

**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, AUGUST 17, 2023.**

9:00 AM – 1:30 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

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

**NEW BUSINESS:**

- A. Joseph Cybert, S36, T63N, R18W (Beatty)
- B. Ryan Nelson, S5, T68N, R19W (Unorganized 68-19)
- C. Thomas Lundquist, S34, T60N, R18W (Unorganized)
- D. Amy Heikes, S36, T53N, R15W (Unorganized)
- E. Ann Chouinard, S22, T53N, R13W (North Star)

**OTHER BUSINESS:**

None.

**NEW BUSINESS:**

**Joseph Cybert**

The first hearing item is for Joseph Cybert, property is located in S36, T63N, R18W (Beatty). 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 dwelling at a reduced shoreline setback, to exceed allowed structure width facing the water and to exceed allowed height for a structure located between the shore impact zone and the required shoreline setback. *Skyler Webb*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a new 1,920 square foot dwelling at a reduced shoreline setback that will exceed the allowed 40 percent structure width and exceed the maximum height allowed.
- B. The new dwelling will have a shoreline setback of 50 feet where 75 feet is required.
- C. The applicant is proposing to construct a new dwelling with 50 feet of the structure facing the shoreline where 40 feet is allowed and at a structure height of 30 feet where 25 feet is allowed.

*Skyler Webb* reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.4, states that the shoreline setback on a General Development lake is 75 feet. The applicant is requesting a dwelling setback of 50 feet from the lake.
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. The applicant is proposing 50 feet of the structure to face the shoreline where 40 feet is allowed.
3. Zoning Ordinance 62 Article IV, Section 4.3 D., allows a nonconforming structure up to 25 feet in height maximum if all or any part of the structure is between the shore impact zone and the required setback. The applicant is proposing a structure height of 30 feet.
4. 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.
5. 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.
6. 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 right-of-way setback of 15 feet and shoreline setback of 75 feet, there is limited area on the riparian portion of the property where the proposed structure could meet both setbacks.
2. Reducing the size and configuration of the structure could eliminate and reduce the request for variances.
3. A variance is not the only option, as there are alternatives:
  - A 400 square foot addition up to 25 feet in height would be allowed through a Performance Standard Permit.
  - Relocate the proposed dwelling to a location that conforms to all required setbacks on the non-riparian area of the parcel. The proposal would then be allowed with a land use permit.

C. Essential Character of the Locality:

1. The neighborhood consists of nonconforming parcels with dwellings at reduced shoreline setbacks.
2. The applicant is not proposing a new use to the area.
3. There have been no similar variance requests within the plat.

D. Other Factors:

1. The structure will conform to property line, roadway, and septic tank setbacks.

2. St. Louis County On-Site 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 On-Site Wastewater Division to obtain a septic permit prior to the issuance of a land use permit.
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.

*Skyler Webb* noted no items of correspondence.

### **RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance to allow a dwelling at a shoreline setback of 50 feet where 75 feet is required, a structure width facing the water of 50 feet parallel to the shoreline where 40 feet is allowed, and a structure height of 30 feet where 25 feet is allowed 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 discharge directly into the lake or on adjacent lots.
3. St. Louis County On-site Wastewater SSTS standards shall be followed.
4. The structure shall be placed at a shoreline setback of 50 feet or greater to maximize setbacks to the greatest extent possible.

*Joseph Cybert*, 4639 Bluebell Trail North, Medina, the applicant, stated the new structure would be 36 feet from the centerline of Soderholm Beach Road. They are not trying to build anything extravagant. This property has been in his family for four decades. It was recently transferred into his ownership, so he wants to make improvements to the property. They want four bedrooms to accommodate the family that will be up there to use the property. The reason they want the dwelling at its location is to have a basement with two bedrooms and save money versus the cost of building two stories up. They intend to have a basement with a single story above it. His father has impaired mobility and he would like his father to be able to get out and access the property through the walkout basement.

*Rita Reinhart* stated she is just listening in. No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked if staff had anything that would show what the proposed structure would look like. *Skyler Webb* stated she had not received building plans.
- B. Board member *Manick* asked what community health and safety means when referenced in Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan. *Donald Rigney*, Acting Secretary, stated examples of protecting community health and safety would be meeting setbacks from a septic, keeping shoreline setbacks for future clean water, and runoff hurting water quality. Board member *Manick* stated that safety could be not removing this structure six inches from a busy road. This is not for the individual as much as it is for the community.

- C. Board member *Werschay* asked what the existing dimensions of the dwelling and deck are. *Jeff Cybert* stated the existing structure is currently 28 feet wide with a 12 foot wide deck.
- D. Board member *Pollock* asked about the staff alternative of relocating the structure to a conforming location on the non-riparian part of the property. *Skyler Webb* stated this would be north of Soderholm Beach Road. A wetland delineation would be required to build in this area. The applicant is proposing a garage on the non-riparian part of the parcel. That would be at a 171 foot shoreline setback. Board member *Pollock* asked how close the dwelling could be moved to the road. *Skyler Webb* stated the required setback is 15 feet and the structure could be moved about 20 feet back. Board member *Pollock* asked how many people are on this private road. Board member *Coombe* stated the road ends right after this property.
- E. Board member *Pollock* asked if the structure was moved to a zero foot road right-of-way setback there would be 36 feet gained. There would be an 86 foot shoreline setback which would be conforming. There is an option to build this structure correctly and they would not need a shoreline variance.
- F. Board member *McKenzie* asked if staff worked with the applicant to site this structure on this parcel in a way that would work for them. *Skyler Webb* stated when the applicant came to them, Land Use staff discussed the proposal. The reason why the landowner chose this location was because a wetland delineation would be required for the non-riparian part of the parcel. With both a road right-of-way and shoreline setback, there is limited area to meet both setbacks on the riparian part of the parcel. Board member *Pollock* stated that a zero foot road right-of-way setback is allowed on a private road. Board member *McKenzie* noted that there was no setback distance between the proposed structure and the road. Is there anything in the way like a well or the septic system?
- G. Board member *Coombe* asked if Soderholm Beach Road is a county road and not a private road. *Skyler Webb* stated Soderholm Beach Road is a private, local road.
- H. Board member *Manick* stated that with a walkout basement there will be some excavation and the structure is only 50 feet from the shoreline. There is no practical difficulty in moving the structure back from the lake. The location, structure height, and walkout basement are desires. There is room between the existing cabin and the road for a new structure that could be in a practical location. There may need to be some trees removed. With a walkout basement, that is a two story structure.
- I. Board member *Pollock* asked if the deck has a roof over it. *Jeff Cybert* stated that it does. Board member *Pollock* asked if the applicant is proposing a structure width of 58 feet including the deck. *Jeff Cybert* stated the dwelling will be 30 feet in width and there would be an 18 foot wide deck. This would be a 48 foot width. Board member *Pollock* stated if the applicant moved away from the shoreline the structure width could be 55 feet wide. He asked if this deck would be allowed in the shoreland area. *Skyler Webb* stated this may be allowed with a land use permit, but the Ordinance states it may not exceed 12 feet in depth. There is no width requirement. She spoke with the landowner who did say that they would keep the deck to 12 feet in depth.
- J. Board member *Coombe* stated the MN Supreme Court verbiage on practical difficulty was changed ten years ago to say that the plight of the landowner due to unique circumstances beyond the landowner's control and to use the property in a reasonable manner not permitted by official controls. The practical difficulty has a trapezoid-shaped property on the riparian side. While the structure could be moved back, there is still a grade. *Jeff Cybert*

stated the grade is about 16 feet. Board member *Coombe* added with a walkout basement there would not be much excavation. *Jeff Cybert* stated the excavation would be the top of the mound and down six to eight feet. With the excavation, they would not require a second story. He was not aware of the zero foot private road right-of-way setback. The size of the structure is less than what the existing structure is. He could otherwise do a 400 square foot addition to the existing structure.

