

**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, JANUARY 11, 2024.**

11:24 AM – 1:50 PM

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

Board of Adjustment members absent: Andrea Zupancich

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

**NEW BUSINESS:**

A. Michael Jones, S35, T53N, R15W (Unorganized)

**OTHER BUSINESS:**

**Motion by McKenzie/Manick** to approve, with one correction, the minutes of the December 14, 2023 meeting.

**In Favor:** Filipovich, Manick, McKenzie, Pollock, Werschay - 5

**Opposed:** None - 0

**Abstained:** Coombe - 1

**Motion carried 5-0-1**

**Motion by McKenzie/Coombe** to elect Diana Werschay as Chair.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Werschay – 6

**Opposed:** None - 0

**Motion carries 6-0**

**Motion by McKenzie/Coombe** to elect Dan Manick as Vice Chair.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Werschay – 6

**Opposed:** None - 0

**Motion carries 6-0**

**NEW BUSINESS:**

**Michael Jones**

The only hearing item is for Michael Jones, subject property located in S35, T53N, R15W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62,

Article III, Section 3.4 and Article IV, Section 4.3 D., to allow a replacement principal dwelling at a reduced shoreline setback and to exceed allowed structure width facing the water. *LaShawn Rush*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing a replacement principal dwelling at a reduced shoreline setback of 58 feet where 100 feet is required.
- B. The proposed replacement principal dwelling has a structure width facing the water of 82 feet where 71 feet is allowed.
- C. The property currently contains a principal dwelling, multiple accessory structures, and a private septic system.
- D. There is good screening from most sides of the property.
- E. There is a gradual slope from the dwelling to the shore with an elevation change of six feet.
- F. The lowest floor will be above the Regulatory Flood Protection Elevation.
- G. There are wetlands on the north side of the property that will not be impacted by the proposed project.
- H. The parcel is divided by NW Island Lake Road.

*LaShawn Rush* reviewed staff facts and findings as follows:

- A. Official Controls:
  - 1. Zoning Ordinance 62, Article III, Section 3.4, requires a setback of 100 feet from Recreation Development lakes.
    - a. The applicant is proposing a 58 foot setback from Island Lake Reservoir.
  - 2. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a nonconforming structure to have a width facing the shoreline of 40 percent of the lot width if located within the shoreline setback.
    - a. The applicant is proposing 82 feet of the structure to face the shoreline (46 percent) where 71 feet is allowed (40 percent).
  - 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. The property is part of an official plat (Breezy Bay) that was platted in September of 2023.
    - a. There are no notes on the original plat expressing concerns for conforming buildable area.
  - 2. There are alternatives that may reduce the number of variance requests:
    - a. Reduction of size and change in configuration of the structure may result in a proposal being at a conforming location that would be allowed through a Land Use Permit.

3. No practical difficulty has been presented for exceeding lot width requirements.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The Breezy Bay Plat is developed with many seasonal and year-round residential uses.
2. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
3. There have been seven approved variance cases in the area to allow for a reduced shoreline setback.

D. Other Factors:

1. St. Louis County Onsite Wastewater Division did not pass the record review of the proposal.
  - a. If the variance request is approved, the applicant will need to work with St. Louis County Onsite Wastewater Division to meet their requirements before the issuance of a land use permit.
2. 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.

*LaShawn Rush* noted no items of correspondence.

## **RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance to allow a replacement principal dwelling at a reduced shoreline setback and to exceed the allowed structure width facing the water as proposed 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 directly discharge into the lake or on adjacent lots.
3. The lowest floor of the structure shall be at or above the Regulatory Flood Protection Elevation.
4. St. Louis County Onsite Wastewater SSTS standards shall be followed.

*Michael Jones*, 4976 NW Island Lake Road, the applicant, stated he owns both properties. He lives at 4976 NW Island Lake Road and the subject property is 4978 NW Island Lake Road. He purchased this cabin property in 2009. His wife and he decided to build a new home as their current home, while a year-round residence, was built in 1993 and he does not want to deal with a crawlspace as he ages. They intend to sell that property and build a new dwelling on the cabin property. The existing dwelling is 40 feet from the shoreline. He purchased this property from the original owner and the cabin is about 26 feet by 40 feet. The cabin is 58 feet from the shoreline.

