

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD THURSDAY, APRIL 11, 2019, ST. LOUIS COUNTY PUBLIC WORKS, LOWER-LEVEL TRAINING ROOM, VIRGINIA, MN.**

11:30 A.M. – 1:13 P.M.

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

Board of Adjustment members absent: None

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

**NEW BUSINESS:**

- A. Rocky Oakland – S15, T51N, R16W (Grand Lake)
- B. John and Jill Broman – S18, T51N, R15W (Canosia)
- C. CalZion Construction / Rick and Sally Misiewicz – S2, T50N, R16W (Solway)

**OTHER BUSINESS:**

**Motion by McKenzie/Skraba** to approve the minutes of the March 14, 2019 meeting.

**In Favor:** McKenzie, Pineo, Pollock, Skraba, Svatos - 5

**Opposed:** None – 0

**Abstained:** Filipovich, Werschay - 2

**Motion carried 5-0-2**

**NEW BUSINESS:**

**Case 6182 – Rocky Oakland**

The first hearing item was for Rocky Oakland, in S15, T51N, R16W (Grand Lake). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow after-the-fact approval of a parcel that does not meet the minimum MU-3 dimensional standard.

*Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is to allow a parcel that does not meet the minimum Multiple Use (MU)-3 dimensional standards.
- B. The applicant applied for and received a land use permit for a new dwelling in 2015.
- C. The parent parcel was divided in 2003.
- D. The applicant purchased an additional 50 foot strip of land in order for the dwelling to meet setback requirements.

- E. The applicant could purchase land to the south; however, the property to the south contains wetlands which are not suitable for development.

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

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.2 states that a dimensional district 3 requires 9 acres and 300 feet of lot width. The subject parcel is now 4.79 acres and 680 feet in lot width, where prior to subdivision in 2003, the parcel was 26.9 acres in size.
2. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

B. Practical Difficulty:

1. The improper subdivision is a self-created practical difficulty. However, permit #54001 should not have been issued on the property due to the improper subdivision. In 2015, Planning and Community Development review of subdivision of property prior to recording was not required; however, legislation changed since that time to insure that improper subdivision of property for the purposes of development is not allowed.
2. The applicant has stated that he is unable to purchase additional property which consist mostly of wetland with limited building area.

C. Essential Character of the Locality:

1. The majority of the parcels in the area that are developed with homes exceed the dimensional standards that are required.
2. The density of the area will likely not change due to the predominance of wetlands and existing development to the south.

D. Other Factor:

1. The applicant purchased additional property to the east of the nonconforming property in order to meet setback requirements for the dwelling that was approved in 2015. It was at this time the applicant should have been made aware of the improper subdivision.

E. What steps were taken by the landowner to comply with county ordinances?

1. The applicant contacted the Planning Department to determine if their parcel met zoning/subdivision requirements. Upon review it was determined that the subdivision that occurred in 2003 was improper.

*Mark Lindhorst* noted one item of correspondence from Grand Lake Township in support of the variance request.

## **STAFF RECOMMENDATION**

In the event that the Board of Adjustment determines the proposal meets the criteria for granting a variance, no conditions of approval are recommended.

*Rocky Oakland*, the applicant, stated that he wished he would have known about the improper lot split when the permit was issued. He has been unable to get a loan for the dwelling because of the issue and believes that a variance will help obtain that loan.

No audience members spoke.

The Board of Adjustment discussed the fact that even if additional property to the south was obtained to meet minimum zoning requirements, density in the area would not change because that area is predominately wetlands and could not be developed. In addition, the Board noted that the area just to the east of the subject parcel has a 4.5 acre zoning requirement and this parcel is 4.79 acres in size and would not be inconsistent with property to the east.

## **DECISION**

**Motion by Skraba/Pineo** to approve an after-the-fact variance to allow a parcel that does not meet the minimum MU-3 dimensional standard, based on the following facts and findings:

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

1. Zoning Ordinance 62, Article III, Section 3.2 states that a dimensional district 3 requires 9 acres and 300 feet of lot width. The subject parcel is now 4.79 acres and 680 feet in lot width, where prior to subdivision in 2003, the parcel was 26.9 acres in size.
2. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

### **B. Practical Difficulty:**

1. The improper subdivision is a self-created practical difficulty. However, permit #54001 should not have been issued on the property due to the improper subdivision. In 2015, Planning and Community Development review of subdivision of property prior to recording was not required; however, legislation changed since that time to insure that improper subdivision of property for the purposes of development is not allowed.
2. The applicant has stated that he is unable to purchase additional property which consist mostly of wetland with limited building area.

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

1. The majority of the parcels in the area that are developed with homes exceed the dimensional standards that are required.
2. The density of the area will likely not change due to the predominance of wetlands and existing development to the south.