- K. Board member *Coombe* asked if the applicant could keep the structure out of the shore impact zone, beyond 50 feet. *Jeff Cybert* stated yes. He requested 50 feet from the shoreline and will try and get the structure back as far as he can.
- L. Board member *McKenzie* asked if there is a plan because the variance narrative did not indicate there was one. The size of the deck was discussed, and the screened porch could be sized down to fit with the size of the structure. There is no information on the structure height without knowing if there will be a walkout basement or not. There is not enough information to make an informed decision.
- M. Board member *Coombe* asked about the soil where the excavation would be. *Jeff Cybert* stated they do not know the soils and will not know the soils. The builder saw gravel material under their current cabin's crawlspace. They may be expecting boulders that would need to be removed with machinery. They will not know until they dig more. The builder wanted to complete the variance process first and then put plans together once they know whether or not they can excavate. They have rough ideas of what they will do.
- N. Board member *Pollock* stated there are three variances being requested: shoreline setback, lot width, and structure height. There is no plan, and the applicant does not know what will happen. There is not enough information. Board member *Manick* stated the structure could be moved back more towards the road and that may require more excavation. It should not be presumed that all three variances will be approved. The Board can approve any one of them. Board member *Werschay* stated if the walkout basement is included, the structure height variance would not be needed. Board member *Manick* added that the Board knows nothing about the basement or if the height would be required or not. Board member *Werschay* stated that the Board could restrict the structure height if a walkout basement were allowed. Board member *Pollock* stated there are still things the landowner can do, such as change the structure width. The applicant is applying for a wish list without a set plan. This may be a case to deny without prejudice to get more information. Board member *McKenzie* agreed and stated there is not enough information to make an informed decision. Board member *Coombe* stated he is not concerned about the basement or the two story structure. It will be one or the other. The applicant cannot be expected to dig into the ground that close to the lake or provide soil information. Board member *Svatos* asked if the Board should deny without prejudice. Board member *Pollock* stated denial without prejudice is an option and so is a denial.
- O. Board member *McKenzie* asked if denying without prejudice would allow the applicant to continue working with staff to come up with additional information without an additional cost. *Donald Rigney* stated that it would still require a rehearing fee, which is \$210. For a denial, the applicant would only be allowed to come back if the request were significantly different. If the Board would like the applicant to provide more information, a denial without prejudice would be a better option.
- P. Board member *Manick* asked if the 16 foot by 26 foot deck is outside of the proposed shoreline setback of 50 feet. *Skyler Webb* stated that the applicant is aware they would need

to reduce the depth of the deck to 12 feet to meet ordinance requirements. That deck could be issued with a land use permit.

- Q. Board member *Manick* stated that he would prefer to see a condition that if there is a walkout basement, the height variance would not be allowed. Board member *Coombe* stated with a walkout basement the structure will not be as high. Board member *McKenzie* stated the Board is making assumptions without knowing if there is a plan. There can be some negotiation if the applicant is willing to give up something in order to get a variance for something else. Board member *Pollock* stated all three variances would need to be addressed.
- R. Board member *Werschay* stated that she would prefer for the applicant to not deal with wetlands. Board member *McKenzie* agreed that building beyond the road would not be preferred.

### **FIRST MOTION**

**Motion by Coombe/Filipovich** to approve a variance for a 1,920 square foot dwelling at a shoreline setback of 50 feet where 75 feet is required, a structure width facing the water of 50 feet parallel to the shoreline where 40 feet is allowed, and a structure height of 30 feet where 25 feet is allowed, based on the following facts and findings:

A. Official Controls:

1. One of the intents of the Zoning Ordinance is to encourage the most appropriate use of the land in the county and to promote orderly development.
2. This property has been in the applicant's family since approximately 1987 and the existing structure needs to be replaced. The current structure is only 560 square feet.
3. The present structure is not what is considered American Disabilities Act (ADA) compliant for the applicant's father.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The access road does not follow the actual platted road. The present road cuts the property into basically two pieces; the lakeside half being like a trapezoid and the other non-riparian being far from the lake. With the trapezoid-shaped property it is almost impossible to meet all setbacks.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. This is a neighborhood with many nonconforming parcels and nonconforming dwellings. The new structure as proposed will be further from the lake than the current structure.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant has installed a 1,500 gallon septic tank which was added in 2014 to replace an old system that was failing.
2. The old 20 foot by 20 foot cabin with its decks will be removed.
3. Most of the cabin will be setback further from the lake than the current structure.

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 structure shall be placed at a shoreline setback of 50 feet or greater to maximize setbacks to the greatest extent possible.
5. If the applicant has the ability to install a walkout basement, the structure height shall not be greater than what the Ordinance allows. If the applicant is unable to add a basement, the applicant will be allowed a structure height of 30 feet.
6. St. Louis County Solid Waste Ordinance 45 standards shall be followed.

**In Favor:** Coombe, Filipovich, Werschay - 3

**Opposed:** Manick, McKenzie, Pollock, Svatos - 4

**Motion fails 3-4**

#### **DISCUSSION ON FIRST MOTION**

- A. Board member *Pollock* stated that the height variance has not been maximized. It was not addressed that the structure could be moved back further to maximize the distance from the lake. The structure width facing the lake was not addressed. The applicant can build at a 50 foot shoreline setback. The applicant is getting exactly what he wants.
- B. Board member *Manick* asked if the Board is setting precedent by including ADA compliance. Board member *Coombe* stated that he can remove that. Board member *Werschay* added that Board member *Pollock* has added health and safety factors before in variance approvals. Board member *Pollock* agreed but added that he does not add anything about the ADA. Board member *Coombe* stated he would remove that part.
- C. *Donald Rigney* stated that when a motion fails, there is the opportunity to make a second motion. If that motion also fails, the variance is denied. Because this motion was not approved, that does not mean the variance is denied.

