states that parcels less than one acre in size may be allowed an accessory dwelling up to 250 square feet in size and shall not be combined with a garage. Structures that contain living quarters that exceed the 250 square feet in size shall be considered a principal dwelling. The proposed dwelling is 700 square feet in size which includes dwelling and garage space.
5. Zoning Ordinance 62 states that there shall be sufficient lot area per principal structure to equal the minimum dimensional standards and the structures can be placed so the property can be divided at a later date into conforming lots.
6. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
7. Objective LU-3.1 of the St. Louis County 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.
8. Objective LU-3.3 of the St. Louis County 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. With a centerline setback of 85 feet and shoreline setback of 75 feet, there is no location on the riparian portion of the property where the proposed structure could meet both setbacks.
2. An alternative is to relocate the proposed dwelling to a location that conforms to all required setbacks on the nonriparian parcel. The proposal would then be allowed with a land use permit as a principal dwelling.
  - a. Topography may limit development in the areas conforming to setbacks on the nonriparian portion of the parcel as there is steep slope ranging from 14 percent to 28 percent. However, development on adjoining properties appears to be in similar topographic areas.

C. Essential Character of the Locality:

1. Most of the riparian lots along this road within 650 feet on both sides of the subject property are developed. These three structures along Grant McMahan Boulevard appear to be closer than 48 feet from the road centerline and two of the three do not conform to the shoreline setback.
2. There are other structures in the area on nonriparian lots that are built in steep slope areas.
3. There have not been any similar variance requests in this neighborhood.

D. Other Factors:

1. The proposed structure will conform to shoreline and property line setbacks.
2. The proposed structure would conform to accessory dwelling size and height standards for parcels over one acre in size.
3. At the time of this report, there has not been a submitted design for a septic system that could accommodate the proposed structure.
4. The parcel would allow a maximum density of two principal dwellings: the existing dwelling on the riparian parcel and a potential future dwelling on the nonriparian parcel.
5. 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.

*Ada Tse* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance to allow a road centerline setback of 48 feet where 85 feet is required, a right-of-way setback of 15 feet where 35 feet is required, and a second principal dwelling on a parcel that does not have sufficient lot area per principal structure include, but are not limited to:

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.
3. St. Louis County On-site Wastewater SSTS standards shall be followed.
4. The riparian and nonriparian portions of the property shall remain in common ownership and shall be allowed a maximum of two principal dwellings.

*Patrick Norman*, 2120 Grant McMahan Boulevard, Ely, the applicant, stated they purchased this property in the fall of 2019. One of the stipulations for purchasing this property was could he put a garage on the riparian side of the property. There was a surveyor that did the drawing and said they could and there would be a 48 foot setback. It was not until he applied for the land use permit that this was identified as a collector road. There are buildings all along Grant McMahan Boulevard that are on top of the road. They want to update the structure for year-round use once they retire. This is their home right now. They wanted to build a garage with a loft in order to park their vehicles and boat. They want a place upstairs for guests to stay. There is one bedroom inside the current cabin and there is a loft area. That is not very private. They have a local builder and a local

