

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY THURSDAY, NOVEMBER 12, 2020.

9:30 AM – 2:25 PM

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 - 0

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

NEW BUSINESS:

- A. Independent School District 704, S32, T51N, R15W (Canosia)
- B. Hugh Reitan, S22, T53N, R13W (North Star)
- C. James Janssen, S23, T67N, R17W (Crane Lake)
- D. Matt Foehrenbacher, S2, T52N, R15W (Fredenberg)
- E. Todd and Laura Rothe, S27, T52N, R15W (Fredenberg)

OTHER BUSINESS:

Motion by Skraba/McKenzie to approve the minutes of the October 8, 2020 meeting.

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

Opposed: None – 0

Motion carried 7-0

NEW BUSINESS:

Case 6233 – Independent School District 704

The first hearing item was for Independent School District 704, property located in S32, T51N, R15W (Canosia). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow the lot coverage on the property to exceed 25 percent. *George Knutson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing an additional 900 square feet of impervious surface with a 30 foot by 30 foot pavilion.
- B. The covered pavilion is intended to be utilized as an outdoor classroom area for the school. The applicant has indicated that federal COVID funding will be used for this project and the area should be suitable in assisting with social/physical distance recommendations due to COVID.
- C. The area is relatively flat with little to no slope.

- D. There are potential wetlands located in the south/southwest corner of the parcel. The proposal will not impact this area.

George Knutson reviewed staff facts and findings as follows:

A. Official Controls:

1. The subject parcel is zoned Shoreland Multiple Use (SMU)-11.
 - a. Zoning Ordinance 62 Article III, Section 3.2 allows a maximum of 25 percent lot coverage for zone district 11.
 - b. The subject parcel is approximately 6.67 acres. The 25 percent lot coverage allowed is 1.668 acres or 73,181 square feet.
 - c. The current lot coverage on the subject parcel is approximately 83,300 square feet or 28.67 percent which consists of the school building, multiple small accessory structures, and concrete/pavement (parking, sidewalks, and roads).
 - d. The proposed 900 square foot pavilion increases the existing lot coverage to 28.98 (29) percent, a 0.31 percent increase.
2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan states: 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 applicants 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 states: 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 circumstances of the property that the owner did not create.
2. A school as a public/semi-public use requires a large structure, as well as a large parking area with a school bus drop off/pick up road.
 - a. These are the main factors contributing to the large impervious surface number.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area.
 - a. The subject parcel is adjacent to Canosia Township property that is used as a recreation area.
2. There was a previously approved variance for this property for a reduced road setback for the school building in 2003.
 - a. This variance was approved when Canosia Township administered their own zoning.
3. There was one similar variance within the same section, township, and range (S32, T51N, R15W) which allowed a max lot coverage of 31 percent for a commercial property in 2004.

D. Other Factors

1. The parcel is adjacent to the Canosia Township Recreation Area which appears to be used jointly by the school.
2. The school district owns approximately 31 undeveloped acres that are not adjacent to the subject parcel, but are within 0.2 miles of the subject parcel.
 - a. If these parcels were adjacent, lot coverage would be well under the 25 percent maximum.

George Knutson noted one item of correspondence from John and Judith Bachovchin opposed to the proposal with water runoff concerns. This item was provided to the Board of Adjustment prior to the hearing

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow the lot coverage on the property to exceed 25 percent, there are no recommended conditions.

Stephen Anderson, Business Manager for Proctor Public Schools, stated they want to create an outdoor classroom space and will be designed for the children to spend more time outside. Addressing the water runoff concerns, the project will cause runoff to the east based on the slope. They are not intending to use blacktop. They have had a good relationship with Canosia Township and have worked with them with the property to the east. While they do have additional acres, they are not adjoining and could not be used in conjunction with lot coverage. They do not want to impact surrounding property owners and will minimize impact on surrounding properties.

Mark Hughes, Pike Lake Elementary Principal, stated that the land grades towards the east in the pavilion location. There should be no impact to the homes on Midway Road. He added he spoke with Ms. Modean and showed her where the pavilion would be located and added they would work to have runoff flow to the east. This pavilion would be used to further environmental studies and education.

One member of the audience spoke in opposition/with concerns:

Rochelle Modean, 4884 Midway Road, stated her biggest concern is water runoff. She asked that runoff go to the east instead of the west and she asked that there be no further concrete or asphalt that would push the water into her property. The biggest problem was the addition to the school that put all of the water runoff into the wetland behind her property. When that water overflows, it goes straight into her basement.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* stated he lived in the Pike Lake area and asked if there could be a way to direct water runoff to the southeast away from the development to the south or west. The runoff would move towards vacant land.

- B. Board member *Skraba* asked if there are any stormwater retention ponds on the property at all. The school building likely has a lot of water runoff. To be proactive, stormwater ponds could be added. *Stephen Anderson* stated water is retained between the two driveways used for bus pickup.
- C. Board member *Pollock* asked if there has been anything done between the school district and Ms. Modean in order to reconcile the water runoff issues. *Stephen Anderson* stated the school addition was placed on before his current position and he was not aware of any issues. *Rochelle Modean* stated she has tried to fix the issue herself.
- D. Board member *McKenzie* calculated the impervious surface using the County Land Explorer. The new pavilion will add less than one percent additional impervious surface. It would be reasonable to ask the school district to put gutters on the pavilion and divert the water to a drywell. It might not correct the runoff issue for the neighbors to the south and west but it would not add any more.
- E. Board member *Pollock* asked if a stormwater management plan would take into account all runoff on the property or if this plan would just be limited to the proposed pavilion? Board member *Skraba* stated that this motion was for this specific request.

DECISION

Motion by McKenzie/Skraba to approve a variance to allow the lot coverage on the property to exceed 25 percent, based on the following facts and findings:

- A. Official Controls:
 - 1. The subject parcel is zoned Shoreland Multiple Use (SMU)-11.
 - a. Zoning Ordinance 62 Article III, Section 3.2, allows a maximum of 25 percent lot coverage for zone district 11.
 - b. The subject parcel is approximately 6.67 acres. The 25 percent lot coverage allowed is 1.668 acres or 73,181 square feet.
 - c. The current lot coverage on the subject parcel is approximately 83,300 square feet or 28.67 percent which consists of the school building, multiple small accessory structures, and concrete/pavement (parking, sidewalks, and roads).
 - d. The proposed 900 square foot pavilion increases the existing lot coverage to 28.98 (29) percent, a 0.31 percent increase.
 - 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan states: 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 applicants 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 states: Acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.
 - 5. The variance is in harmony with official controls and would grant reasonable use of the applicant's property.
 - 6. This variance will promote the health and safety of the children that attend the school. With the current pandemic, an outdoor classroom will promote their health and safety.