#### **SECOND MOTION**

**Motion by Manick/Pollock** to deny a variance for a 1,920 square foot dwelling at a shoreline setback of 50 feet where 75 feet is required, a structure width facing the water of 50 feet parallel to the shoreline where 40 feet is allowed, and a structure height of 30 feet where 25 feet is allowed, based on the following facts and findings:

- A. Official Controls
  1. Zoning Ordinance 62, Article III, Section 3.4, states that the shoreline setback on a General Development lake is 75 feet. The applicant is requesting a dwelling setback of 50 feet from the lake.
  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. The applicant is proposing 50 feet of the structure to face the shoreline where 40 feet is allowed.
  3. Zoning Ordinance 62 Article IV, Section 4.3 D., allows a nonconforming structure up to 25 feet in height maximum if all or any part of the structure is between the shore

impact zone and the required setback. The applicant is proposing a structure height of 30 feet.

4. 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.
5. 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.
6. 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.
7. The variance request is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. With a right-of-way setback of 15 feet and shoreline setback of 75 feet, there is limited area on the riparian portion of the property where the proposed structure could meet both setbacks.
2. Reducing the size and configuration of the structure could eliminate and reduce the request for variances.
3. A variance is not the only option, as there are alternatives:
  - A 400 square foot addition up to 25 feet in height would be allowed through a Performance Standard Permit.
  - Relocate the proposed dwelling to a location that conforms to all required setbacks on the non-riparian area of the parcel. The proposal would then be allowed with a land use permit.
4. Practical difficulty has partially been demonstrated in complying with the official controls. There was no practical difficulty for the structure width facing the lake. There are ways to mitigate the structure width facing the lake. The height is still an unknown. There are too many questions with the plan.

C. Essential Character of the Locality:

1. The neighborhood consists of nonconforming parcels with dwellings at reduced shoreline setbacks.
2. The applicant is not proposing a new use to the area.
3. There have been no similar variance requests within the plat.
4. The variance request will not alter the essential character of the locality. This will not be a Taj Mahal. The structure may need to be 30 feet in height. The shoreline is important.

D. Other Factors:

1. The structure will conform to property line, roadway, and septic tank setbacks.
2. St. Louis County On-Site 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 On-Site Wastewater Division to obtain a septic permit prior to the issuance of a land use permit.
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.

## **DISCUSSION ON SECOND MOTION**

- A. Board member *Werschay* asked if the motion could be changed to be a denial without prejudice. The applicant would be able to return with a new plan. Board member *Manick* stated he would be okay with a denial without prejudice.
- B. Board member *Coombe* stated the existing structure is nonconforming and can be expanded where it is. If the structure is not expanded, the state would allow him to tear that structure down and replace like for like. Board member *Pollock* disagreed and stated the applicant would be able to add none of the variance requests he wanted. The applicant can work with staff.
- C. Board member *Manick* stated that the applicant could get a performance standard permit for a 400 square foot addition. If there was no practical difficulty, the Board of Adjustment would have no reason to be here.
- D. The second motion was altered to a denial without prejudice.
- E. *Donald Rigney* requested direction on what the applicant may need to focus on in order to return to the Board of Adjustment: if a structure needs to be reconfigured to lessen the structure width facing the lake variance or if the structure needs to be moved to maximize shoreline setback to the greatest extent, etc.
- F. Board member *McKenzie* asked if conditions would be allowed on a denial without prejudice. *Donald Rigney* stated no. What information needs to be provided for the Board to make a more informed decision should be stated in the motion, but without conditions.

## **DECISION**

**Motion by Manick/McKenzie** to deny a variance for a 1,920 square foot dwelling at a shoreline setback of 50 feet where 75 feet is required, a structure width facing the water of 50 feet parallel to the shoreline where 40 feet is allowed, and a structure height of 30 feet where 25 feet is allowed, without prejudice, in order for the applicant to return with additional information on what the structure will look like and to determine if all three variance requests are required: to maximize the shoreline setback, minimize the structure width facing the lake, and to know if a walkout basement could be added in order to determine what structure height will be allowed.

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

**Opposed:** Coombe - 1

**Motion carried 6-1**

## **Ryan Nelson**

The second hearing item is for Ryan Nelson, property is located in S5, T68N, R19W (Unorganized 68-19). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV,

Section 4.3 D, to allow a nonconforming principal structure to exceed allowed structure width facing the water, and to exceed allowed height for a structure located between the shore impact zone and the required shoreline setback. *Skyler Webb*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 2,160 square foot dwelling with a structure width facing the water of 44 feet where 40 feet is allowed, and at a structure height of 32 feet where 25 feet is allowed.
- B. There is an approved variance on file to allow a 2,160 square foot nonconforming principal dwelling to be located at a reduced shoreline setback of 53 feet and a reduced road centerline setback of 36 feet that has not yet been constructed.
- C. The current variance request is in addition to the approved variance request from December 2021.
- D. The parcel contains a garage and septic holding tank. The previous dwelling has been removed.

*Skyler Webb* reviewed staff facts and findings as follows:

- A. Official Controls:
  1. St. Louis County 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. The applicant is proposing 44 feet of the structure to face the shoreline where 40 feet is allowed.
  2. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a nonconforming structure up to 25 feet in height maximum if all or any part of the structure is between the shore impact zone and the required setback. The applicant is proposing a structure height of 32 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 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 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 is an approved variance on file from 2021 and the applicant could proceed with the approved variance proposal.
    - a. The variance approval from December 2021 was to create a 2,160 square foot dwelling at a reduced shoreline setback of 53 feet and a reduced road centerline setback of 36 feet.
    - b. The approved structure was proposed to have a width of 30 feet and a height of 22 feet.
    - c. The previous variance request did not include a request for height or structure width facing the water.

2. Reducing the size and configuration of the structure could eliminate and reduce the request for variances. As proposed, the structure size and configuration are considered a self-created practical difficulty.

C. Essential Character of the Locality:

1. The neighborhood consists of nonconforming parcels with small cabins at reduced setbacks.
2. The applicant is not proposing a new use to the area.
3. There have been no similar variance requests approved in the neighborhood.

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. The applicant did not include structure height or width facing the shoreline in the previous variance request.

*Skylar Webb* noted no items of correspondence.

## **RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance for a 2,160 square foot nonconforming dwelling with a structure width facing the water of 44 feet parallel to the shoreline where 40 feet is allowed and a structure height of 32 feet where 25 feet is allowed as proposed include, but are not limited to:

1. A plan to enhance vegetation and protect the shore impact zone shall be submitted prior to issuance of a land use permit.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. Lot coverage of the parcel shall not exceed 25 percent.
4. The stormwater runoff from the proposed structure shall not directly discharge into the river or on adjacent lots.