septic contractor to build the structure and update their septic. The current plan is to have a mound system across the road. This is a wooded lot and neighbors on both sides will not be able to see the structure. The new structure will be built with the same colors as the existing cabin. The neighbors on top of the hill would be able to see the structure but their view is not impeded. Building across the road on the hill would be steep and rocky. It would be expensive to excavate and put a building there. There would be no water or power unless a well was drilled back there. They are retired and live on this property. They would need to park their cars across the road and get back to their current dwelling which would be dangerous.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked where in the ordinance it states that a road splits a property into two. If the road was not there, the property would have more than enough room for two dwellings. *Donald Rigney* stated that it has always been this way, even if the property is one tax parcel. For zoning purposes, the road splits the property and one dwelling can be on one side of the property and one dwelling can be on the other side of the property. There is not sufficient lot area to have two dwellings located on the riparian side of the property. *Jenny Bourbonais*, Land Use Manager, stated that while there is no direct provision in the ordinance that addresses this, by definition of a road per MN Statute, it has been staff's policy to interpret this way. *Donald Rigney* added staff looks at private jurisdiction roads, easement roads, and power lines as entities that do not split properties for zoning purposes.
- B. Board member *Svatos* asked if there was consideration for removing the existing structure. *Donald Rigney* stated the applicants would be allowed to keep the current dwelling at its present location. Because the riparian portion of the property is less than one acre in size, the definition of an accessory dwelling is 250 square feet in size. The request is for 700 square feet and does not meet the definition of an accessory dwelling.
- C. Board member *Pollock* stated this is one total contiguous property with a lot of buildable area on the nonriparian side of the property. He asked why the applicant cannot have both dwellings on the riparian side of the property. *Donald Rigney* stated because the highway splits the property into two pieces for zoning purposes. The applicant could apply for a parcel review and split the property at the highway and there could be a dwelling located on both sides of the highway. Board member *Pollock* stated because the road goes through, the applicant would need to build away from the road. *Donald Rigney* stated that the buildable area on the nonriparian portion does conform to property line, road centerline, and road right-of-way setbacks.
- D. Board member *Pollock* asked what has been built on the nonriparian side of the road into the steep slope. *Donald Rigney* stated there have been structures built east of the applicant's property into the steep slope.
- E. Board member *Werschay* asked how much property is on the riparian side of the property. *Ada Tse* stated 0.78 acres.
- F. Board member *Filipovich* stated there are two characteristics that differentiate the two parts of the property. Building on the north, nonriparian side of the property means there is a 15 percent grade change which could be challenging. With a steep hill and a driveway coming off this property, this could be dangerous. The lower parcel would be safer to access the

highway. He asked how many variances have been issued where the property is split by a road.

- G. Board member *Manick* asked how far apart two principal dwellings need to be. *Donald Rigney* stated it does not matter in this case. The applicant could never subdivide the south, riparian parcel because the parcel does not meet double the acreage or lot width for each principal structure.
- H. Board member *McKenzie* asked the limitation of combining a dwelling with an accessory structure on a parcel less than an acre. *Ada Tse* stated the existing structure would be allowed a 200 square foot addition size total. This would include any potential space for an attached garage or additional living area. There is no separate square footage given for an attached garage. *Donald Rigney* stated for less than one acre, the DNR's Shoreland Rules state that an accessory dwelling cannot be combined with an attached garage. *Jenny Bourbonais* stated the Shoreland Rules limit what can be added more than the zoning ordinance does. The other intent is to limit dwellings and density versus accessory structures.
- I. Board member *Coombe* asked if the applicant accepts the condition that the riparian and nonriparian portions of the property shall remain in common ownership and shall be allowed a maximum of two principal dwellings. *Patrick Norman* stated he agrees to this.
- J. Board member *McKenzie* asked where the septic field would be. *Patrick Norman* stated the mound system would go across the road. The pump tank would be added on the riparian side of the property and the piping would go under the road. They will also drill a well as they currently use a lake water system. Board member *Pollock* asked if there is a power line along the road and if a mound system could be put near the power line. He is working with Low Impact Excavators.
- K. Board member *McKenzie* stated he is familiar with this area and the highway is generally not a safe road to cross. Board member *Manick* stated it is unfortunate the road is there.

## DECISION

**Motion by Coombe/Pollock** to approve a variance to allow a 700 square foot dwelling located at a road centerline setback of 48 feet where 85 feet is required, a right-of-way setback of 15 feet where 35 feet is required, and being a second principal dwelling on a parcel that does not have sufficient lot area per principal structure, based on the following facts and findings:

A. Official Controls:

- 1. The applicant has 2.7 acres of property and 220 feet of lot width. The property is split by Grant McMahan Boulevard/County Road 88. The land is zoned Shoreland Multiple Use (SMU)-11 which requires one-half acre in size and 100 feet of lot width. The applicant more than meets that with their property.
- 2. The new structure will be approximately 20 foot by 32 foot and 20 feet in height. The structure will be a garage with a loft and a bathroom.
- 3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The property is split by Grant McMahan Boulevard/County Road 88.