He worked with Minnesota Power to get approval for steps down to the lake. It was then he discovered his lot was 200 feet wide when Minnesota Power provided a map for the work. When he installed the septic in 2018, his lot width was at 190 feet. He asked Minnesota Power what had happened, and they said the lot width was 190 feet, not 200 feet like the map had indicated. During

the platting process, he received a packet in the mail that said his lot was 175 feet wide. Minnesota Power had to make the lots more conforming and lot lines were adjusted. When the lot was squared off, he lost some of the lot width. He did acquire land behind the road which is mostly a swamp.

He has been working with Tom Rovinsky, a septic designer, who was on this site and installed the septic in 2018. They intend to replace the current tank with a larger tank. The tank will be relocated behind the proposed garage.

He is asking for a shoreline setback variance because he would be unable to fit the septic system behind the staff alternative location.

The garage may be a luxury, but it is a necessity to gain interior storage. He does not want to clear cut his lot so he can park everything outside.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* asked when other variances were approved around the subject property, noting that this area was platted in September 2023. *LaShawn Rush* stated some of these variances were approved prior to platting.
- B. Board member *Filipovich* asked if lot sizes were changed during the platting process. *Donald Rigney*, Acting Secretary, stated that during the platting process, lots are not added, and the process tries to maintain a lot of record where the lot is at. Some property lines were adjusted slightly to create a more conforming lot. Some acreage was added to lots, such as adding to backlots. The applicant can answer to if they have more acreage now through the platting process. In most cases, these lots did not get smaller.
- C. Board member *Pollock* asked about the staff's alternative building site and if there were anything that would limit building at that location. *LaShawn Rush* stated there is not. Board member *Pollock* asked if the alternative location is 100 feet from the shoreline. *LaShawn Rush* stated it is. Board member *Pollock* asked what the structure width facing the water would be at the alternative location. *Donald Rigney* stated it would be 55 percent. *LaShawn Rush* added the current proposal is 46 percent of the structure width facing the water. Board member *Pollock* stated at the conforming location, the applicant could have a land use permit. The applicant may need to reconfigure the design.
- D. Board member *Coombe* asked if by moving the proposed structure back to the 100 foot shoreline setback, the applicants' neighbors would all have structures in front of them. Board member *Pollock* stated the neighboring cabins would not obstruct the applicant's view.
- E. Board member *McKenzie* asked about the address of the property as both 4978 and 4976 NW Island Lake Road were used. *LaShawn Rush* stated the applicant owns both properties.
- F. Board member *McKenzie* asked about the proposed building height and if the allowed height at this setback would be 25 feet. *LaShawn Rush* stated the applicant noted 24 feet in the application.
- G. Board member *McKenzie* asked about the garage dimensions. Board member *Manick* stated the site sketch showed a 28 foot by 30 foot garage.

- H. Board member *McKenzie* asked where the septic was located. *LaShawn Rush* stated the septic tank will be located north of the proposed structure. The applicant will need to work with a designer and an environmental specialist if they wanted to move the septic.
- I. Board member *Manick* stated in the staff report the practical difficulty noted that the proposed structure is too wide and too close to the shoreline. This proposal is what the applicant would like to do. The applicant has a garage on the property. The applicant may not need an attached garage. Without the attached garage the structure could be moved back to meet the shoreline setback. The garage could be rebuilt and expanded. Removing a little square footage from the side would also comply with the structure width facing the lake requirement. *Michael Jones* stated the existing garage is 22 foot by 26 foot and they cannot fit more than a single vehicle in that garage. He has boats and other gear like Jet-skis that need to be stored. When he moves to this property, he will have no storage area. He could build across NW Island Lake Road as an alternative, but the area across the road is swampy. It would be nice to have an attached garage in the winter and be able to get into his house. Board member *Manick* stated this property may not allow for an attached garage.
- J. Board member *Pollock* stated this proposal is a wish list. The sunroom could be a deck with sliding doors going outside. The size of the attached garage could be reduced to move the structure back. They need justification for variances and not what is convenient for the applicant. There is a lot that could be done to make this request easier to grant a variance for. Board member *Coombe* stated the applicant is before them stating what they want. This proposed house is out of the shore impact zone and will meet other setback requirements. There might be an issue with the septic system if the house is moved back. The applicant may not be able to get a replacement area for their septic system. This house could be moved back a few feet, but what will anyone gain by doing that? It will not protect the lake or neighborhood anymore, it will not be a new use to the area, and there has always been something on this property since the 1960s. This structure is just bigger. Bigger is not always bad.
- K. Board member *McKenzie* stated practical difficulty is something not caused by the landowner. In this case, the applicant's architect designed a house that is too big for this lot. The garage could be what is causing the setback issue with this lot. If the shoreline setback could be met, the structure width would not be a problem. This is not a practical difficulty because the structure is too big for the lot. *Michael Jones* stated he does not know how to reduce the size of the structure because even with two bedrooms and a two-stall garage, he would still exceed the structure width facing the lake requirement. He does not know how he could build his dwelling at the 100 foot shoreline setback and still be able to install a septic. Board member *McKenzie* stated a reduced shoreline setback could be amended if the septic could be moved. The size and scale of this building compared to either adjoining neighbor is large. He does not see a practical difficulty not created by the landowner. *Michael Jones* stated he is building what he wants because he wants interior storage. He has two cars and both he and his wife work. Board member *McKenzie* stated that a desire to store things inside is not a practical difficulty. The applicant can control what they need or what they have.
- L. Board member *Manick* asked about the future replacement septic area. *Michael Jones* stated there is an existing septic field and a septic tank. The tank will be moved into a new area with the new dwelling. The existing septic field will be extended to meet code. There is an area behind the detached garage that could be utilized as a replacement area. Board