*Ryan Nelson*, 2601 6th Avenue SE, Willmar, the applicant, stated when he asked for the 2021 variance, he did not fully understand the nonconforming versus conforming lot situation. He thought he was working with a conforming lot's setbacks and height requirement. His original proposal was to have a straight dwelling without a garage to the side. At the 2021 hearing, he agreed to reduce the road setback from 32 feet to 36 feet and would need to move the garage to the side or else reduce the length to 24 feet. He would request a 28 foot long garage for boat storage. The garage length increased the structure width of the dwelling from 30 feet to 44 feet. The garage width is towards the back of the house, not the front closer to the river. The structure height is to get the rooflines to line up and to be able to clear snow from the roof. After his land use permit was denied, he went back to the person doing the site plans and they discussed what they could and could not do. With a 25 foot structure height, they would end up with a flat roof. The second story would have a five foot sidewall instead of a six to seven foot sidewall. The property lines are not accurate on the aerial maps, but his sketch is correct. The neighbor's garage is closer to the shoreline than his will be. The other neighbor's house is 25 feet in height but should only be 20 at the shoreline setback. The neighbors are aware of what he is trying to do, and nobody

has had an issue with this. These are the changes made after the last variance approval. On the river, there are other houses that exceed structure width and exceed structure height. His proposed dwelling would not look out of place. His neighbor has a drainfield which he cannot have. The neighbors have a garage across the road whereas he does not have property across the road for a garage.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Manick* asked what configuration the roofline would be. *Ryan Nelson* stated the roof would have a north-south configuration. The roofline would be opposite of the old cabin. Part of the reason they worked with the roof pitch was they wanted to follow the pitch of the house roof. There will be a little pitch change because the buildings offset.
- B. Board member *Manick* stated the other buildings he has seen driving in the area are not riverside. Some of the commercial buildings are higher. Cabins that may have the higher structure height are across the road and would not block anyone's existing view.
- C. Board member *Coombe* stated this is basically a redesign of the first variance request from 2021. *Ryan Nelson* stated they went back to do a redesign, not understanding the difference between conforming and nonconforming. Losing that four foot setback from the road meant they added the width to the side. Board member *Coombe* stated during the 2021 hearing it was suggested the applicant make the structure wider in order to extend the road setback. The applicant is doing what the Board had asked him to do in 2021.
- D. Board member *McKenzie* stated the applicant has a variance approval. This was not a variance denial. Board member *Coombe* stated that what was approved did not work for the applicant. The applicant could have made it work, but he chose instead to come back for another variance.
- E. Board member *McKenzie* asked what the practical difficulty is here. Board member *Coombe* stated that practical difficulty is how the applicant wants to use their property in a way not allowed by ordinance. Board member *Manick* stated this is a self-created practical difficulty. This request is a desire. The Board needs proof that the standards cannot be met. Board member *Coombe* stated any variance is a desire to build something on a nonconforming lot. With practical difficulty, the Board of Adjustment has the power to approve any variance. The property owner is proposing to use the property in a reasonable manner not allowed by official controls and due to the circumstances unique to the property. Board member *Manick* noted that there are areas along the river where there is ledge rock and people are not able to build. The applicant already has a variance and can build. Board member *McKenzie* stated a person can have an entirely conforming property and can use it in a reasonable manner and to use it in ways not permitted by official controls. Just because someone wants something does not mean the Board should consider it a reasonable request. That is not the intention of the statute. Board member *Coombe* stated that the applicant's request is reasonable meaning the applicant wants to use the property in a way that is not allowed. Board member *Manick* stated it all depends on what defines "reasonable." Board member *Pollock* stated there is also a need to justify what circumstances are unique to the property.
- F. Board member *Svatos* asked if the applicant is applying for something that was suggested to him at the 2021 hearing. Board member *Coombe* stated this was only a suggestion and

it was not a part of the motion. Board member *Manick* stated previous Board member *Skraba* had asked the applicant if he would consider a wider structure than depth as he was concerned the applicant would back out onto the road.

- G. Board member *McKenzie* stated his concern is the structure height. Board member *Manick* added there are not many tall buildings on this side.
- H. Board member *Manick* stated the applicant is still allowed a 2,160 square foot dwelling. Board member *Werschay* stated she agreed with a structure width that is four feet wider. She does not agree with the structure height.

## DECISION

**Motion by McKenzie/Manick** to deny a variance for a 2,160 square foot nonconforming dwelling with a structure width facing the water of 44 feet parallel to the shoreline where 40 feet is allowed and a structure height of 32 feet where 25 feet is allowed, based on the following facts and findings:

### A. Official Controls:

1. St. Louis County 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. The applicant is proposing a structure width of 44 feet facing the shoreline where 40 feet is allowed.
2. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a nonconforming structure up to 25 feet in height maximum if all or any part of the structure is between the shore impact zone and the required setback. The applicant is proposing a structure height of 32 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 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 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. Official controls exist for several reasons, to direct controls to where appropriate and identifies limitations on size, height, width, etc.
7. The applicant's request will be for a wider structure than what is permitted and requesting a structure height greater than what is permitted with no apparent justification.
8. The variance request is not in harmony with the general purpose and intent of official controls.

### B. Practical Difficulty:

1. A variance has been granted to this applicant on this parcel in 2021 on a lot that is too small when a structure was proposed then.
2. The applicant is now proposing a structure with a greater width and a greater height than what is permitted. Staff, at that time, considered any type of practical difficulty

to be self-created. The applicant will not be denied reasonable use of the property if the variance is denied.

3. Practical difficulty has not been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. In context of the zoning regulations that were in effect at the time the character of the locality was developed, the proposed structure would not affect the essential character of the locality.
2. In the context of the situation that exists today on and around this parcel, a structure exceeding the height restrictions would affect the character of the immediate locality.
3. The parcel is small and open and has maybe two trees on it, one of which is dead.
4. Any structure on the lot will be completely visible from the roadway and the river. There are several residences across the road from the parcel in question whose view of the river would be affected.
5. To grant the applicant a variance for greater width and height than the Ordinance allows will have a greater effect on the neighbors.
6. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. No correspondence was received on this case.

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

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

**Motion carried 4-3**

**Thomas Lundquist**

The third hearing item is for Thomas Lundquist, property is located in S34, T60N, R18W (Unorganized). The applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.6 A., to allow an attached deck to a nonconforming principal structure that extends toward the water body to exceed 12 feet in depth. *Paul Butler*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing an after-the-fact variance for a 14 foot by 20 foot (280 square foot) attached deck.
- B. The deck is 14 feet in depth extending toward Sand Lake where no greater than 12 feet in depth is allowed.
- C. The stairs extend eight feet towards the lake from the edge of the deck.
- D. The structure meets all other required setbacks.

*Paul Butler* reviewed staff facts and findings as follows:

A. Official Controls:

1. St. Louis County Zoning Ordinance 62, Article IV, Section 4.6 A., requires that a deck on a nonconforming principal structure that extends toward the water body not to exceed 12 feet in depth. The applicant is proposing a depth of 14 feet.
2. 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.

3. 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.
4. 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. The subject property conforms to the minimum zoning requirements for lot size.
  - a. A variance is not the only option. A land use permit can be issued for a deck meeting ordinance requirements. This would require that two feet be removed from the existing deck.
3. 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."
4. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.vi 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. Many of the parcels are year-round residential use.

D. Other Factor:

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.

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

1. Construction was completed prior to applying for variance.
2. The applicant submitted a land use permit for an accessory structure. In the review process staff discovered that the deck was built without a land use permit.
3. The applicant was made aware of and discussed the alternatives that do not require a variance with staff and elected to pursue a variance instead of bringing the property into compliance.

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

1. The county would benefit by enforcement of the Ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
2. Approval of an after-the-fact variance for a deck that was not permitted without sufficient practical difficulty is not keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

*Paul Butler* noted no items of correspondence.