2. The land across the road is rocky and steep with an approximately 70 foot rise between the road and the back of the property. The area where the applicant is proposing to build has approximately a two foot rise.
3. No area between the road and the shoreline would meet any road setback.
4. The applicant's health and safety should be considered as they want their structures on one side of the highway. This will also grant the applicants reasonable use of their property.
5. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. This is a well-wooded parcel. The new structure will blend into the area with unobtrusive colors.
2. The neighboring property owners will likely not see the new structure.
3. The variance request will not alter the essential character of the locality.

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.
3. St. Louis County On-site Wastewater SSTS standards shall be followed.
4. The riparian and nonriparan portions of the property shall remain in common ownership and shall be allowed a maximum of two principal dwellings.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Motion carried 7-0**

**Brian Lobbestael**

The third hearing item is for Brian Lobbestael, property is located at S22, T53N, R13W (North Star). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a dwelling at a reduced shoreline setback where 100 feet is required, and relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3.D, to allow the height of the principal structure to exceed the maximum allowed 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to replace an existing 28 foot by 24 foot nonconforming dwelling that is 14 feet in height.
- B. The proposed dwelling is 28 foot by 28 foot and will be in the same location as the existing structure, which is 57 feet from Barrs Lake where 100 feet is required.
- C. The proposed structure will be 27 feet in height where a maximum of 25 feet is allowed.
- D. The existing structure is on piers and the replacement dwelling is proposed to have a basement foundation.
- E. There is good vegetative screening from the road and property lines. There is no screening from the shore.
- F. There is steep slope along the shore and some low areas on the property.

*Ada Tse* reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.4 states the shoreline setback requirements. Barrs Lake is a Recreational Development Lake which requires a 100 foot setback. The applicant is requesting a replacement dwelling located 57 feet from the lake.
2. Zoning Ordinance 62, Article IV, Section 4.3 D states the maximum height allowed of 25 feet for a nonconforming principal structure located between the shore impact zone and the required setback. The applicant is requesting a height of 27 feet.
3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
5. Objective LU-3.3 of the St. Louis County Comprehensive 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. A variance is not the only option as there are alternatives.
  - a. Move the proposed structure back to the 100-foot setback. The proposal would then be allowed with a land use permit.
  - b. A 400 square foot addition with a height up to 25 feet would be allowed to the existing structure through a performance standard permit.

C. Essential Character of the Locality:

1. The area consists of a mix of seasonal and year-round lake homes.
2. The applicant is not proposing a new use to the area. There are dwellings on Barrs Lake that do not meet the required 100 foot setback.
3. There had been four approved variances within the plat for additions that reduced the shoreline setback on nonconforming principal structures and accessory structures at a reduced shoreline setback.

D. Other Factors:

1. The parcel consists of three platted lots that would allow for multiple dwellings, but each individual lot does not meet zoning requirements.
2. The On-Site Wastewater division failed the record review.
  - a. The system was designed for two bedrooms but is currently serving two dwellings with four bedrooms.
3. Due to winter conditions, it is difficult to determine current shoreline setback. It is recommended a site visit to determine current shoreline setback be done when conditions allow, should the Board of Adjustment allow a variance at a reduced shoreline setback.

*Ada Tse* noted one item of correspondence from Janet Keough not in support. This item was provided to the Board of Adjustment prior to the hearing.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a replacement dwelling at a reduced shoreline setback as proposed include, but are not limited to:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim, and roof.
2. St. Louis County On-Site Wastewater SSTS standards shall be followed.
3. Stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
4. The proposed dwelling shall not be closer to the lake than the existing dwelling.