member *Manick* asked if the applicant is keeping or removing the detached garage. *Michael Jones* stated he would like to keep the detached garage.

- M. Board member *Pollock* asked if the applicant has a new design sketch for the septic. *Michael Jones* stated he does not. Board member *Pollock* asked if this design is based on where the new proposed dwelling will be located. *Michael Jones* stated yes. Board member *Pollock* asked if the applicant asked that the septic be moved as far back as possible. *Michael Jones* stated Tom Rovinsky moved it back as far as it could go. Board member *Pollock* stated he has no design showing this. The septic could be moved back further. *Michael Jones* stated this was designed by Tom Rovinsky who is a professional that knows the rules. This area was picked out by him for the septic area. They may not gain much if the septic is moved. There is a road setback they need to follow. This proposal makes the most sense. Board member *McKenzie* asked if there is an existing septic field. *Michael Jones* stated there is. The septic was installed in 2018.
- N. Board member *McKenzie* stated having the 22 foot by 26 foot detached garage stand in the way of this new dwelling seems impractical. *Michael Jones* stated he wants to keep any storage they can get. They might not be able to build across the road because it is all swamp.
- O. Board member *Manick* stated he is not opposed to the size of the living quarters. His issue is the attached garage. They have to take into consideration practical difficulty. There is an area with the same elevation across the road to store the boats, etc. Without the attached garage, the structure could almost meet the required setback.
- P. Board member *Werschay* stated the cabin is located 54 feet from the shoreline and asked if the applicant could get a permit to expand the existing structure. *Donald Rigney* stated the cabin is located outside of the shore impact zone and the applicant could potentially get a performance standard permit for an addition up to 400 square feet in size. Board member *Werschay* stated the applicant is not asking that much more to stay where the current structure is at. Neighboring properties have cabins around the same distance from the shoreline. There would be no soil disturbance. There will be no fill. There will be no basement. If the structure is moved around, the soil could be disturbed. The septic system is already there and installed.
- Q. Board member *Manick* stated the application said the applicant is installing a new septic system to replace a noncompliant system. *Michael Jones* stated they found out the system is noncompliant by 12 square feet. With the second story bonus room above the garage counted as a bedroom, the septic system needed to be sized for four bedrooms. The noncompliant system is for what he is building, not for what already exists there. They can reuse some of the existing septic but would need to expand. Not having to remove and replace the entire septic system is cost saving. Board member *Manick* stated that without an attached garage and bonus room, the septic would be fine. This would be a problem solved by not attaching a garage. Board member *Werschay* stated she supports an attached garage. Board member *Coombe* stated he called staff to ask why the septic was noncompliant. It was not just about the additional bonus room that could be considered a bedroom, but the square footage of the entire structure. *Donald Rigney* stated the square footage of the structure changed the classification of the dwelling which is how they size a septic system.
- R. Board member *Pollock* stated this request is a wish list by the applicant. There is also reasonable use of the property. A wish list does not mean the applicant does not have reasonable use of the property. Board member *Werschay* stated the applicant did not have

control over the fact Minnesota Power adjusted the property lines and reduced the lot width of this property. Board member *McKenzie* stated the applicant has control over the design of the new house. Board member *Werschay* stated the applicant could remove square footage in order to conform to the lot width. Board member *Pollock* stated that 11 feet could be removed and that would better conform to the structure width facing the lake requirement. *Michael Jones* stated if he removed the sunroom to make the structure not as wide, he could still add a sunroom/gazebo elsewhere which would take up lot width on the property and would gain nothing. He would need to remove a number of trees which is where his vegetative buffer is. Board member *Manick* stated the applicant is already removing trees to fit a new dwelling in this location. *Michael Jones* stated there are birch trees that need to be removed as they are leaning on the cabin.