D. Other Factor:

1. The applicant purchased additional property to the east of the nonconforming property in order to meet setback requirements for the dwelling that was approved in 2015. It was at this time the applicant should have been made aware of the improper subdivision.

E. What steps were taken by the landowner to comply with county ordinances?

1. The applicant contacted the Planning Department to determine if their parcel met zoning/subdivision requirements. Upon review it was determined that the subdivision that occurred in 2003 was improper.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6183 – John and Jill Broman**

The second hearing item was for John and Jill Broman, in S18, T51N, R15W (Canosia). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article II, Section 2.4F.(4), and from Article III, Section 3.2, to allow a principal dwelling at a reduced property line setback and to exceed the allowed structure width facing the lake. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The request is to allow a 28 foot by 42 foot (1,176 square foot) dwelling with an 8 foot by 10 foot (80 square foot) covered porch. The structure size would be 1,256 square feet in size.
- B. The dwelling would be located 11 feet from the property line where 15 feet is required.
- C. The structure width facing the lake will be 56 percent where 55 percent is allowed.
- D. The proposed dwelling would replace a 20 foot by 30 foot nonconforming dwelling that was removed in February 2018.
- E. The proposed dwelling would be 20 foot 7 inches in height.
- F. The dwelling will have a 100 foot shoreline setback where 75 feet is required.

*Stephen Erickson* reviewed staff facts and findings as follows:

A. Official Controls:

1. The structure width facing the water will be 56 percent of the lot width where a maximum of 55 percent is allowed.
2. The required principal structure setback from property lines is 15 feet; the applicant's proposal will be 11 feet from property lines.
3. The required accessory structure property line setback is 10 feet in the SMU-11 zone district.
4. The parcel is a platted lot and a legal lot of record for permitting purposes.
5. The parcel is located in the Lakeshore Development Area on the Future Land Use Map found in the St. Louis County Comprehensive Land Use Plan. This area is intended for rural development and redevelopment adjacent to lakes. This includes single family residential uses in size, scale and intensity consistent with the county's developed lake shore area.

B. Practical Difficulty:

1. The applicant's lot is 50 feet in width.
2. The applicant's parcel, as well as most parcels in the plat of Caribou Lake Tracts, does not conform to current zoning requirements.
3. The plat of Caribou Lake Tracts was recorded in 1922 prior to the first zoning ordinance in St. Louis County.
4. The landowner has not clearly demonstrated why the variance is the only available option as there are alternatives.
5. Alternative: Reduce the structure width facing the lake to 20 feet which was the width of the previous dwelling. If the proposed dwelling were 20 feet in width and centered on the lot, then the proposal may be issued with a land use permit.

C. Essential Character of the Locality:

1. The applicant is proposing to use the property as a year-round cabin which is not a new use to the area.
2. This area consists of many long and narrow lots with principal structures that do not conform to the required property line setback.
3. There are 21 principal dwellings in Block 5 of the plat of Caribou Lake Tracts and 17 of the dwellings do not conform to the required property line setback.

D. Other Factors:

1. The proposed property line setback for the dwelling is consistent with the accessory structure property line setback for the SMU-11 zone district.

*Stephen Erickson* noted one item of correspondence from Keith and Beth Kirkland in support of the variance request.

**STAFF RECOMMENDATION**

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a principal dwelling at a reduced property line setback and to exceed the allowed structure width facing the lake, the following conditions shall apply:

1. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
2. The property line setback for the proposed structure shall be maximized to the greatest extent possible, and shall be no less than 11 feet.
3. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county, and shall be implemented by the property owner no later than one year from the time that a land use permit is issued.

*Jill Broman*, the applicant, stated that they have removed five structures from the property, including the old cabin. They will have one dwelling and one garage on the property. They would rather build a wider structure than build higher.

*David Hjelle*, 4310 Sugar Maple Drive, Hermantown, the contractor, stated that to build a narrower structure would be to build something like a mobile home. The dwelling would have long hallways and small, narrow rooms and would not be of reasonable use.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired if the property is part of the PLAWCS municipal system. *Stephen Erickson* stated it is not.
- B. Inquired if there is a definition for 'reasonable use' in the Ordinance. *Jenny Bourbonais*, Acting Secretary, stated there is nothing in the Zoning Ordinance that lists criteria for reasonable use.
- C. Inquired if the applicants have spoken with their southern neighbor. *Jill Broman* stated that they have spoken with their southern neighbor who is happy they are not selling their property and have cleaned it up. While all of the cabins around them may have had variances, their original cabin had a 20 foot property line setback.