B. Practical Difficulty:

1. A school as a public/semi-public use requires a large structure, as well as a large parking area with a school bus drop off/pick up road.
 - a. These are the main factors contributing to the large impervious surface number.
2. Practical difficulty has been demonstrated. The school property is bound on all four sides, including by a major county road. The area proposed for the pavilion is adjacent to the school building.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area.
 - a. The subject parcel is adjacent to Canosia Township property that is used as a recreation area.
2. There was a previously approved variance for this property for a reduced road setback for the school building in 2003.
 - a. This variance was approved when Canosia Township administered their own zoning.
3. There was one similar variance within the same section, township, and range (S32, T51N, R15W) which allowed a max lot coverage of 31 percent for a commercial property in 2004.
4. The variance will not alter the essential character of the locality. This will be a small addition to the existing school property.

D. Other Factors

1. The parcel is adjacent to the Canosia Township Recreation Area which appears to be used jointly by the school.
2. The school district owns approximately 31 undeveloped acres that are not adjacent to the subject parcel, but are within 0.2 miles of the subject parcel.
 - a. If these parcels were adjacent, lot coverage would be well under the 25 percent maximum.
3. The new pavilion will be screened by the existing school building.
4. Accommodations are made daily in order to deal with the current pandemic.

The following condition shall apply:

1. A stormwater management plan shall be submitted and the stormwater runoff from the proposed structure shall not directly discharge onto adjacent lots.

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

Opposed: None - 0

Motion carried 7-0

Case 6234 – Hugh Reitan

The second hearing item was for Hugh Reitan, property located in S22, T53N, R13W (North Star). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section

4.3, to allow the addition of a permanent foundation to a nonconforming principal dwelling that does not meet the minimum shoreline setback requirement; to allow multiple additions to a nonconforming principal dwelling where one is allowed without variance; and to allow the height to exceed the 25 foot maximum for a principal structure located between the shore impact zone and the shoreline setback.

George Knutson, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing three enclosed additions, two covered porches and the installation of a walkout basement. None of the proposed additions decrease the existing lake setback of 60 feet.
- B. The proposed walkout basement would increase the structure height to 30.5 feet.
- C. The three proposed, enclosed additions would total approximately 346 square feet.
- D. The two proposed covered porches would total approximately 84 square feet.
- E. The parcel is flat to the existing dwelling and a 28 percent slope between the dwelling and the shoreline.
- F. The existing dwelling is located 60 feet from the lake. The shore impact zone is located at 50 feet from the lake.
- G. There is one after-the-fact addition that could meet the performance standard permit requirements for the one addition allowed at the dwelling's current location.
- H. There are two after-the-fact accessory structures (carports) that will also need to be permitted.
- I. The holding tank is located approximately 45 feet behind the structure.

George Knutson reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Barrs Lake is classified as a Recreation Development Lake.
 - a. Zoning Ordinance 62 Article III, Section 3.4, requires a minimum 100 foot shoreline setback for Recreation Development Lakes and the Shore Impact Zone is 50 feet.
 - b. The current structure is located 60 feet from the lake.
 2. The ordinance requires that if a nonconforming structure is moved any distance or if structural changes are made, the structure shall be moved to conform to setback requirements.
 3. An existing nonconforming principal dwelling may be expanded once with a performance standard permit, without variance, if no additions have been added to the principal dwelling since the implementation date of the appropriate setback standard.
 - a. Under prior ownership, a small addition to the rear of the structure was constructed without the benefit of permit. That addition is the one expansion that would have been allowed without variance.
 - b. The applicant is now proposing three enclosed additions and two open porch additions.
 4. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback; the proposed principal structure will have a height of 30.5 feet.

5. The property falls within the Lakeshore Development Areas of 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 lakeshore area.
6. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving the management of nonconformities.
7. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
8. Objective LU-3.3 is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statue 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 variance is not the only option as the following alternatives exist:
 - a. Relocate the existing structure to a conforming location on the property and construct conforming additions to the structure with a land use permit.
 - b. Replace the existing structure with a new structure that conforms to ordinance standards with a land use permit.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the locale as there are other residential properties in the area.
2. There have been three similar variances approved in the area;
 - a. In 2005, the E 1/2 of Lot 10 and all of Lot 11 of Barrs Lake Plat was granted a variance for a 1,416 square foot addition to the side of an existing nonconforming structure, a permanent foundation 45 feet from the shoreline where 50 feet was required, and a 160 square foot addition to the front of a nonconforming structure located where no addition is allowed. Staff recommended denial based on alternatives existing.
 - b. In 2005, Lots 14 and 15 of Barrs Lake Plat was granted a variance for a second addition to a nonconforming structure by removing a 14 foot by 12 foot porch and replacing it with a 16 foot by 18 foot addition, and adding an 8 foot by 10 foot addition. The variance was approved based on staff recommendation.
 - c. In 2018, Lots 4 and 5 of Sheltons Beach Plat was granted a variance to allow the expansion of a nonconforming principal structure that has been previously expanded and to allow a nonconforming principal structure height of 32 feet between the shore impact zone and the required shoreline setback. The nonconforming principal structure was located 95.5 feet from the shoreline where 100 feet was required.

D. Other Factors:

1. The alternative, conforming location would alleviate the need for the current variance request and the need for any potential variance requests for future expansions.
2. There was a small addition to the rear of the structure constructed without the benefit of permit; this addition is the one addition that would have been allowed without variance. There are also two carports (accessory structures) that were placed on the property that did not receive permits.
3. Regardless, if a variance is approved for further additions, permits will be required for the previous addition and carports.
4. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.
 - a. Increasing a nonconformity in intensity of use where alternatives exist, 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.
5. The applicant has not met the burden of demonstrating practical difficulty as there is sufficient area for a conforming structure.

George Knutson noted one item of correspondence from Peggy Kuettel in support of the variance. This item was provided to the Board of Adjustment prior to the hearing

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow the addition of a permanent foundation to a nonconforming principal dwelling that does not meet the minimum shoreline setback requirement; to allow multiple additions to a nonconforming principal dwelling where one is allowed without variance; and to allow the height to exceed the 25 foot maximum for a principal structure located between the shore impact zone and the shoreline setback, 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 protection 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. In the event that it is determined that the structure is not structurally sound to be added onto or moved, a new structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
5. Land use permits shall be obtained for the previous addition and other structures that did not receive permits prior to a land use permit for any further additions.
6. All SSTS sewage treatment standards shall be met.