- S. Board member *McKenzie* asked if the architect knew what the requirements were and what property the applicant had to work with. The architect designed a structure too big for the lot. *Michael Jones* stated one might expect the architect to know everything. However, he did not realize they had lost lot width. He has been asking what he can take off the structure. He does not want to shorten the bedrooms by any square footage because they are already small. Board member *McKenzie* stated that what the applicant can have and what they will have is not necessarily the same thing. The architect should have known the dwelling is too big for this lot. The attached garage pushes the structure towards the lake. This design is what they like. Board member *McKenzie* stated in discussing this plan with the architect, the applicant might ask what they can get away with? *Michael Jones* stated he did not do that. He wanted a house designed for this property. He wanted to pull straight into a garage, which he was unable to do because then the structure would be too wide.
- T. Board member *Pollock* stated a redesign might be necessary in order to make this better for the Board to decide on. The septic designer can redesign the system to better fit and the dwelling could be redesigned to better configure the lot. The applicant needs to work with this to make it more compatible. Wishes do not take over the rules and regulations. *Michael Jones* stated he is restricted by the size of the lot, the trees, setbacks, etc. Board member *Pollock* stated the applicant is being restricted by the size and design of the proposed dwelling. *Michael Jones* asked if the issue is with the shoreline setback or with the size of the structure. It would cause more difficulty moving the septic back toward the road. Everyone wants a little privacy. He does not want a lot of trees taken out so his property is more visible. Board member *Manick* stated he has no issue with the structure width. He does have an issue with the attached garage. There is room across the road for storage. There are alternatives here. Board member *Pollock* stated the shoreline setback, and the structure width are both against rules and regulations. A redesign should be done so the applicant can come back with something more palatable.
- U. Board member *Filipovich* stated the applicant should get some credit because the structure is moving further from the lake. The applicant did a good job putting this design together. Board member *Manick* stated the applicant could redesign the structure in order to better meet the shoreline setback. It may not be at 100 feet, but it could be better than what is already there. Board member *Werschay* stated the Board cannot really determine if there is room across the road to build anything. How would the Board know without visiting the site? *LaShawn Rush* stated there was one picture of the property across the road in the presentation. The pond on that part of the property is visible. Board member *Werschay* stated the attached garage will not be visible from the shore because it will be located

behind the house. Board member *Filipovich* stated these are two separate lots because the road divides them. *Michael Jones* stated he is not sure he would call the land across the road usable land.

- V. Board member *Manick* asked why storage units are all over the place? It is because people do not have the room for storage on their property.
- W. Board member *Coombe* asked what the shoreline averaging would be for this property. *Donald Rigney* stated he did not run those numbers, but shoreline averaging is taking the shoreline setbacks of all principal dwellings within 150 feet of the subject property and adding 25 feet. Board member *Coombe* stated he calculated 75 to 77 feet. If the structure is moved back 15 feet, what has that accomplished? Does this protect the lake? The measures the applicant takes to direct rainwater away from the lake would do that. He would not tear down a 22 foot by 26 foot detached garage. The applicant needs room for a septic system and replacement area. The applicant is not asking for anything out of the ordinary. Board member *Manick* stated they are not singling out this applicant. If any of their neighbors wanted a variance to rebuild a structure, they would have the same questions. It is not as though the applicant's cabin burned down which would be a different circumstance. Board member *Werschay* stated if everyone had to build according to the Ordinance, there would be no Board of Adjustment. This applicant has done everything they can. Board member *Pollock* stated the Board still has to justify granting a variance.