*Brian Lobbestael*, 1775 Shilhon Road, Duluth, the applicant, stated he and his wife purchased this property in October 2022. The setting and structure are as they bought it. It is a garage package with windows and a floor system that the previous owner had put on piers. He desires to build a log cabin. He is a carpenter by trade and has studied log construction. They do not want to move the structure up the hill. If it could be done, they would need to build a new parking area and cut down a fair amount of mature maple and birch trees. They want to replace the walls with logs and get rid of the shingle face that faces the lake and replace it with a gable of hand-peeled logs. For added square footage they would add a basement instead of making a bigger structure on the hill. The unnatural terrace and riprap would be removed. It would return to a more natural slope. They do have a few options. They could keep the structure at its current location and add 400 square feet. To keep the structure at its current location and add a basement underneath, they would alter the aesthetic and the structure would be an improvement to the area. He would rather have a basement than larger square footage above grade. To move the structure back to the 100 foot setback is not an option and is not worth it to carve into the existing trees.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* stated it appears all vegetation was removed between the cabin and the shoreline. *Ada Tse* stated there is no screening.
- B. Board member *Werschay* asked what the slope is on the property. *Ada Tse* stated while there is slope, it is not bluff. *Donald Rigney*, Acting Secretary, added that this slope does not meet the definition of bluff. The definition of steep slope is any slope over 12 percent.
- C. Board member *Pollock* stated one of staff's alternatives is to move the structure back to a 100 foot setback. However, the applicants sketch indicated that there is steep slope behind the structure. *Ada Tse* stated there is steep slope behind the structure, but there is room for a structure in the level area behind the existing structure. Board member *Pollock* stated if the structure can move back there it should not be a problem. If the slope prevented the structure from moving back that would be a different issue.
- D. Board member *McKenzie* stated the application stated a performance standard permit would allow re-siding with log siding and adding a log roof structure but would not allow switching from a pier to basement foundation. *Ada Tse* stated that is correct and the applicant would have been allowed a 400 square foot addition. The 27 foot height resulting from switching a pier foundation for a basement foundation would not be allowed in the

structure's present location. Board member *McKenzie* asked if the foundation work would fall under the definition of repair. *Donald Rigney* stated under its definition a repair would be a like-for-like replacement. To change the foundation type would require a variance when the structure is located at a nonconforming setback.

- E. Board member *Manick* stated the application read under the alternatives that the landowners could increase the footprint of the addition by 400 square feet to the west. Below in the application, it stated a performance standard permit would allow the cabin to remain at its current location and be added on to above. He asked if that meant adding a second story onto the existing structure. *Brian Lobbestael* stated he could add another 400 square feet to the west of the current structure. This would be a less attractive option. What it meant was he did not want to add additional square footage above ground but wanted to add on a basement instead.
- F. Board member *Manick* stated he does not see how an additional 400 square feet to the west would result in an increased visible structure would be a problem. Any structure addition would be more visible than it is now. Adding brown shingles or siding would also help make it more unobtrusive. However, the proposed structure with its 27 foot height would also be very visible. There is no vegetative screening that would help. The applicant has a good amount of flat land they are not even considering moving the structure back to. *Brian Lobbestael* stated the 27 foot height is being measured from the bottom of the basement door to the peak. Most of the slope would cover that foundation. A log cabin with its gable facing the lake would be more attractive looking up from the lake than a blue cottage. He could change things to make it fit into the environment, but he would do that by adding logs. If the variance is not approved, he will get a performance standard permit. He would then add more piers, trade out the walls for logs and add some log roof structure to the cabin that could be 25 feet above grade. It would be better to have that square footage in the ground and the footprint would be smaller.
- G. Board member *Pollock* stated the applicant mentioned they could increase the footprint by 400 square feet with a performance standard permit and asked if that would be allowed. *Donald Rigney* stated as long as the structure does not go beyond 40 percent lot width facing the lake and will meet property line setbacks it would be allowed.
- H. Board member *Coombe* asked how far the applicant would need to excavate the slope. *Brian Lobbestael* stated he would excavate roughly 20 feet of the existing slope. He would remove the terrace. Board member *Coombe* asked how far off the ground the existing cabin is now. *Brian Lobbestael* stated it is 18 inches off the ground. Board member *Coombe* asked how tall the existing structure is. *Brian Lobbestael* stated the cabin is about 15 feet in height. Board member *Coombe* stated the applicant could add 10 feet to the top of the structure and add 400 square feet to the side as long as property line setbacks are met. He asked if the roof pitch is 4/12. *Brian Lobbestael* stated it is with the eaves facing the lake. Board member *Coombe* asked with the new structure would the roof be more like 6/12 or 8/12. Would the gable be all glass? *Brian Lobbestael* stated there would be logs that divide the gable and would not be entirely glass.
- I. Board member *McKenzie* asked if the applicant intends to remove the cabin. *Brian Lobbestael* stated the current floor system sitting on the beams sitting on the piers is a good, sound floor system. He added spray foam insulation last fall. He would remove the floor system and set it aside, do the ICF basement and add the floor system back on top of the