Hugh Reitan, applicant and contractor, stated his client's biggest concern is having to move the SSTS and move the driveways. This is an inconspicuous, modest-sized home. They are not proposing large additions. This location is a nicer location to have it. To move the structure back, they would lose the view and more trees could be removed.

Ann Chouninard, landowner, stated there are concrete pylons underneath the cabin that go down about five feet below the surface. The crest of the hill is right before the stairs on the front side.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* inquired about impervious surface as the driveway appears to be blacktopped. *George Knutson* stated that the first driveway has blacktop and the second driveway does not. Board member *McKenzie* asked if this proposal is close to the limit of impervious surface allowed. *George Knutson* said it is not.
- B. Board member *Pollock* inquired if both carports would require a permit. *George Knutson* stated that as both structures are above 150 square feet, they would both require a permit.
- C. Board member *Skraba* asked how the lake setback is calculated. *George Knutson* stated it is measured horizontally to the shoreline.
- D. Board member *McKenzie* asked what the holding tank setback is from a structure. *George Knutson* stated 10 feet.
- E. Board member *Filipovich* asked if the two lots could be split and if they would be considered buildable. *George Knutson* stated that the lot without a dwelling would not meet the definition of a lot of record in order to be buildable as it is too small. It would need to be owned contiguously with an adjoining parcel.
- F. Board member *Filipovich* inquired if the address on the parcel is different than the address on the application. *Jenny Bourbonais*, Acting Secretary, stated that the legal notice contained the legal description, not the address of the property.
- G. Board member *Pineo* stated she is concerned about building on to a structure that close to a steep slope and the lake.
- H. Board chair *Werschay* asked what slope percentage defines a bluff. *George Knutson* stated a bluff requires at least a rise of 25 feet and at least a 30 percent grade/slope.
- I. Board chair *Werschay* inquired about the plan to excavate the walkout basement. *Hugh Reitan* stated it would depend on the best way to move the structure. The builders may be able to move it without taking trees down. The structure could also be dug out from underneath.
- J. Board member *Skraba* asked if there is an existing basement. *Hugh Reitan* stated there is just a crawl space.
- K. Board member *Skraba* stated it might be easier to move the structure back to the top of the hill instead of into the slope.
- L. Board member *McKenzie* asked what structure changes are being anticipated? *Hugh Reitan* stated there would be a new walkout basement and a different roof structure. The landowners want a little additional space and an attic truss.
- M. Board member *McKenzie* asked about the impervious surface within the shoreline setback and if it is permitted at that location. There is blacktop in front of the 100 foot shoreline setback. *George Knutson* stated impervious surface is calculated based on what is existing and that is calculated for the maximum allowed. *Jenny Bourbonais* added that this type of impervious surface would not be allowed this close to the lake if the property was undeveloped.
- N. Board member *Skraba* stated he is not as concerned about the two driveways. He is concerned with cutting trees or making the building more obvious. If the structure were

moved back enough to still be able to use the parking and meet the SSTS setbacks, the structure could still be located where it is. That way the additions would be further back from the edge of the slope. The houses on either side of the landowner's are as close to the lake. However, to move the structure back would remove all of the trees as there would be the dwelling, a new driveway, etc.

- O. Board chair *Werschay* stated that if the cabin needs to be lifted and moved out of the way, the cabin could be moved to a conforming setback. If the cabin can be dug out underneath, there would be less disturbance to the hill and a lower chance of runoff down the slope to the lake. If the structure were moved back, the area where the structure was would need to be filled in.
- P. Board member *McKenzie* stated that the Zoning Ordinance requires that any structural change made to a nonconforming structure would require the structure to be moved to a conforming setback. If the structure came back to within the SSTS setback, it would be a reasonable compromise to get the structure further from the shoreline.
- Q. Board member *Pollock* asked how far back the structure could be moved in order to not interfere with the holding tank. *George Knutson* stated he does not know where the 10 foot setback point is measured from. He measured from the exterior cap of the tank. Board member *Pollock* stated that based on this discussion, it needs to be moved to the 100 foot setback.
- R. *Jenny Bourbonais* added that some tree removal and some modifications to the property are necessary when redeveloping the property.
- S. Board member *Filipovich* asked how far the well needs to be from the house. *Jenny Bourbonais* stated that this a state requirement and the well needs to be three feet from the eaves.
- T. Board member *Skraba* asked if any addition would need a variance. *Jenny Bourbonais* stated that if the structure met the 100 foot setback, any addition would not require a variance.

FIRST MOTION

Motion by *Skraba/Filipovich* to approve a variance to allow the addition of a permanent foundation to a nonconforming principal dwelling that does not meet the minimum shoreline setback requirement; to allow multiple additions to a nonconforming principal dwelling where one is allowed without variance; and to allow the height to exceed the 25 foot maximum for a principal structure located between the shore impact zone and the shoreline setback, based on the following facts and findings:

A. Official Controls:

- 1. Barrs Lake is classified as a Recreation Development Lake.
 - a. Zoning Ordinance 62 Article III, Section 3.4, requires a minimum 100 foot shoreline setback for Recreation Development Lakes and the Shore Impact Zone is 50 feet.
 - b. The current structure is located 60 feet from the lake.
- 2. The ordinance requires that if a nonconforming structure is moved any distance or if structural changes are made, the structure shall be moved to conform to setback requirements.

3. An existing nonconforming principal dwelling may be expanded once with a performance standard permit, without variance, if no additions have been added to the principal dwelling since the implementation date of the appropriate setback standard.
 - a. Under prior ownership, a small addition to the rear of the structure was constructed without the benefit of permit. That addition is the one expansion that would have been allowed without variance.
 - b. The applicant is now proposing three enclosed additions and two open porch additions.
4. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback; the proposed principal structure will have a height of 30.5 feet.
5. The property falls within the Lakeshore Development Areas of 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 lakeshore area.
6. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving the management of nonconformities.
7. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
8. Objective LU-3.3 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.
9. The variance request is partially in harmony with the purpose and intent of official controls. The building setback shall be no closer than 20 feet to the existing SSTS and the shoreline setback shall be maximized to the greatest extent to avoid remaining on the current crest of a hill.