## **RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance for a deck extending toward the water body to be 14 feet in depth include, but are not limited to:

1. The stormwater runoff from the proposed structure shall not directly discharge onto adjacent properties or into the lake.
2. All other zoning ordinance standards shall be met.

*Thomas Lundquist*, 8826 East Point Drive, Britt, the applicant, stated he found out he was not in compliance when he applied for a land use permit for a garage. He had been working on this house for the past seven to eight years. He is asking for a variance to keep the deck which took him weeks to build last summer. He lives at this residence full time. He had been told during the building process that it was not included in the build if it was not attached to the house.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if the stairs extending out eight feet from the deck are taken into consideration. *Paul Butler* stated that they are.
- B. Board member *Werschay* asked if there are additional stairs off the deck. *Paul Butler* stated there is another shorter set of stairs that go off to the side of the deck.
- C. Board member *Pollock* asked if the stairs count towards the square footage of the deck itself. *Paul Butler* stated they do. *Donald Rigney*, Acting Secretary, stated the way staff interprets this is if the stairs are four feet or less, they would have no impact on the depth. Anything over four feet in width extending towards the lake would be considered part of the deck. This is based on the walkway and staircase standards in the ordinance. Board member *Pollock* asked if that means that four feet or less wide stairs can be left alone. *Donald Rigney* stated yes. The concern is the 14 foot depth of the deck itself. *Paul Butler* stated the steps do not appear to be four feet wide.
- D. Board member *Manick* asked what the shoreline setback is. *Paul Butler* stated Sand Lake has a 75 foot setback. Board member *Manick* stated that the steps would count then because the deck does not meet the shoreline setback. *Paul Butler* stated he measured 38 feet from the steps to the ordinary high water mark (OHWM).
- E. Board member *McKenzie* asked if the variance request is for the attached deck. The stairs are not mentioned in the variance request.
- F. Board member *McKenzie* asked if the applicant was present when staff went out to look at the site. *Thomas Lundquist* stated he was. Board member *McKenzie* asked if the applicant had been told he was two feet too large at the time and could have removed two feet of



deck to not have to go through the variance process. *Thomas Lundquist* stated he loves his deck and would have to cut the rebar and other materials back to shorten the deck. Board member *McKenzie* asked if the applicant is aware of the regulations that limit the size of decks. *Thomas Lundquist* stated he has applied for every other permit and was not trying to get away from applying. He will only get the land use permit for his garage if the variance is approved.

- G. Board member *Manick* asked the applicant if the stairs were four feet wide or less. *Thomas Lundquist* stated they are.
- H. Board member *Pollock* stated the applicant may not get to where the support posts are if he removes two feet of depth from the deck. The applicant would not have to rip off the deck.
- I. Board member *Pollock* asked why there was no double charge for an after-the-fact variance. It was formerly the discretion of the Director. *Donald Rigney* stated that when there are compliance issues, the landowner is given a period of two weeks to respond. This applicant responded within that two weeks and is trying to bring the property into compliance by getting a variance approved. The after-the-fact fee is double the \$650 variance fee which would be \$1,300.
- J. Board member *McKenzie* asked how rebar is a factor on this property. *Thomas Lundquist* stated all of the posts would have to be taken apart to shorten the length.
- K. Board member *Werschay* asked if the applicant came in to get a land use permit. *Thomas Lundquist* stated he did the permit online and found out later that he was not in compliance.
- L. Board member *McKenzie* asked if it was a staff person that gave the applicant advice about an attached versus detached deck. *Thomas Lundquist* stated it was not.
- M. Board member *Coombe* asked if the applicant is allowed a deck in front of his house. It is just two feet too deep. *Paul Butler* stated yes. Board member *Manick* asked if the deck was built without a permit. *Paul Butler* stated it was. A permit is needed if the variance is approved.
- N. Board member *Pollock* stated the dwelling is 60 feet from the shoreline where 75 feet is required. *Donald Rigney* stated the deck can be 12 feet closer to the shoreline.
- O. Board member *Coombe* asked if the applicant could have a deck located 30 feet from the shoreline. *Donald Rigney* stated if there is no water oriented accessory structure, a deck could be conforming to detached deck standards. Board member *Pollock* asked if there is a size limit allowed for a detached deck. *Donald Rigney* stated the size would be 250 square feet in floor area and should be a 30 foot setback. There is a sauna on this property. The applicant already has a water oriented accessory structure. A detached deck would not apply.
- P. Board member *Manick* stated this is a beautiful deck. It would be a lot of work to remove two feet from the deck. However, that work could be done. Two feet could be removed from each side of the stairway and the stairs could remain. There is an advantage to having rebar railing. Would the deck be less enjoyable at 12 feet than 14 feet? Board member *Pollock* stated that the part can be removed as a landing and the rail could be extended.
- Q. Board member *McKenzie* stated that economic considerations alone are not a practical difficulty.
- R. Board member *Manick* stated he is not happy that the applicant did not get a permit for the deck. There is no harm being done by this deck.

## **DECISION**

**Motion by Coombe/Manick** to approve a variance for a 14 by 20 foot (280 square foot) attached deck extending toward the water body to be 14 feet in depth, based on the following facts and findings:

**A. Official Controls:**

1. The deck is two feet deeper than what it should be. The intent is not to harm the property owner.
2. The variance request is and is not in harmony with the general purpose and intent of official controls.

**B. Practical Difficulty:**

1. The deck exists in this present location and does no harm in that location.
2. The cost of redoing the deck may or may not be prohibitive.
3. The structural integrity of the deck may not be strong enough to remove a part of the deck.
4. Practical difficulty has 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. Many of the parcels are year-round residential use.
2. The variance request will not alter the essential character of the locality.

**D. Other Factors:**

1. There was no correspondence received and no neighbors came forward.
2. This was a self-reported violation, and the applicant is looking for relief from self-reporting.

The following conditions shall apply:

1. The stormwater runoff from the proposed structure shall not directly discharge onto adjacent properties or into the lake.
2. All other zoning ordinance standards shall be met.

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

**Opposed:** None - 0

**Motion carried 7-0**

### **Amy Heikes**

The fourth hearing item is for Amy Heikes, property is located in S36, T53N, R15W (Unorganized). 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. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 1,990 square foot dwelling located 75 feet from the shoreline where 100 feet is required.
- B. There is an existing, conforming 960 square foot dwelling on the property that will be converted into an accessory structure (garage) upon completion of the proposed dwelling.
- C. The property has water on two sides of the property.

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

A. Official Controls:

1. Island Lake Reservoir is a Recreational Development Lake which requires a shoreline setback of 100 feet.
  - a. The applicant is requesting a dwelling to be located 75 feet from the shore at its closest point.
2. 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.
3. 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.
4. 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 is shoreline on two sides of the property.
2. There are alternatives that exist that do not require variance.
  - a. An addition to the existing dwelling that conforms to ordinance standards may be allowed with a land use permit.
  - b. The proposed dwelling may be located at a conforming location. A dwelling at a conforming location would meet floodplain management requirements.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area as there are other residential properties in the area.
2. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
3. There have been two approved variances in the area to allow a structure at a shoreline setback – one variance for an accessory structure and one for a dwelling.