basement. He would use parts of the existing cabin to construct the 28 foot by 28 foot structure.

- J. Board member *Werschay* stated the structure is too close to the shore impact zone and she is worried about excavating into the shore impact zone.
- K. Board member *McKenzie* stated he is concerned this is a way to go around the ordinance in order to replace a structure.
- L. Board member *Pollock* stated the retaining wall is about 20 feet in front of the cabin. The applicant indicated that they would need to excavate 20 feet into the retaining wall. There are alternatives if the applicant wants the cabin to remain in its current location.
- M. Board member *Manick* stated the applicant could add onto this structure. There is an option to do a basement, but it would not be a walk-out.
- N. Board member *McKenzie* stated the 100 foot shoreline setback area is six feet higher in elevation than the location of the existing structure.
- O. Board member *Coombe* asked if shoreline averaging would affect where the structure could be located. *Donald Rigney* stated if the property meets the zoning lot width requirement, the parcel is not eligible for shoreline averaging.

## **DECISION**

**Motion by McKenzie/Manick** to deny a variance for a replacement dwelling at a reduced shoreline setback, based on the following facts and findings:

### A. Official Controls:

- 1. Zoning Ordinance 62, Article III, Section 3.4 states the shoreline setback requirements. Barrs Lake is a Recreational Development Lake which requires a 100 foot setback. The applicant is requesting a replacement dwelling located 57 feet from the lake.
- 2. The official controls set standards that allow a variance from those standards if a good reason exists.
- 3. The request sets up what appears to be an end-run around the shoreline setback requirements by proposing almost a complete demolition of an existing nonconforming 1955 structure and building back in the same location with not only a larger footprint, but a height elevation which would be in violation of the ordinance.
- 4. The variance request is not in harmony with the general purpose and intent of official controls.

### B. Practical Difficulty:

- 1. The applicant, in his application, has not presented any circumstance existing on the parcel that would prevent building the proposed structure at the required setback other than that the required setback would interfere with the parking area and some trees might have to be removed.
- 2. None of these reasons appear to meet the threshold of practical difficulty and that a reasonable use of the property would not be denied if the variance is not granted.
- 3. There do not appear to be circumstances unique to the property not created by the landowner.
- 4. Practical difficulty has not been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. There are several dwellings on Barrs Lake that do not meet the required setback.
2. The standard of determining the essential character of the locality would be altered based on compliance and zoning regulations and variances that existed at the time the locality was developed. This area was developed before zoning regulations were instituted.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The application regards the removal of trees and the parking area being affected. The lot appears to be heavily treed.
2. There does not appear to be any change in elevation that would prevent creating or expanding the parking area.
3. The current structure has no vegetative screening from the shoreline.
4. Correspondence was received from a lake resident who urged the Board to enforce the 100 foot shoreline setback and alluded to pollution from construction. The correspondent's other concern was road damage, and the hours of construction are not normally addressed by the Board.
5. The applicant's sketch appears to show the location of the septic tank and septic field which would not affect building a structure at the required setback.