B. Practical Difficulty:

1. At the 100 foot setback, the entire building site would need to be redone, including the driveway and that would require the removal of many trees.
2. The location of the trees and location of the septic limit where a structure can be placed in order to maintain a SSTS setback and not remove so many trees.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the locale as there are other residential properties in the area.
2. There have been three similar variances approved in the area;
 - a. In 2005, a variance was granted on the E 1/2 of Lot 10 and all of Lot 11 of Barrs Lake Plat for a 1,416 square foot addition to the side of an existing nonconforming structure, a permanent foundation 45 feet from the shoreline where 50 feet was required, and a 160 square foot addition to the front of a nonconforming structure

located where no addition is allowed. Staff recommended denial based on alternatives existing.

- b. In 2005, a variance was granted on Lots 14 and 15 of Barrs Lake Plat for a second addition to a nonconforming structure by removing a 14 foot by 12 foot porch and replacing it with a 16 foot by 18 foot addition, and adding an 8 foot by 10 foot addition. The variance was approved based on staff recommendation.
- c. In 2018, a variance was granted on Lots 4 and 5 of Sheltons Beach Plat to allow the expansion of a nonconforming principal structure that has been previously expanded and to allow a nonconforming principal structure height of 32 feet between the shore impact zone and the required shoreline setback. The nonconforming principal structure was located 95.5 feet from the shoreline where 100 feet was required.

D. Other Factors:

1. The alternative, conforming location would alleviate the need for the current variance request and the need for any potential variance requests for future expansions.
2. There was a small addition to the rear of the structure constructed without the benefit of permit; this addition is the one addition that would have been allowed without variance. There are also two carports (accessory structures) that were placed on the property that did not receive permits.
3. Regardless, if a variance is approved for further additions, permits will be required for the previous addition and carports.
4. The amount of trees that would need to be removed in order to relocate the structure at the 100 foot shoreline setback is not an added value.

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 protection 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. In the event that it is determined that the structure is not structurally sound to be added onto or moved, a new structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
5. Land use permits shall be obtained for the previous addition and other structures that did not receive permits prior to a land use permit for any further additions.
6. All SSTS sewage treatment standards shall be met.
7. The shoreline setback shall be maximized to the greatest extent possible and the dwelling shall be no closer than 20 feet from the septic tank.

In Favor: Filipovich, McKenzie, Skraba - 3

Opposed: Pineo, Pollock, Svatos, Werschay - 4

Motion fails 3-4

DISCUSSION ON MOTION

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* stated that having a condition that has a set number for a SSTS setback and not having a set number for the shoreline setback makes no sense. The SSTS setback is 10 feet.
- B. Board member *McKenzie* stated that the septic location is the practical difficulty. Board chair *Werschay* stated that the topography is another practical difficulty, especially with potential erosion. To remove any part of the structure could cause more runoff into the lake because of the steep slope. There will be nothing to bind that soil in front of that building.
- C. Board member *Pineo* disagrees because further back away from the slope would be better. The shoreline setback is also vague because there is a firm number for a SSTS setback and there is no set number for a shoreline setback.
- D. Board member *Filipovich* stated the setback could be maximized to the greatest extent possible, but no closer than 20 feet to the septic tank.
- E. Board member *McKenzie* stated that no matter what, there will be disturbance. This proposed building would be about 75 feet back from the shoreline if the structure were kept 20 feet from the septic.
- F. *Jenny Bourbonais* clarified that any land alteration would need to be done appropriately. The landowner would not be able to just fill in the area.
- G. Board member *Svatos* stated there are no unique physical characteristics on the property. The variance is not the only option. There is buildable area behind the existing dwelling.
- H. Board member *Pollock* asked if the height variance would still be needed. If the dwelling is moved back, would there no longer be a walkout basement as the structure is no longer in a hill? This height would be allowed without knowing if there is a walkout basement. There is a big unknown here. Board member *Skraba* stated that the variance is for a height beyond 25 feet.

DISCUSSION AFTER VOTE

Board members discussed if the denial of the first motion would deny the variance or if further action was needed. Board members called on *Thomas Stanley*, St. Louis County Attorney's Office, who stated that while the motion to approve was denied, the action by the Board denied the variance. A separate motion to deny the variance is another option.

SECOND MOTION

Motion by Svatos/Pineo to deny a variance to allow the addition of a permanent foundation to a nonconforming principal dwelling that does not meet the minimum shoreline setback requirement; to allow multiple additions to a nonconforming principal dwelling where one is allowed without variance; and to allow the height to exceed the 25 foot maximum for a principal structure located between the shore impact zone and the shoreline setback, based on the following facts and findings:

- A. Official Controls:
 1. Barrs Lake is classified as a Recreation Development Lake.
 - a. Zoning Ordinance 62 Article III, Section 3.4, requires a minimum 100 foot shoreline setback for Recreation Development Lakes and the Shore Impact Zone is 50 feet.
 - b. The current structure is located 60 feet from the lake.

2. The ordinance requires that if a nonconforming structure is moved any distance or if structural changes are made, the structure shall be moved to conform to setback requirements.
3. An existing nonconforming principal dwelling may be expanded once with a performance standard permit, without variance, if no additions have been added to the principal dwelling since the implementation date of the appropriate setback standard.
 - a. Under prior ownership, a small addition to the rear of the structure was constructed without the benefit of permit. That addition is the one expansion that would have been allowed without variance.
 - b. The applicant is now proposing three enclosed additions and two open porch additions.
4. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback; the proposed principal structure will have a height of 30.5 feet.
5. The property falls within the Lakeshore Development Areas of 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 lakeshore area.
6. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving the management of nonconformities.
7. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
8. Objective LU-3.3 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 variance is not the only option as the following alternatives exist:
 - a. Relocate the existing structure to a conforming location on the property and construct conforming additions to the structure with a land use permit.
 - b. Replace the existing structure with a new structure that conforms to ordinance standards with a land use permit.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the locale as there are other residential properties in the area.
2. There have been three similar variances approved in the area;
 - a. In 2005, a variance was granted for the E 1/2 of Lot 10 and all of Lot 11 of Barrs Lake Plat for a 1,416 square foot addition to the side of an existing nonconforming structure, a permanent foundation 45 feet from the shoreline where 50 feet was

required, and a 160 square foot addition to the front of a nonconforming structure located where no addition is allowed. Staff recommended denial based on alternatives existing.