D. Other Factors:

1. The On-Site Wastewater Division passed the record review for the proposed project.
2. This area is in the process of being platted. Subdivision Ordinance 60, Article VIII, Section 8.2 B., states that all nonconforming structures and uses shall be brought into conformity during the subdivision process.

*Ada Tse* noted no items of correspondence.

## **RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance to allow a 1,990 square foot dwelling at a 75 foot shoreline setback where 100 feet is required as proposed include, but are not limited to:

1. The stormwater runoff from the structure shall not directly discharge into the lake or onto adjacent parcels.

2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. St. Louis County On-site Wastewater SSTS standards shall be followed.
4. The lowest floor shall be at or above the Regulatory Flood Protection Elevation.
5. There shall only be one principal dwelling on the property.

*Joe Heikes*, 4871 Breezy Point Road, the applicant, stated if they move the structure too far from the shoreline, they will need to take out a number of trees. Staff alternative locations would be 200 to 300 feet from the lake and would require taking out trees through the whole area. In their proposed location they would not have to remove any trees. His mother-in-law has lived here since the 1990s. There was a cabin on this property that burned down. They have taken care of everything on this property since Covid. They have temporarily lived on this property in the lower level. The mother-in-law winters elsewhere and lives on the property during the summer. When the house is completed, she will just move into a bedroom on the property. The well does not allow them to build to the left of their current cabin. He thought they might be able to use shoreline averaging since the structures on either side of them are at 40 feet and 50 feet from the shoreline. However, staff said a variance was required.

*Amy Heikes*, 4871 Breezy Point Road, the applicant, stated they intend to turn the storage space into a gym and a craft room. They have gone through a lot of plans that would keep within the 100 foot setback. They want a single-story dwelling because of their age. Their contractor stated it would not be feasible to add onto the existing structure. They want to keep their trees and not remove any. This is also important to their neighbors to keep the privacy.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked where a conforming location on the property would be located. *Ada Tse* stated there is area behind the existing structure that would have a conforming setback. Board member *Pollock* asked if the location of the septic system would impact that location. *Ada Tse* stated it would not.
- B. Board member *Pollock* asked if there is screening. *Ada Tse* stated that there would be no screening from one part of the lake, but the proposed structure would be located behind trees on the other side of the lake.
- C. Board member *Werschay* asked where the well is located. *Ada Tse* stated it is to the left of the existing dwelling.
- D. Board member *Coombe* asked what the shoreline setbacks would be for the two alternative locations. *Ada Tse* stated they are beyond 100 feet from the shoreline.
- E. Board member *Manick* stated the applicants already have a principal dwelling. If a second dwelling is built, does it automatically become an accessory structure? How does the classification change? Would the applicants be able to convert the existing dwelling into an accessory dwelling for additional sleeping area? *Ada Tse* stated there was an affidavit submitted that stated the existing dwelling would become an accessory structure after the proposed dwelling is completed. The existing dwelling size exceeds what is allowed for an accessory dwelling and would not be able to become an accessory dwelling. This accessory structure would be converted to a storage building. It may have water or septic, but there would be no living quarters allowed.

- F. Board member *Coombe* asked if this would be a slab home. *Joe Heikes* stated it will be a one-story slab home with an attached garage.
- G. Board member *Manick* stated there is nothing about exceeding the height restriction. *Joe Heikes* stated they will not. The proposed structure height is 17 feet.
- H. Board member *Pollock* asked about the depth of the lot. *Joe Heikes* stated they have 2.2 acres, and it is 200 feet wide and just over 400 feet in depth. Board member *Pollock* stated staff alternative locations would push the structure back into a gray area. *Joe Heikes* stated one gray area is where the power line is located and the other is where the driveway is. Board member *Pollock* asked about the distance from the shoreline to the front of the house. *Joe Heikes* stated about 200 feet.
- I. Board member *Pollock* stated it was stressed that there should be one principal dwelling. The landowners stated that they would convert this existing dwelling into an accessory structure. *Donald Rigney* stated that it would be converted into a structure with no living quarters. Board member *Pollock* stated that means it cannot be a short term rental and cannot have living quarters.
- J. Board member *McKenzie* stated that the Board requested better site sketches. It would be helpful for the Board to make informed decisions. Board member *Pollock* agreed.

## DECISION

**Motion by Coombe/Manick** to approve a variance for a 1,990 square foot dwelling at a 75 foot shoreline setback where 100 feet is required, based on the following facts and findings:

### A. Official Controls:

- 1. Island Lake Reservoir is a Recreational Development Lake which requires a shoreline setback of 100 feet.
  - a. The applicant is requesting a dwelling to be located 75 feet from the shore at its closest point.
- 2. The lot has water on two sides making it very difficult to meet a 100 foot shoreline setback. The proposed dwelling will be located 75 feet from the closest point of the shoreline and the other side will have a setback of 90 feet.
- 3. The variance request is in harmony with the general purpose and intent of official controls.

### B. Practical Difficulty:

- 1. The lot has water on two sides which makes it difficult to meet shoreline setbacks.
- 2. Practical difficulty has 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 as there are other residential properties in the area.
- 2. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
- 3. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. This is a Minnesota Power lot that is currently going through the subdivision platting process. It is possible that the lot may not be nonconforming after the subdivision process.

The following conditions shall apply:

1. The stormwater runoff from the structure shall not directly discharge into the lake or onto adjacent parcels.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. St. Louis County On-site Wastewater SSTS standards shall be followed.
4. The lowest floor shall be at or above the Regulatory Flood Protection Elevation.
5. There shall only be one principal dwelling on the property.
6. The existing dwelling shall be converted to an accessory structure and shall not contain living quarters.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Ann Chouinard**

The fifth hearing item is for Ann Chouinard, property is located in S22, T53N, R13W (North Star). The applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a dwelling at a reduced shoreline setback. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is requesting after-the-fact approval for a variance to allow a replacement dwelling at a reduced shoreline setback.
- B. The former dwelling was located 60 feet from the shore where 100 feet is required.
- C. The applicant was granted a variance for a basement foundation and additions to the existing dwelling on December 10, 2020 with the conditions that (1) the dwelling shall be relocated 15 feet further back and must be a minimum of 75 feet from the lake, and (2) if the structure was deemed unsound, a replacement dwelling would have to meet all zoning ordinance standards.
- D. A land use permit for the basement and additions was issued in July 2022. Construction began in April 2023. The existing dwelling was deemed unsound for being added on to or moved.
- E. The basement was excavated and ICF walls poured at the reduced setback of 74 feet (field measured) from the shore.
- F. Construction of a new dwelling continued until the applicant was informed in June 2023 that a new structure is not allowed with the 2020 variance and 2022 land use permit.
- G. There is good screening from neighboring properties and partial screening from the lake. The property has good screening from Barrs Lake Road.
- H. There is steep slope from the site of the former dwelling to the lake. The rest of the property is relatively flat.