**In Favor:** Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 6

**Opposed:** Coombe - 1

**Motion carried 6-1**

**Ursalyn Fena and Jerome Bakke**

The fourth hearing item is for Ursalyn Fena and Jerome Bakke, property is located at S25, T56N, R15W (Colvin). The applicant is requesting an appeal for after the fact relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to exceed the maximum height allowance for a nonconforming principal structure located in the shore impact zone. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting after-the-fact approval for a variance that was denied at the October 13, 2016, Board of Adjustment meeting.
- B. The requested variance is the same request that was denied in 2016 to allow after the fact approval for a structure height of 24.5 feet where 20 feet is allowed.
- C. The applicant chose not to bring the property into compliance per the 2016 decision and appealed the Directors determination that a new application for a variance is not significantly different from the earlier application.
- D. The Board reversed the Directors determination allowing the applicant to submit a new application.
- E. Other than a riprap project related to shoreline erosion, no effort has been made to bring the property into compliance since the 2016 after-the-fact variance denial.
- F. Per the Department of Natural Resources shoreline alteration: riprap fact sheet, the riprap must be no more than six feet waterward of the Ordinary High Water Level. The riprap

must conform to the natural alignment of shore and must not obstruct navigation or flow of water.

- G. Riprap is not to gain additional shoreline but to protect against shoreline erosion and wave action. Elevation does not change when riprap is placed along the shoreline.
- H. The applicants have had correspondence with staff on alternatives and chose to pursue a second after-the-fact variance request.
- I. The property has suitable screening within the shore impact zone.

*Mark Lindhorst* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. St. Louis County Ordinance 62, Article IV, Section 4.3 D., allows a maximum structure height of 20 feet for a principal structure located within the shore impact zone. The applicant is requesting a height of 24.5 feet.
- 2. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states: “Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance.”
- 3. Through the Land Use Goals, Objectives and Implementation section, the Land Use Plan is meant to provide ways of improving the variance process and encourages adherence to existing criteria to ultimately reduce the volume of variance applications received by the county.
- 4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 5. Objective LU-3.3 of the St. Louis County 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 current proposal is the same request that was previously denied and is not sufficient to provide justification for allowing the after-the-fact variance.
- 2. No structural alterations to reduce the height have been provided.
- 3. Installing riprap protection is for erosion control measures only and is not to restore lost shoreline per Minnesota Department of Natural Resources (DNR) correspondence from Kim Boland

C. Essential Character of the Locality:

- 1. The neighborhood consists of conforming and nonconforming seasonal and year-round principal structures.

D. Other Factors:

- 1. No effort has been made to bring the property into compliance since 2016.
- 2. No effort to reduce the height of the structure has been requested.
- 3. Therefore, absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

*Mark Lindhorst* noted one item of correspondence received this morning from Daniel Lindskog in support. This item was read into the record.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance to allow an after-the-fact variance to allow a structure height of 24.5 feet where 20 feet is allowed include, but are not limited to:

1. The structure shall be unobtrusive in color including siding, roof, and trim.
2. All other applicable permits shall be obtained.

*Lynn (Ursalyn) Fena*, 2562 Eskeli Road, Makinen, the applicant, handed documents to the Board. Photographs were submitted into the record in December 2022. She stated the front ten feet of their house lies in the shore impact zone. They met with Jenny Bourbonais in January and it became clear that no part of their house could be over 20 feet in height if any part of the structure was located in the shore impact zone. Their economic situation is a significant barrier. It is not their only practical difficulty. They would have difficulty moving the septic and water lines if the structure were moved back. When Peterson Drilling was placing the well, they hit bedrock quickly and moved to a second drill site where the depth of the water was 450 feet down. They had extraordinary difficulty lying in water lines due to the rocks underground. They would also need to deal with constructing a new foundation, removing the old foundation, tree removal, and everything else that goes into moving a house. They do not believe community health or safety issues are threatened by approving this request. They have acted and intend to continue doing so to protect the lake, preserve the shoreline and present the old white pine trees on the property. The character of the area is preserved by leaving the house where it was built during the 1950s along with others immediately adjoining their lot.