- b. In 2005, a variance was granted on Lots 14 and 15 of Barrs Lake Plat for a second addition to a nonconforming structure by removing a 14 foot by 12 foot porch and replacing it with a 16 foot by 18 foot addition, and adding an 8 foot by 10 foot addition. The variance was approved based on staff recommendation.
- c. In 2018, a variance was granted on Lots 4 and 5 of Sheltons Beach Plat to allow the expansion of a nonconforming principal structure that has been previously expanded and to allow a nonconforming principal structure height of 32 feet between the shore impact zone and the required shoreline setback. The nonconforming principal structure was located 95.5 feet from the shoreline where 100 feet was required.

D. Other Factors:

1. The alternative, conforming location would alleviate the need for the current variance request and the need for any potential variance requests for future expansions.
2. There was a small addition to the rear of the structure constructed without the benefit of permit; this addition is the one addition that would have been allowed without variance. There are also two carports (accessory structures) that were placed on the property that did not receive permits.
3. Regardless, if a variance is approved for further additions, permits will be required for the previous addition and carports.
4. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.
 - a. Increasing a nonconformity in intensity of use where alternatives exist, 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.
5. The applicant has not met the burden of demonstrating practical difficulty as there is sufficient area for a conforming structure.

In Favor: Pineo, Pollock, Svatos - 3

Opposed: Filipovich, McKenzie, Skraba, Werschay - 4

Motion fails 3-4

DISCUSSION ON SECOND MOTION

The *Board of Adjustment* discussed the following:

- A. Board chair *Werschay* stated she was not in support of the first motion and she was not in support of denying the variance request. The first motion would have asked the landowner to move the structure back from its current location, which she did not agree with due to the erosion concerns and felt the building needed to be left where it was.
- B. *Jenny Bourbonais* stated the first motion was to approve the variance but changes were made. The second motion was to deny the variance. Neither motion passed. The options would be to deny or approve the variance or to deny the request without prejudice so that staff can work with the applicant on an updated proposal.

C. More concise measurements are needed in order to either approve or deny a variance.

DECISION

Motion by Skraba/McKenzie to deny a variance without prejudice in order for staff to work with the applicant/landowner on updated setback information.

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

Opposed: None - 0

Motion carried 7-0

Case 6235 – James Janssen

The third hearing item was for James Janssen, property located in S23, T67N, R17W (Crane Lake). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow the replacement of an existing dwelling at a reduced shoreline setback, and Article VI, Section 6.2 B, to allow more than one principal dwelling on a parcel where there is not sufficient lot area per structure to equal the minimum dimensional standard. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to replace a dwelling located 50 feet from the shoreline where 100 feet is required.
- B. The applicant is also proposing to allow two principal dwellings on a parcel where there is not sufficient lot area per structure to equal minimum dimensional standards. The parcel would require double the lot width and acreage for two principal dwellings.
- C. The property contains two dwellings, a garage and two small storage buildings.
- D. The property is serviced by the Crane Lake Water and Sanitary District.
- E. The applicant is requesting to replace one of two nonconforming dwellings that were rental cabins. The applicant has stated that the property will no longer be used commercially.
- F. The existing dwelling is 1,416 square feet in size and located 44 feet from the shoreline.
- G. The replacement structure is proposed at 2,168 square feet and is proposed to be located at 50 feet from the shoreline where 100 feet is required.
- H. The other nonconforming dwelling will remain and be used as a guest cabin.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62, Article III, Section 3.4, requires 100 foot setback for principal structures and Article VI, Section 6.2B, requires sufficient lot area per structure to equal the minimum dimensional standard. The property is currently 1.2 acres and has 290 feet of shoreline. In order to have two dwellings, the parcel would need to be 2 acres and have 300 feet of lot width at the shoreline and building line.
 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.
 3. Objective LU-3.3 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. Existing development on the property may limit a structure from meeting the required shoreline setback; however, the configuration of the proposed dwelling is a self-created practical difficulty. The structure layout should be amended to meet a greater shoreline setback. The applicant has not provided sufficient evidence that ledge rock limits a greater setback for a slab foundation. As stated in the Comprehensive Land Use Plan, nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statutes.
2. The applicant has several alternatives that would eliminate the need for or reduce the amount of variance requests.
 - a. Re-design the structure to meet the greatest shoreline setback as possible; staff believes a 75 foot shoreline setback could be met for a proposed replacement dwelling.
 - b. Add on to the existing structure with a performance standard permit.
 - c. Remove both dwellings (2,312 square feet) and replace with one dwelling of similar size with a performance standard permit at a greater shoreline setback.

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 area.
2. There have not been any similar variance requests in this plat.
3. The parcel to the north has a nonconforming dwelling located approximately 83 feet from the shoreline, and the parcel located to the south has conforming structures at 100 feet or more.

D. Other Factor:

1. The fact that there is suitable area for a structure to meet a greater setback, the existing configuration of the structure is self-created and there are several alternatives that would eliminate or reduce the amount of variances, the landowner has not met the burden of demonstrating a practical difficulty as proposed.

Mark Lindhorst noted no items of correspondence were received prior to the deadline. However, several items were received the morning of the hearing and were accepted and read into the record. These letters were from Richard and Colleen Dinter in support, Jim and Gretchen Janssen to better explain their proposal, Kolstad-Olson Drilling that stated ledge rock was encountered when drilling the well, and from Deena Congdon in support.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow two principal dwellings on a parcel where there is not sufficient lot area per structure to equal the minimum dimensional standard and to allow up to a 2,168 square foot dwelling 50 feet from the shoreline, the following conditions shall apply:

Condition Precedent:

1. 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 June 1, 2021.

Conditions Concurrent:

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

James Janssen, the applicant, stated that staff indicated that the building could be moved back. The slope is significant enough to make that difficult and there is ledge rock located directly behind the structure. Moving the structure back would remove green space and vegetation. The building would also be located in the parking area and would destroy the layout of the property. There will be no change to the scenery or shoreline. The only difference would be building further to the west and that should not be seen from the lake. While there are other properties in the area with conforming setbacks, there are many properties with nonconforming structures. They had previously rented this property and they will no longer be renting out the property.

One member of the audience spoke in support.

Deena Congdon, 7629 Gold Coast Road, stated they are in favor of the variance. Their letter was read into the record.

No other audience members spoke.