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

- A. Official Controls:

1. Barrs Lake is a Recreational Development lake which requires a shoreline setback of 100 feet.
  - a. The after-the-fact dwelling is located at a shoreline setback of 74 feet (field measured).
2. 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."
3. 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, Subd. 7 and all acts amendatory thereof.
4. 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.
5. 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.
6. 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. The property has suitable buildable area that conforms to ordinance standards.
3. A new dwelling may be relocated at a conforming location with a land use permit.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area as there are other residential properties in the area.
2. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
3. In addition to the variance granted on the property in 2020, there had been three similar variances approved within the plat for additions that reduced the shoreline setback on nonconforming principal structures and for accessory structures at a reduced shoreline setback.
4. An adjacent property was denied a variance for a replacement dwelling at a reduced shoreline setback in April 2023.

D. Other Factors:

1. The applicant received a variance to add on to the former dwelling in December 2020 with the condition that the if the structure was deemed unsound to add on to or

moved, a new structure may be allowed provided all setback and ordinance requirements are met.

- a. A land use permit for the project was issued in July 2022.
  - b. The existing dwelling was determined unsound to add on to or move and construction of the new dwelling at the reduced shoreline setback began in April 2023.
2. 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.
- E. Was the construction completed prior to applying for the variance? If not, what extent of the construction has been completed?
1. The basement was excavated and ICF walls were poured prior to County staff notifying the applicant in June 2023 that the project is outside the scope of the approved land use permit. Construction has since stopped.
  2. The applicant ceased construction and applied for a variance for an after-the-fact replacement dwelling at a reduced shoreline setback.
- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The county would benefit by enforcement of the Ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
  2. Approval of an after-the-fact variance for a structure that was not permitted without sufficient practical difficulty is not keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

*Ada Tse* noted six items of correspondence from Robert Hansen and Diane Lunde-Hansen in support of, and from David Holmberg, Denise Anderson, Robert A. West, and Ryan and Leianne Krajewski not in support of the variance request. These items were provided to the Board of Adjustment prior to the hearing. One letter was submitted from Bob Anderson after the deadline and time was given for the Board of Adjustment to read that correspondence.

## **RECOMMENDED CONDITIONS**

Conditions that may mitigate the after-the-fact variance to allow a dwelling at a reduced shoreline setback as proposed, include but are not limited to:

1. The stormwater runoff from the existing structure shall not directly discharge into the lake or onto adjacent parcels.
2. The shore impact zone shall be preserved in a natural state and screening shall be retained.
3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
4. St. Louis County On-site Wastewater SSTS standards shall be followed.

*Ann (Kuettel) Chouinard*, 7656 Barrs Lake Road, Duluth, the applicant, stated they thought they could replace the original structure with the new structure. Their plans did not change. The structure they are building onto was deemed unsound. They just misunderstood what was said.



This is their family cabin that they had to tear down. In the correspondence, it was stated that they were building in defiance to what their approval had been. They were not. A lot of memories were made up there. They tried to salvage what they could in the original cabin for taking the cabin down. They still want the cabin to look like the cabin they tore down.

They moved the structure back 15 feet. The previous survey measured the original structure at 71 feet from the shoreline. As a result of moving the structure back, they did have to remove a few trees. They did not have to bring in any fill. The excavator was able to use what was dug out from the basement. They installed a silt fence.

She wanted to address the correspondence in opposition. One letter said that the applicants built anyway without benefit of variance or proper permit. The applicants simply want the new dwelling where they want it because that is where they want the structure to be. She replied that they do have a variance and a permit for this dwelling. Several hundred yards of fill was added to the property. This is untrue as the fill was from their existing property. The letter stated a silt fence was added after the neighbor had mentioned it to them. She replied that this was a part of the original permit. The letter stated that the applicants have removed trees. She replied that they have removed dead trees over the years to clear them or to get the heavy equipment in to dig the basement. The letter stated that their circular driveway was newly excavated. She replied there was originally a driveway for that plot of land that has been there for 70 plus years. This was always her grandmother's driveway as she wanted it as a circular driveway. Their plan now is to use it as a circular driveway. The letter went on about an addition that she replied they did not understand. The letter also stated the applicants did not want to save the old cabin. She replied that they did make an effort to. She has had positive feedback from some neighbors about this project, but those neighbors fear reprisal from other neighbors.

*Christopher Chouinard*, 7656 Barrs Lake Road, Duluth, the applicant, stated in talking with contractors, lifting the cabin and placing the basement underneath would not work. The contractor did not feel comfortable with his men working underneath the cabin. They tried to put the structure off to the side. They were able to dismantle and save about 55 percent of the cabin that was not lost to rot. They did address the minimum setback of 75 feet. They made an effort to save their shoreland sauna. They went through the process of adding riprap and doing what they could to save their sauna. They have added a hundred feet or more of silt fences to divert runoff and are doing the best they can.

The Kuettel family has been on this property for a hundred years. He married into a military family.

Three audience members spoke.

*Brian Lobbestael*, 7666 Barrs Lake Road, stated he is the neighbor directly east of this property. When they purchased their home in October 2022, they lived next to the neighbors, and they are decent people who do not do anything out of line. The structure that was taken down appeared dilapidated and not salvageable. They were forced to try and salvage parts of the structure so they could renew it. He was shown parts of wall framing and other structural parts that were salvaged. Given the situation, it would be practical to grant the variance because the applicants did their due diligence and did not try and subvert protocol on purpose. They have a duty as fellow citizens and

as fellow man to look after each other. If this variance was not approved, it would not be a good service to the public. He asked the Board of Adjustment to consider approving the after-the-fact variance.

*Bob Anderson*, 7496 Pequaway Lake Road, stated he knew the applicant Ann's father for 20 years. The applicants are upstanding people. This is an opportunity for a young family with two young girls to be on the lake. He asked the Board of Adjustment to not make this harder for them.

*Tom Kuettel*, 2605 Northwoods Lane, stated he is a resident on Barrs Lake. The applicants are good members of the community. If there is any way that this variance could happen, it would be appreciated.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Manick* asked about the use of the word "may" as in "if the structure was deemed unsound, a replacement dwelling will have to be constructed to meet all zoning ordinance standards." The applicants took the language to mean that they could just rebuild in that exact location.
- B. Board member *Coombe* stated there are two different shoreline setback distances; staff measured 74 feet and a licensed contractor measured 71 feet. *Ada Tse* stated 74 feet was measured by staff and the 71 feet was from a survey. These are not typos. Board member *Coombe* stated the structure was moved 14 back from the location of the original dwelling. *Ada Tse* stated yes.
- C. Board member *Pollock* asked if there is a general contractor. *Chris Chouinard* stated there is not. Board member *Pollock* stated that the applicant alone is responsible for this situation. The original variance approval had a condition that read "If the structure was deemed unsound, the new dwelling would need to meet all ordinance standards" and asked the landowner to explain why this was not followed. *Chris Chouinard* stated during this period after receiving the land use permit, the permit read that they could replace if all setbacks and the ordinance were accommodated. This is where he failed. Board member *Pollock* stated that if the foundation was put underneath it, the structure could go forward. That is not what this ended up being. *Chris Chouinard* stated they brought the house back and brought it within the parameters. They had everything in place to move the structure, but then the structure was deemed unsound. *Ann Chouinard* stated they read the permit as they would be allowed to do it. Board member *Pollock* stated that this was the applicant's decision. The plight of the landowner is self-created. The applicants are guilty until proven innocent. The applicants are in a situation where they had a variance approval with conditions and now the applicants are here.
- D. Board member *Manick* asked if the applicants understand how things are worded. *Ann Chouinard* stated that they understand now. Board member *Manick* stated he is unsure why the applicants did not meet the 75 foot setback.
- E. Board member *Coombe* stated the applicant received a variance in 2020 and asked what size the dwelling will be. *Ann Chouinard* stated it will be the same size as before. *Chris Chouinard* stated the structure will be the same height, width, and depth.