This is not the same proposal that was previously denied in 2016. They had asked for the 24.5 foot structure height with a shoreline setback of 28 feet. This request was made with a revised 40 foot shoreline setback as measured by Dave Marciniak, Minnesota Power. The slope has allowed for the additional distance between their house and the shoreline. They have not presented structural alterations to reduce the height of the roof. Removing or replacing the entire roof seems neither feasible nor affordable. Changing the height of the first ten feet does not remove the problem. They did consult a contractor to flatten the front ten feet of the roof and there was no interest in the project. This was not pursued after talking to Jenny Bourbonais as this would not solve their problem. They did think it was because they have the change from the distance to the water and they are willing and able to change the color of the roof and trim that they may get the variance for the structure height for the current location.

They installed riprap protection for erosion control as they were watching their embankment wash away and needed to do something to prevent further shortening of the distance to the Ordinary High Water Level. They worked with the DNR and learned that the riprap would be installed at a 3:1 slope.

There are a variety of structures along the point that are a mix of conforming and nonconforming structures, with those nearest to their property built between the 1950s and 1960s. Their neighbor has been supportive of their variance request. One immediate neighbor was granted a variance to build a new structure on the existing but nonconforming footprint of the original cabin. They intend

to improve conformance of this structure by changing the color of the roof and trim. They could also reconfigure the deck but would need steps out from the lake entrance.

They feel that an effort was made to bring the property into compliance. They worked to get a greater shoreline setback. After their variance denial they obtained estimates from a few contractors for the costs of moving the house, including moving, disconnecting, and reconnecting the various parts of that. They shared these with Tyler Lampella in 2017. They did not have the finances available to move the structure. They have spent the years since their variance denial paying down debt in order to deal with their current situation. They understand they made their own mess. They just want to keep their roof and leave the house where it is.

*Jerome Bakke*, 2562 Eskeli Road, Makinen, the applicant, stated they are willing to change the color and trim of the roof. They are willing to modify the deck to whatever ordinance allows.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if the only alternative is to somehow reduce the roofline? *Mark Lindhorst* stated yes as that was the alternative in the 2016 variance.
- B. Board member *Manick* asked if nothing has changed since 2016. In the 2022 administrative appeal, there was some dispute in measuring the shoreline setback. Kim Boland, Minnesota DNR, submitted a letter stating that riprap and fill do not add to the shoreline setback.
- C. Board member *Coombe* asked if this is a rehearing or a new application. *Mark Lindhorst* stated this is a new application. A rehearing would apply if the Board of Adjustment originally denied the variance without prejudice. This is a new application that the Board of Adjustment determined would meet the criteria based on the decision of the administrative appeal in December 2022.
- D. Board member *Pollock* stated the applicant had reached out to a contractor in order to lower the first ten feet of the roof and the contractor never got back to them. He asked if this was the same contractor that did the roof in the first place. *Lynn Fena* stated no. Board member *Pollock* asked if there were any discussions with the contractor that did the roof job. *Jerome Bakke* stated they were their own contractor. They hired someone to do the work. He spoke with the builder a month ago but there was no interest as the builder was working elsewhere. Board member *Pollock* asked if this was a licensed contractor. *Jerome Bakke* stated this was not a contractor but a carpenter. Board member *Pollock* stated that if this were a contractor there would be liability.
- E. Board member *Pollock* stated there was effort and pain the applicants have gone through in this situation. This has become an unusual situation.
- F. Board member *Manick* stated he did not participate in the administrative appeal hearing in December 2022. He appreciates the applicant being forthright and honest. Money was spent to create these problems and that is where the situation is today. Moving the house back ten feet is not practical. There should have been some help from the carpenter to at least check if permits were required. *Jerome Bakke* stated the carpenter did the work and checked about a permit. He went to the Planning Department in Duluth and found out they were already in violation. They were told the project could not start, but the project had been started. Tyler Lampella came to the property and said they could button up the

structure and make it weather-tight to protect the structure and deal with an after-the-fact variance. They had an issue with a tree root pushing the house up on one corner and they got a land use permit to raise the structure up and build a foundation underneath it. They were not instructed to move the structure at that time. Moving the structure would have been easier because all the utilities were disconnected. After the structure was set back down the utilities were reconnected. They had obtained land use permits for their two-story garage and their foundation. They just got excited about starting the roof project and did not receive a permit at first.