## **FIRST MOTION**

**Motion by McKenzie/Pollock** to deny a variance to allow a replacement principal dwelling at a reduced shoreline line setback and to exceed the allowed structure width facing the water, based on the following facts and findings:

### **A. Official Controls:**

1. Zoning Ordinance 62, Article III, Section 3.4, requires a setback of 100 feet from Recreation Development lakes.
  - a. The applicant is proposing a 58 foot setback from Island Lake Reservoir.
2. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a nonconforming structure to have a width facing the shoreline of 40 percent of the lot width if located within the shoreline setback.
  - a. The applicant is proposing 82 feet of the structure to face the shoreline (46 percent) where 71 feet is allowed (40 percent).
3. The applicant is requesting to place a structure on a parcel that is not large enough to accommodate the proposed design. The proposed design includes a large, attached garage at the rear of the residence. The placement of the septic system may prevent the garage on the designed structure from moving back where the proposed structure could meet the required setback. If this is the case, the proposed garage is too large, the proposed residence is too large, or the garage design is wrong for the circumstances. The parcel could continue to be used in a reasonable manner without approval of a variance.
4. The variance request is not in harmony with the general purpose and intent of official controls.



B. Practical Difficulty:

1. Practical difficulty under the Ordinance in connection with granting a variance means the property cannot be put to reasonable use under conditions allowed by the Ordinance.
2. The plight of the landowner is due to circumstances on the property not created by the landowner.
3. The applicant is requesting to build a structure that is designed to not fit the parcel. The property is not unique and is of adequate size and any circumstance or difficulty by the applicant is self-created.
4. Practical difficulty has not been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The Ordinance says judging the essential character of the locality should be as done by regulations that existed at the time the area was developed.
2. In a practical matter, granting this variance request will alter the essential character of the locality.
3. The proposal, in looking at various structures in a one-quarter mile vicinity in either direction, there are no neighboring properties (with the exception of maybe one) that approach the size or scale of the proposed structure size of 3,600 square feet.

D. Other Factor:

1. There was no correspondence received in this case.

**In Favor:** Manick, McKenzie, Pollock - 3

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

**Motion failed 3-3**

The *Board of Adjustment* discussed the following after the first motion:

- A. *Donald Rigney* informed the Board that if the second motion were to fail again in a split vote, the variance would be denied.
- B. Board member *Coombe* stated he will not make a motion because this Board operates under Robert's Rules of Order. They may not enforce that, but they do use it. A failed motion is no motion at all. If there is no second motion and there is no decision made within 60 days, the variance would be automatically approved. Board member *Pollock* asked if the staff agrees. *Donald Rigney* stated that the Board needs to act on this application with a motion to approve or deny without prejudice. Board member *Pollock* stated there could be a denial without prejudice to allow for a redesign.

**SECOND MOTION**

**Motion by Pollock/Manick** to deny a variance to allow a replacement principal dwelling at a reduced shoreline line setback and to exceed the allowed structure width facing the water without prejudice. The applicant will work with their architect and their septic designer in order to fit rules and regulations of St. Louis County, including the 100 foot shoreline setback and the size and amount of coverage. The applicant will have the opportunity to present something more palatable. This is based on the following facts and findings:

- A. Official Controls:
  - 1. The variance request is not in harmony with the general purpose and intent of official controls as the request does not meet rules or regulations.
- B. Practical Difficulty:
  - 1. Work can be done to make this property compliant.
  - 2. Practical difficulty has not been demonstrated in complying with the official controls.
- C. Essential Character of the Locality:
  - 1. The variance request will alter the essential character of the locality.
- D. Other Factor:
  - 1. The Board wants to see work done by the applicant with those that did the septic and architect where it can be compliant because it can be compliant.

The *Board of Adjustment* discussed the following after the second motion:

- A. Board member *Werschay* asked if this motion makes sense because the applicant is being denied without prejudice and is being told they have to comply with all Ordinance requirements. *Donald Rigney* stated there needs to be some clarity. Board member *Werschay* stated if the applicant complies with all Ordinance requirements, the applicant will not need a variance. Board member *Pollock* stated the applicant can work with the designer and architect to make this fit. Maybe it will not need a variance if designed correctly. Board member *Manick* stated maybe the structure will meet all setbacks.
- B. *Donald Rigney* asked what would happen if the applicant cannot meet all requirements. Board member *Pollock* stated the applicant can work with staff to maximize the shoreline setback and on lot coverage. If there is something that reduces the shoreline setback, the Board can believe that the applicant worked this out. Board member *Manick* stated they have a problem with the architect not doing the applicant justice. *Donald Rigney* stated things need to be listed on what the Board expects the applicant to bring back. Board member *Pollock* stated the applicant needs to meet the rules and regulations. If the architect determines the design is limited, that can be presented to the Board. The applicant can maximize the setback to the greatest extent or minimize the structure width facing the lake to what is allowed. *Donald Rigney* stated if the applicant cannot meet the 100 foot shoreline setback, the applicant has to come back and explain why. Board member *Pollock* agreed and added that would include the structure width facing the lake.
- C. Board member *Coombe* asked what type of road NW Island Lake Road is. *Donald Rigney* stated the road is a local road. Board member *Coombe* asked what road setbacks are. *Donald Rigney* stated the rights-of-way in Minnesota Power plats are considered easements. Although this is designated a local road, the County would consider this a private road and therefore the road setback is 15 feet from the edge of the road. Board member *Coombe* stated that the setback question is to make sure that the structures and septic could meet the road setback.
- D. Board member *Manick* asked what the small structure is down by the lake. *Michael Jones* stated this is his workshop and stores his boat gas, life jackets, fishing gear, etc. There was a door on the shop with boat rails going down. This structure is not wide enough to store a boat.

- E. Board member *Pollock* asked if this vote comes out in a tie what is this notion that the variance could be approved in 60 days? Board member *Coombe* stated a tied vote is the same as a “no” vote. Board member *Pollock* asked if there are two failed votes on denials, could the variance be approved after 60 days. Board member *McKenzie* asked if there are two failed votes, could the variance be denied?
- F. *Donald Rigney* stated there could be a condition added to any motion for approval that the setback could be maximized to the greatest extent possible and no closer than x number of feet from the shoreline. The dwelling was marked at 27 feet from the septic area. The dwelling could be located 20 feet from a septic drainfield. There is an option.
- G. Board member *Pollock* stated his motion is for the dwelling to meet the 100 foot setback and be compliant. The applicant, architect, and designer will have to work together to meet the rules and regulations. The motion was reworded to maximize the setbacks. The applicant needs to work on this and not just come back with the same request without working on this.
- H. Board member *Coombe* stated there is seven feet of wiggle room to move the structure back while keeping the setback between an occupied dwelling and the septic drainfield at 20 feet. The applicant should not have to dig up and move the mound because that would be expensive. Would it hurt the Board to have an occupied structure located 60 feet from the shoreline? Board member *Pollock* stated there is a motion on the floor. He does not want to tell the applicant this is what they have to meet. Board member *Werschay* stated that is not true and the motion maker is telling the applicant what to do. Board member *Pollock* stated he did not; he was telling the applicant to work with the architect and designer to come up with a design that maximizes setbacks that would satisfy the Board.
- I. *Donald Rigney* set a small recess to contact the St. Louis County Attorney’s Office to interpret what will happen after two failed votes on denials. Upon returning, *Donald Rigney* relayed from *Tom Stanley*, St. Louis County Attorney’s Office, that the burden of proof for a variance lies on the applicant. If there were multiple motions that did not approve the variance, then it would be considered a denial. From MN Statute 15.99, Subd. 2 (c): “When a vote on a resolution or properly made motion to approve a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request. A denial of a request because of a failure to approve a resolution or motion does not preclude an immediate submission of a same or similar request.”
- J. Board member *Coombe* stated this makes no sense when the motion is to deny.
- K. Board member *Werschay* stated the Board has two options. They can withdraw the motion, table the decision for another month, and extend the variance application from 60 days to 120 days. The other option is to clarify the existing motion on the table and vote on that motion. Board member *Pollock* elected to not withdraw his motion.

## DECISION

**Motion by Pollock/Manick** to deny a variance to allow a replacement principal dwelling at a reduced shoreline line setback and to exceed the allowed structure width facing the water without prejudice in order for the applicant to design a structure to maximize the shoreline setback to the greatest extent and minimize the structure width facing the water to meet current Ordinance standards. If the applicant cannot meet the required shoreline setback or reduce the width of the

structure facing the water, the applicant would have to come back with justifiable criteria from the septic designer and building architect as to why these requirements cannot be met.

**In Favor:** Filipovich, Manick, McKenzie, Pollock, Werschay - 5

**Opposed:** Coombe - 1

**Motion carried 5-1**

**Motion to adjourn by McKenzie. The meeting was adjourned at 1:50 PM.**