The Board of Adjustment discussed the following:

- A. Board member *Svatos* asked if the guest cabin was removed if it would eliminate a variance. *Mark Lindhorst* stated it would remove one of the variances. The guest cabin is too large to be an accessory dwelling.
- B. Board member *Filipovich* asked if staff had discussed a single building and being able to build upwards. *Mark Lindhorst* said that he did discuss this with the applicant. While he did not see any ledge rock, there may be ledge rock that would limit where a structure could be built.
- C. Board member *Filipovich* asked if bed and breakfasts were commercial uses. *Mark Lindhorst* stated that it is a commercial use and would require a conditional use permit.
- D. Board member *McKenzie* inquired what type of foundation is under the existing dwelling. *James Janssen* stated this is one of the reasons why the dwelling needs to be removed. The foundation was poured on top of the ground and there are no footings.

DECISION

Motion by *Skraba/Svatos* to approve a variance to allow two principal dwellings on a parcel where there is not sufficient lot area per structure to equal the minimum dimensional standard and to allow up to a 2,168 square foot dwelling 50 feet from the shoreline, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.4, requires 100 foot setback for principal structures and Article VI, Section 6.2B, requires sufficient lot area per structure to equal the minimum dimensional standard. The property is currently 1.2 acres and has 290 feet of shoreline. In order to have two dwellings, the parcel would need to be 2 acres in size and have 300 feet of lot width at the shoreline and building line.
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.
3. Objective LU-3.3 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.
4. The variance is somewhat in harmony with official controls, as the structure will be moved farther back from the shoreline.

B. Practical Difficulty:

1. Existing development on the property may limit a structure from meeting the required shoreline setback.
2. Practical difficulty has been demonstrated. There is ledge rock located on the property. There is also elevation change on the driveway behind the proposed structure.

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 area.
2. The road came before the structures were built. Structures were built closer to the road.
3. The variance will not alter the essential character of the locality.

D. Other Factor:

1. Crane Lake is a longstanding community that was developed before ordinances.

The following conditions shall apply:

Condition Precedent:

1. 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 June 1, 2021.

Conditions Concurrent:

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

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

Opposed: Pollock - 1

Case 6236 – Matt Foehrenbacher

The fourth hearing item was for Matt Foehrenbacher, property located in S2, T52N, R15W (Fredenberg). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3, to allow the addition of a permanent foundation to a nonconforming principal dwelling that does not meet the minimum shoreline setback requirement and to allow two additions to a nonconforming principal dwelling where one is allowed without variance.

Donald Rigney, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a permanent foundation under a nonconforming dwelling at its existing location.
- B. The dwelling is 672 square feet and is located 28 feet from the Ordinary High Water Level (OHWL) of Island Lake Reservoir.
- C. The existing dwelling has a post and beam foundation.
- D. The applicant is also proposing to construct a 200 square foot addition to the side of the existing dwelling. The proposed addition will not increase any existing nonconformities.
- E. The proposed height of the structure will not exceed 20 feet.
- F. There is steep slope located on the property.
- G. There is a parking area located on top of the slope. This is where an alternative building area is located.

Donald Rigney reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Island Lake Reservoir is classified as a Recreational Development lake and requires a minimum 100 foot shoreline setback.
 - a. The shore impact zone for Recreational Development lakes is 50 feet.
 - b. The current structure is located 28 feet from the lake.
 2. The ordinance requires that if a nonconforming structure is moved any distance or if structural changes are made, the structure shall be moved to conform to setback requirements.
 3. The applicant is proposing two additions:
 - a. A basement (zero square foot addition).
 - b. An expansion (200 square foot addition).
 4. An existing nonconforming principal dwelling may be expanded once with a performance standard permit, without variance, if no additions have been added to the principal dwelling since the implementation date of the appropriate setback standard.
 - a. If the variance to allow the addition of a permanent foundation to the nonconforming principal dwelling that does not meet the minimum shoreline setback requirement is denied, the 200 square foot expansion may still be allowed through a performance standard permit.
 - b. If the variance is granted to allow the addition of a permanent foundation to the nonconforming principal dwelling that does not meet the minimum shoreline setback requirement, the 200 square foot expansion would then require a variance for a second addition to a nonconforming principal dwelling where one is allowed without variance.

5. 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.
6. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
7. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

B. Practical Difficulty:

1. There are no unique physical circumstances of the property.
2. A variance is not the only option.
3. Alternative: The dwelling may be relocated to a conforming location and placed on a permanent foundation with a land use permit. There is suitable area to relocate the dwelling to a conforming location.
4. Alternative: Construct a replacement dwelling with a permanent foundation at a conforming location with a land use permit.
5. Alternative: The foundation may be repaired with like construction as allowed through repair as defined in the St. Louis County Zoning Ordinance 62.
6. Alternative: An addition of up to 200 square feet may be done with a performance standard permit. This alternative may be used for a mechanical room. This would allow any mechanical systems that may be located on the exterior of the cabin to be relocated into the heated structure.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area.
2. Approval of a variance to allow a permanent foundation for a nonconforming principal dwelling that does not conform to the minimum shoreline setback requirement without the demonstration of practical difficulty is not consistent with ordinance requirements.
3. There has been one variance request to construct a permanent foundation under an existing nonconforming dwelling in the area. The request was granted in 2018 on the adjoining lease lot to the east.
 - a. The nonconforming dwelling on the adjoining lease lot that was granted a permanent foundation through variance has a shoreline setback of 52 feet which is outside the shore impact zone.

D. Other Factors:

1. The existing septic system, which was permitted in 2015, was designed for a three bedroom single family dwelling.
 - a. The design indicates the location of the proposed three bedroom dwelling at a conforming location.
2. The alternative conforming location would alleviate the need for the current variance request and the need for any potential variance requests for future expansions, as well

- as the potential floodplain issues with constructing a permanent foundation at the current location.
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.
 4. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states:
 - a. “Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance.”
 5. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.
 - a. Increasing a nonconformity in intensity of use where alternatives exist, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Ordinance or St. Louis County Comprehensive Land Use Plan.
 6. The landowner has not met the burden of demonstrating practical difficulty as there is sufficient area for a conforming structure.

Donald Rigney noted one item of correspondence from Cathie and Steve Trachsel in support of the variance. This item was provided to the Board of Adjustment prior to the hearing

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow the addition of a permanent foundation to a nonconforming principal dwelling that does not meet the minimum shoreline setback requirement and to allow two additions to a nonconforming principal dwelling where one is allowed without variance, 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 protection 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. Overall height shall not exceed 20 feet.
5. All FEMA and St. Louis County Floodplain Management Ordinance 43 standards shall be met.
6. In the event that it is determined that the structure is not structurally sound to be added onto or moved, a new structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.