## **DECISION**

**Motion by McKenzie/Skraba** to approve a variance request to allow a principal dwelling at a reduced property line setback of 11 feet where 15 feet is required and to allow 56 percent structure width facing the lake where 55 percent is allowed, based on the following facts and findings:

- A. Official Controls:
  - 1. The structure width facing the water will be 56 percent of the lot width where a maximum of 55 percent is allowed.
  - 2. The required principal structure setback from property lines is 15 feet; the applicant's proposal will be 11 feet from property lines.
  - 3. The required accessory structure property line setback is 10 feet in the SMU-11 zone district.
  - 4. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:
  - 1. The lot is only 50 feet wide. The applicant has demonstrated why a variance is an appropriate option.
  - 2. Reducing the width of the structure is not reasonable on a lot that is only 50 feet wide, while allowing a dwelling to be replaced will allow reasonable use of the property.
- C. Essential Character of the Locality:
  - 1. The variance will not alter the essential character of the locality.
  - 2. There are many long, narrow lots in the plat with nonconforming structures.
  - 3. There are 21 principal dwellings in Block 5 of the plat of Caribou Lake Tracts and 17 of the dwellings do not conform to the required property line setback.
  - 4. The proposal is consistent with required accessory structure setbacks and is consistent with neighboring dwelling setbacks.

The following conditions shall apply:

1. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
2. The property line setback for the proposed structure shall be maximized to the greatest extent possible, and shall be no less than 11 feet.
3. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county, and shall be implemented by the property owner no later than one year from the time that a land use permit is issued.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6178 – CalZion Construction**

The third hearing item was for Rick and Sally Misiewicz (landowners) and CalZion Construction (contractor and variance applicant), in S2, T50N, R16W (Solway). This is a rehearing where the applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow a principal structure to be located at a reduced property line setback, and after-the-fact relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow an accessory structure to be located at a reduced property line setback.

*Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. This is a rehearing from a variance originally heard March 14, 2019. The Board denied the variance without prejudice in order for the applicant and/or landowner to speak with the neighboring property owner about a minor boundary adjustment.
- B. The neighboring property owner was not interested in a minor boundary adjustment and submitted this in writing.
- C. The applicant brought the original request back in order for the Board of Adjustment to decide on the variance with the knowledge that there will be no minor boundary adjustment.
- D. The applicant is requesting an after-the-fact variance for a principal structure to be located at a reduced property line setback.
- E. The newly-built dwelling is currently located 19.6 feet from the property line where 50 feet is required.
- F. The applicant applied for and received a land use permit for a new dwelling to be located at a 75 foot property line setback. The dwelling was relocated without Planning Department review and was constructed 19.6 feet from the property line.
- G. The applicant is also requesting an after-the-fact variance for an accessory structure to be located at a reduced property line setback.
- H. The newly-constructed accessory structure (garage) slab/foundation is located 17.4 feet from the property line where 25 feet is required.
- I. The applicant applied for and received a land use permit for a new accessory structure to be located 25 feet from the property line. The garage was relocated without Planning Department review and a slab for the structure was poured 17.4 feet from the property line.

- J. A survey of the property line was conducted during construction which revealed the errors. However, construction of the home was continued and completed.
- K. The zone district is Forest Agricultural Management (FAM)-3.
- L. There are wetlands located on the property.

*Stephen Erickson* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62, Article III requires a 50 foot property line setback for principal structures and a 25 property line setback for accessory structures, in a FAM-3 zone district.
- 2. The St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 4. Through the Land Use Goals, Objectives and Implementation sections, 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.

B. Practical Difficulty:

- 1. There are no unique physical circumstances of the property.
- 2. A variance is not the only option as Land Use permits were issued for both the dwelling and garage at conforming locations.
- 3. There are alternatives that do not require a variance.
  - a. Alternative: a minor boundary adjustment may be done to obtain more land to meet conforming setbacks.
    - i. The applicant pursued the minor boundary adjustment alternative. However, the neighboring property owner stated they were not interested in doing a minor boundary adjustment.
  - b. Alternative: relocate structures to conforming setbacks as originally permitted.
- 4. The dwelling was constructed and the garage slab was poured prior to seeking approval of the revised locations by the Planning Department.
- 5. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states:
  - a. "The plight of the landowner is due to circumstances unique to the property not created by the landowner."
  - b. "Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance."
- 6. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.iv states:
  - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, section 394.27 subdivision 7 and all acts amendatory thereof.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area, the dwelling will be used as a year-round residence.
2. The neighboring parcel to the west was granted a variance in 1988 to allow a principal structure at a reduced property line setback. The 1988 variance on the neighboring property does not indicate the reasoning or approval criteria for allowing a structure at a reduced property line setback.

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. When any land use permit is issued, it is sent with a cover letter that states: "if any changes in design of location are made to what was requested and approved, you must contact the Department for additional approval."
3. The certificate of survey dated July 20, 2018 states the required property setback is 50 feet for principal structures and 25 feet for accessory structures, under 'surveyor's notes.'