- G. Board member *McKenzie* asked why the applicants have a renewed interest to obtain a variance after seven years. *Jerome Bakke* stated they were trying to figure out what they could do aside from removing the entire second story. One thing they could do was fix the distance from the water line. *Lynn Fena* stated there were six years between October 2016 and December 2022 and there was Covid between the years. They wanted to revisit the application but wanted to meet with someone in person. However, the county office was not open at the time. They were ill with Covid after their administrative appeal, and this was their first opportunity to come back.
- H. Board member *McKenzie* stated that if the structure were located outside the 50 foot shore impact zone they would be allowed the structure height. At the December hearing, their attorney/friend Greg Gilbert stated there was some interest in removing the front ten feet of that roofline. *Jerome Bakke* stated during the conversation with Jenny Bourbonais modifying the front roofline of the house would not help them. The only way to do solve the issue was move the structure back ten feet. *Lynn Fena* stated the foundation starts at the 40 foot shoreline setback. They could not just cut off ten feet of the house to get to the 50 foot shoreline setback. Board member *McKenzie* stated that removing the deck would help and add back four feet. *Donald Rigney*, Acting Secretary, stated that measurements are always to the foundation, not the deck. Even if the deck were removed, it would not add any distance.
- I. Board member *Coombe* stated that the applicants can have the four foot wide deck. Their main concern was the shoreline setback. There was a time when the setback allowed was 37.5 feet. The Board should consider the roof height, not the shoreline setback or the deck. The shoreline setback has been established and the deck is allowed.
- J. Board member *Werschay* stated she believes the landowners in that they did not know they required a permit. They had applied for permits for the foundation before. There was no mention of the shore impact zone at that time. There were mistakes made.
- K. Board member *Manick* stated there are no real remedies since the applicants cannot gain ten feet of distance to the shoreline.
- L. Board member *Coombe* asked if the existing color of the roof and trim would be allowed if the variance is approved or disapproved. *Donald Rigney* stated that red is not an earth-toned color. No land use permit could be issued for the height addition with the condition of earth-toned colors. If the Board does not want to change the current color, they need to remove that condition. *Mark Lindhorst* stated this is just a condition that staff suggested. This is a common condition used for structures with reduced setbacks. *Matthew Johnson*, Director of Planning and Community Development, stated that decision is up to the Board of Adjustment.
- M. Board member *McKenzie* stated economic consideration may not be considered alone. There is also ledge rock that adds to the difficulty of making the building compliant.

- N. Board member *Manick* stated that if the structure is to remain in the shore impact zone the applicants should comply with making the structure unobtrusive in color. The applicants did say they would paint the roof and trim. Board member *Pollock* disagreed and stated it would be an unnecessary add-on to paint a metal roof. Board member *Coombe* agreed and stated painting and replacing windows is also an expense.

## **DECISION**

**Motion by Manick/Coombe** to approve an after-the-fact variance to allow a structure height of 24.5 feet where 20 feet is allowed, based on the following facts and findings:

A. Official Controls:

1. St. Louis County Ordinance 62, Article IV, Section 4.3 D., allows a maximum structure height of 20 feet for a principal structure located within the shore impact zone. The applicant is requesting a height of 24.5 feet.
2. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states: "Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance."
3. The variance request is and is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. It would be impractical to move the structure back ten feet. The structure could be moved further back.
2. The applicant's health and safety should be considered in all they have gone through. They have been working on this for years.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The neighborhood consists of conforming and nonconforming seasonal and year-round principal structures.
2. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The applicants have made some effort to bring the property into compliance. Without finances available they were unable to do so.

The following condition shall apply:

1. All other applicable permits shall be obtained.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Motion carried 7-0**

**Motion to adjourn by McKenzie. The meeting was adjourned at 12:25 PM.**