- F. Board member *McKenzie* stated he made the motion in 2020 to approve the variance. That variance was approved with conditions, including an erosion control plan. Was that plan ever submitted? *Ann Chouinard* stated it was. Board member *McKenzie* asked if the silt fencing was part of that erosion control plan. *Ann Chouinard* stated it is. Board member *McKenzie* asked what was done with the shore protection plan condition. *Chris Chouinard* asked if this is once the dwelling was constructed and they could plan things. Board member *McKenzie* stated it does not look like the shore protection zone has been preserved at all. The 2021 pictures show a dwelling barely visible with the vegetation and now it looks like it was all cleared out. He asked if the riprap work along the shoreline has been permitted by the MN Department of Natural Resources (DNR). *Chris Chouinard* stated someone helped them out from the DNR but no permit was required to help the erosion control.
- G. Board member *McKenzie* asked what would happen to the foundation if the variance was not approved today? *Chris Chouinard* stated they would need to move the basement back. They have a viable septic system located 30 feet behind the house. They would need to move the septic back, too. They would also remove additional trees to move things back. Board member *McKenzie* stated with all of the destruction now, what would it matter if things had to be moved back. There are two parcels? *Chris Chouinard* stated there are. Board member *McKenzie* asked if the applicants could move back to the 100 foot setback behind the cabin and not impact the septic system. *Chris Chouinard* stated no. If the house is moved around the septic, that would impact trees and the new neighbor. He would only be within 25 feet. The only other direction is straight back, and he would need to remove the septic system and drainfield. He would have to remove up to 75 mature maple trees. He noted the destruction above the shore impact zone will be planted with trees. They have done some planting on the property.
- H. Board member *Coombe* asked how far that green area is from the lake. *Chris Chouinard* stated 50 feet.

## FIRST MOTION

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

- A. Official Controls:
  - 1. Barrs Lake is a Recreational Development lake which requires a shoreline setback of 100 feet.
    - a. The after-the-fact dwelling is located at a shoreline setback of 74 feet (field measured).
  - 2. 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."
  - 3. 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, Subd. 7 and all acts amendatory thereof.

4. The applicant/landowner has had extensive contact with staff and are now attending their third hearing and still did exactly what they were not permitted to do. The responsibilities and limitations should have been abundantly clear after the second hearing, especially after more contact with Planning staff than most people ever have.
5. The variance request is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The December 2020 variance was granted after much discussion with a number of conditions. That variance granted in December 2020 required any new construction meet all setback standards and could not have been more clear.
2. The conditions have been ignored and to see the destruction of the lot is distressing, especially with recent photos included in the staff report as compared with the 2020 Land Explorer pictometry photos.
3. Practical difficulty has not been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The lot was formerly hedged with trees by the cabin and the area was cleared and shaped by excavation along with the shoreline that has been altered with what looks like a temporary road down to the shoreline. Work on the parcel has been widely visible and does alter the character of the immediate locality.
2. The variance request will alter the essential character of the locality.

D. Other Factors:

1. Condition 5 of the December 2020 variance was not met.
2. There were four letters of opposition received while two letters were in support.

**In Favor:** McKenzie, Pollock - 2

**Opposed:** Coombe, Filipovich, Manick, Svatos, Werschay - 5

**Motion fails 2-5**

**DISCUSSION ON FIRST MOTION**

- A. Board member *Manick* stated there were nice pictures from December 2020 that were included in the application. The applicant had mentioned they would minimize trees being removed. Now, a lot of trees have been removed. Working for a living, sometimes one can work around the trees and sometimes it looks like devastation. There were a couple places located in 2020 that were identified as conforming areas. One area is close to the septic. They may not be able to move the septic so that is out of the question. The other area is behind the septic, but why be on the lake if one has to build so far away? Everyone might see a wide-open home. To move back that far from the lake to get to the conforming spot one might as well live in the woods. This may be the applicant's third time here and it might be self-created, but the alternatives do not work. It is easy to misread something. "May" and "shall" are so important.
- B. Board member *Werschay* stated it appears the applicants are trying. Their next-door neighbor has no problem with this variance. The people that spoke for this drove the distance to speak for it.

- C. Board member *Pollock* stated if the applicants had just moved the original cabin and just started putting it back together, they would have been fine. Had they left one wall, they could have built the house around it. This is an unusual case. There are financial considerations although they cannot be the only one.
- D. Board member *Coombe* stated people can come before the Board of Adjustment and lie. This applicant did not lie but they misread what was approved. The Board is not here to hurt someone for misinterpreting.
- E. Board member *Filipovich* stated the applicants have gone through this for years now.
- F. Board member *Pollock* asked if there was any way for the applicants to work with staff on the best site situation. One staff alternative would have a lot of cleared areas and would be located over 30 feet from the septic.
- G. Board member *Pollock* stated this is an unusual riprap situation. He wanted to make sure that this riprap follows MN DNR rules and regulations. If the Board is concerned about the shoreline and this lake, there should be some consideration for the riprap. *Chris Chouinard* stated he worked with someone to place the riprap and is above the requirement for riprap.

## DECISION

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

- A. Official Controls:
  - 1. This is an after-the-fact variance. The previous variance approval was misinterpreted, and the structure was not moved back 75 feet from the shoreline.
  - 2. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:
  - 1. It appears the applicants misinterpreted the previous variance approval.
  - 2. Financial consideration is not the only concern.
  - 3. The structure could be relocated which may cause other issues.
  - 4. Practical difficulty has been demonstrated in complying with the official controls.
- C. Essential Character of the Locality:
  - 1. There has been some support from neighbors. There is not a lot of harm being done with this variance approval.
  - 2. The variance request will not alter the essential character of the locality.
- D. Other Factor:
  - 1. The applicants have shown remorse.

The following conditions shall apply:

- 1. The stormwater runoff from the existing structure shall not directly discharge into the lake or onto adjacent parcels.
- 2. The shore impact zone shall be preserved in a natural state and screening shall be retained.
- 3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
- 4. St. Louis County On-site Wastewater SSTS standards shall be followed.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Motion to adjourn by Svatos. The meeting was adjourned at 1:30 PM.**