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

1. The applicant stated that construction on the home has been completed while construction on the garage has been stopped and is currently a slab.
2. The applicant applied for a land use permit for the principal structure in May 2018. In that application, the applicant indicated that the structure would conform to the required setbacks.
3. The applicant applied for a land use permit for an accessory structure in July 2018. In that application, the applicant indicated that the structure would conform to the required setbacks.
4. The applicant stated that the construction began in June 2018 and was completed in December 2018. The survey submitted showing location of the house and garage is dated July 30, 2018. A revised survey was completed on August 27, 2018. This revision added an electric utility easement to the July 30, 2018 Certificate of Survey according to the survey submitted by the applicant.

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

1. The County would benefit by enforcement of the ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan.
2. Approval of an after-the-fact variance for structures that were permitted at conforming locations without sufficient practical difficulty is not in keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

*Stephen Erickson* noted the resolution from the Town of Solway that would support the Board of Adjustment's decision if they approved the variance. This correspondence had been previously noted during the March 14, 2019 variance hearing and was provided to the Board prior to this hearing.

### **STAFF RECOMMENDATION**

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow after-the-fact relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow a principal structure to be located at a reduced property line setback, and after-the-fact relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow an accessory structure to be located at a reduced property line setback, the following condition shall apply:

1. Stormwater runoff shall not discharge directly onto adjacent properties.
2. In the event that the structures are rebuilt or moved any distance, they shall meet all Zoning Ordinance requirements.

*Rick Misiewicz*, the landowner, stated he had never built a home before. He relied on the builder and the person doing the site prep work to know the property line setbacks which were said to be 25 feet for a principal structure and 15 feet for an accessory structure. Because the builder had been constructing structures for years, it was assumed that these setbacks were correct. He is upset that both buildings were off and that neither met setback requirements. The house was originally 38 feet from the property line, but was rotated in order to allow more afternoon sunlight. The builder sited this structure.

There were a number of trees removed for the utility easement. In order to preserve cutting down even more trees, he located the garage away from them. He sited the garage slab at its present location. He learned that his neighbor needed a variance for her dwelling to be located 25 feet from the property line and learned that the setbacks were not what he had originally thought. They stopped construction once he realized the structure would not meet the actual setbacks.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired about the garage slab and if the structure could be moved to a conforming setback. *Rick Misiewicz* stated the slab is 28 foot by 30 foot. He sited the garage at its current location so as not to remove any more trees. To move the structure to the conforming setback he would need to remove a number of white pine trees.
- B. The garage would serve as a buffer between the two dwellings. While the garage could be moved to a conforming location, it does break up the sightlines between the two houses next door to one another.
- C. There needs to be a way for contractors to be held responsible as they should know what the setback requirements are before they site any structure.
- D. Inquired what the zone district requirements are. *Stephen Erickson* stated this is a Forest and Agriculture Management (FAM)-3 zone district, which requires 9 acres. The applicant has about 10 acres.

- E. There is still an opportunity for a minor boundary adjustment in order to not require a variance. However, the adjoining property owner should not be pressured into any land exchange.

## **DECISION**

**Motion by Skraba/Svatos** to approve an after-the-fact variance to allow a principal structure to be located at a reduced property line setback of 19.6 feet where 50 feet is required and to approve an after-the-fact variance to allow an accessory structure to be located at a reduced property line setback of 17.4 feet where 25 feet is required, based on the following facts and findings:

A. Official Controls:

1. The variance request is partially in harmony with the general intent of official controls.
2. This error was not done on purpose.
3. The neighboring property owner is okay with the property line setback variance and does not want to pursue a Minor Boundary Adjustment to correct the error.
4. Even if a Minor Boundary Adjustment were used to resolve the issue, the location of the buildings would remain the same.

B. Practical Difficulty:

1. Other than the error, there is a wetland located to the east. If everything is moved to a different location, the septic area would be located closer to the wetlands.
2. The landowner is trying to preserve white pine trees.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area as the dwelling will be used as a year-round residence.
2. The neighboring parcel to the west was granted a variance in 1988 to allow a principal structure at a reduced property line setback of 25 feet.

D. Other Factor:

1. The error could have been caught or prevented. It should be the contractor's responsibility to know what the setbacks are.

The following conditions shall apply:

1. Stormwater runoff shall not discharge directly onto adjacent properties.
2. In the event that the structures are rebuilt or moved any distance, they shall meet all Zoning Ordinance requirements.

**In Favor:** Filipovich, McKenzie, Pineo, Skraba, Svatos, Werschay - 6

**Opposed:** Pollock - 1

**Motion carried 6-1**

**Motion to adjourn by Skraba. The meeting was adjourned at 1:13 p.m.**