Matt Foehrenbacher, the applicant, stated the cabin is 672 square feet in size. There is currently no insulation below this. The goal is to make this cabin a four-season structure and add square footage where they can. They spoke with a local architect and a local builder who advised there were no other reasonable alternatives to make this a four-season structure other than to add a permanent foundation. They also recommended to dig down and build a basement so they could have mechanicals inside, including a furnace. When they talked about moving the cabin back, there are a lot of trees and a hill behind the structure. Even if they did attempt to move the cabin,

they would have to clear cut the hill. The "road" was a driveway at one point and was once shared among multiple cabins. This is an old driveway that is blocked off on both sides. The interior was remodeled by the previous landowner.

Sarah Foehrenbacher, the applicant, stated they wanted to make this cabin something their family can use for a long time.

No audience members spoke.

The Board of Adjustment discussed the following:

- A. Board member *Filipovich* asked if there is an easement going through the lot. *Donald Rigney* stated this is all Minnesota Power property and there could be an easement for adjacent landowners to access their properties. The easement is blocked off at the applicant's property.
- B. Board member *McKenzie* stated the variance request indicated two additions. This would include the 200 square foot addition on the lake side and then a 2 foot by 4 foot bump-out in the back? *Donald Rigney* stated that the bump-out already exists and this is where the mechanicals are. A permanent foundation is considered a zero square foot addition. While they would be allowed the one addition to the side with a performance standard permit, a second addition requires a variance. The permanent foundation/basement would require the variance.
- C. Board member *McKenzie* asked if the applicant is aware that they could repair the foundation with a like foundation. *Donald Rigney* stated that the applicant wants to bring the mechanicals inside and make the cabin more of a four-season structure.
- D. Board member *Skraba* asked if the goal is to lift the cabin to put a foundation underneath it. *Matt Foehrenbacher* stated the goal would be to lift up the cabin and add a basement below it. *Donald Rigney* added that there is now floodplain issues to deal with. If they dig down, they would have to meet Regulatory Flood Protection Elevation (RFPE). They could dig down four feet before they run into that elevation. *Matt Foehrenbacher* added that their current door is about two feet off the ground at the moment and they would like to be able to dig below that for a basement.
- E. Board member *McKenzie* asked the applicant if they are intending for a full basement. *Matt Foehrenbacher* stated they would like full walls and a basement instead of a crawl space. Board member *McKenzie* asked if this will be primarily used for mechanicals. *Matt Foehrenbacher* added that it would be used for mechanicals and for sleeping space. They have three young boys that need space.
- F. Board member *McKenzie* asked if the applicant would replace with a post and beam foundation. *Matt Foehrenbacher* stated the structure was built in the 1940s. If they kept with the post and beam foundation, they would not be able to add any additional square footage. They would not be able to build upwards because the structure height would exceed the 20 foot height requirement.
- G. Board chair *Werschay* asked if the applicant would be able to put in the permanent foundation if they did not include a second addition to the side. *Donald Rigney* stated with the foundation alone, there is conforming area on the property and that would not be allowed without a variance. *Jenny Bourbonais*, Acting Secretary, stated the difference is the applicant is moving from a non-permanent foundation to a permanent foundation. The

Ordinance requires staff to see if there is area for the structure to be moved to in order to meet a greater setback. Because of the type of foundation the applicant is proposing, that would require a variance due to the location the applicant is proposing the foundation in. The 200 square foot addition to the side does not require a variance if the foundation addition were not part of the proposal.

- H. Board member *Pollock* asked about the floodplain and its relation to the basement. Donald Rigney stated that the applicant would be able to dig down four feet before meeting the RFPE and above grade be 20 feet in height due to the location of the cabin. How the applicant does the foundation height along with the first floor is up to the applicants and/or their designer.
- I. Board member *Skraba* asked if the applicants would be allowed to put footings lower than the RFPE. *Donald Rigney* stated the lowest floor, including a basement or a crawl space, has to be at or above the RFPE. Board member *Skraba* asked how high the current structure is. *Donald Rigney* stated it is between 12 to 14 feet.
- J. *Jenny Bourbonais* stated that if the basement or foundation were like for like, that would be allowed under the definition of repair. In this case, this is not replacing like for like.
- K. Board member *McKenzie* asked who enforced the floodplain regulations. *Donald Rigney* stated that floodplain regulations are a part of staff's permit review.
- L. Board member *McKenzie* asked if the applicant is aware their cabin may be raised up. *Matt Foehrenbacher* stated they are aware of this. The current cabin is 13 feet in height. The cabin may be raised another two feet but it should not be much higher.
- M. Board member *Pollock* stated he did not hear any justification for the basement. This is neither a repair nor a fix and it should not be allowed at its current location.

DECISION

Motion by *Skraba/McKenzie* to approve a variance to allow the addition of a permanent foundation to a nonconforming principal dwelling that does not meet the minimum shoreline setback requirement and to allow two additions (totaling 200 square feet) to a nonconforming principal dwelling where one is allowed without variance, based on the following facts and findings:

A. Official Controls:

- 1. Island Lake Reservoir is classified as a Recreational Development lake and requires a minimum 100 foot shoreline setback.
 - a. The shore impact zone for Recreational Development lakes is 50 feet.
 - b. The current structure is located 28 feet from the lake.
- 2. The ordinance requires that if a nonconforming structure is moved any distance or if structural changes are made, the structure shall be moved to conform to setback requirements.
- 3. The applicant is proposing two additions:
 - a. A basement (zero square foot addition).
 - b. An expansion (200 square foot addition).
- 4. An existing nonconforming principal dwelling may be expanded once with a performance standard permit, without variance, if no additions have been added to the principal dwelling since the implementation date of the appropriate setback standard.
 - a. If the variance to allow the addition of a permanent foundation to the nonconforming principal dwelling that does not meet the minimum shoreline

setback requirement is denied, the 200 square foot expansion may still be allowed through a performance standard permit.

- b. If the variance is granted to allow the addition of a permanent foundation to the nonconforming principal dwelling that does not meet the minimum shoreline setback requirement, the 200 square foot expansion would then require a variance for a second addition to a nonconforming principal dwelling where one is allowed without variance.
5. 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.
6. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
7. 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.
8. The variance is in harmony with official controls as visually, the structure will not change and a 200 square foot addition would be allowed if the foundation type was not changing.

B. Practical Difficulty:

1. The applicant is trying to keep the property and shoreline as low-key as possible.
2. To move the structure back, the applicant would need to remove more vegetation than necessary.
3. Practical difficulty has been demonstrated; the applicants are trying to conform to the law.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area.
2. There has been one variance request to construct a permanent foundation under an existing nonconforming dwelling in the area. The request was granted in 2018 on the adjoining lease lot to the east.
 - a. The nonconforming dwelling on the adjoining lease lot that was granted a permanent foundation through variance has a shoreline setback of 52 feet which is outside the shore impact zone.
3. The variance will not alter the essential character of the locality.

D. Other Factors:

1. The existing septic system, which was permitted in 2015, was designed for a three bedroom single family dwelling.
 - a. The design indicates the location of the proposed three bedroom dwelling at a conforming location.
2. This is a young family trying to establish themselves on a lake.

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 protection 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. Overall height shall not exceed 20 feet.
5. All FEMA and St. Louis County Floodplain Management Ordinance 43 standards shall be met.
6. In the event that it is determined that the structure is not structurally sound to be added onto or moved, a new structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
7. The addition to the side shall not exceed 200 square feet.

In Favor: Filipovich, McKenzie, Skraba, Svatos - 4

Opposed: Pineo, Pollock, Werschay - 3

Motion carried 4-3

Case 6237 – Todd and Laura Rothe

The fifth hearing item was for Todd and Laura Rothe, property located in S27, T52N, R15W (Fredenberg). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a principal structure at a reduced shoreline setback; Article IV, Section 4.3 D. (3) and Section 4.3 D. (4) b, to allow a principal structure width facing the water to exceed 40 percent of the lot width if located within the shoreline setback; and to allow a principal structure height to exceed 25 feet when between the shore impact zone and the required setback.

Donald Rigney, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a principal dwelling with an attached garage totaling 3,145 square feet located 62 feet from the shoreline of Fish Lake Reservoir where 100 feet is required.
- B. The dwelling will replace an existing 544 square foot nonconforming dwelling that is approximately 32 feet from the shoreline.
- C. The proposed dwelling will have a structure width facing the lake of approximately 49 percent where 40 percent is allowed.
- D. The proposed height of the dwelling will be 27 feet where 25 feet is allowed.
- E. There is steep slope on the property including a ridge.

Donald Rigney reviewed staff facts and findings as follows:

A. Official Controls:

1. Fish Lake Reservoir is a Recreation Development Lake which requires a shoreline setback of 100 feet; the proposed principal structure will be located at a shoreline setback of 62 feet.
2. Zoning Ordinance 62 states that a nonconforming principal structure width facing the water shall not exceed 40 percent of the lot width, if located within the shoreline setback; the proposed structure will be 49 percent of the lot width.
3. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact

zone and the required setback; the proposed principal structure will have a height of 27 feet.

4. The subject lot does not qualify for shoreline averaging. If shoreline averaging was implemented utilizing the two dwellings on adjoining lots, the required shoreline setback would be 85 feet.
5. The parcel is a Minnesota Power lease lot and is a legal lot of record for permitting purposes.
6. 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 lakeshore area.
7. 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.
8. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
9. 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. A majority of the riparian portion of the lease lot contains steep slope. Any development of the lot, at a conforming location or not, will be effected by the steep slope and will require a design that takes the topography into account.
2. The applicant has several alternatives that would eliminate the need for or reduce the amount of variance requests.
 - a. Alternative: Redesign the structure to conform to the required setbacks. This alternative may also alleviate both height and structure width variances. A conforming structure may be permitted through a Land Use Permit.
 - i. The applicant may also work with Minnesota Power to adjust the eastern lease line to allow for better driveway access to the buildable area of the lease lot. This lease line is the common lease line between the applicant's two lease lots.
 - b. Alternative: As proposed, the dwelling has a walkout basement with a vaulted main floor resulting in a height of 27 feet. A redesign may reduce the height of the structure and eliminate the need for a variance request for height.
 - c. Alternative: As proposed, the dwelling has an attached garage resulting in a principal structure width facing the lake being greater than the allowed 40 percent. Detaching the garage from the principal structure may alleviate the need for variance for principal structure width facing the lake. A redesign of the structure to reduce principal structure width facing the lake may still allow for an attached garage.

- d. Alternative: As proposed, the dwelling has a covered deck extending 12 feet towards the lake. If the roof were to be removed so the deck is no longer covered, the shoreline setback as proposed would then change to 74 feet. This does not eliminate the need for variance but reduces the nonconformity.
3. The topography of the property may complicate the development of the lot; however, the design of the proposed dwelling is a self-created practical difficulty.
4. The applicant has not provided sufficient evidence as to why a greater setback could not be achieved. As stated in the Comprehensive Land Use Plan, nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statutes.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year round dwellings.
2. Most principal structures in the Minnesota Power lease plat located on Larson Lane do not meet shoreline setback.
3. There have been three similar variances granted in the area since 2000. All three have been for principal structures that did not meet shoreline setback.
 - a. In 2000, a variance was granted on the adjoining lot to the east of the subject lot for a principal structure 70 feet from the shoreline where 100 feet is required.
 - b. In 2006, a variance was granted on the adjoining lot to the west for a principal structure 50 feet from the shoreline where 100 feet is required.
 - c. In 2017, a variance was granted on the lot two lots to the east for a principal structure 80 feet from the shoreline where 100 feet is required.

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 current design of the structure is self-created. The applicant has not met the burden of demonstrating a practical difficulty as proposed due to the fact that there is suitable area for a structure to meet a greater setback and that there are several alternatives that would eliminate or reduce the amount of variances.
3. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.
 - a. Replacing a nonconformity with another nonconformity with a greater intensity of use, where alternatives exist, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Ordinance or St. Louis County Comprehensive Land Use Plan.

Donald Rigney noted two items of correspondence, one from the applicant and one from Heather Hiner in support. These items were provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a principal structure at a reduced shoreline setback; to allow a principal structure width facing the water to exceed 40 percent of the lot width if located within the shoreline setback; and to allow a principal structure height to exceed 25 feet when between the shore impact zone and the required setback, the following conditions shall apply:

1. The setback for the proposed structure shall be maximized to the greatest extent possible, and shall be no closer than 85 feet from the shoreline.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
4. 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 within two years from the issuance of a land use permit.

Todd Rothe, the applicant, stated their designer has worked to come up with a plan to minimize tree removal and get the square footage for a year-round home. A walk-out basement would allow for a more compact design in terms of the square footage being impacted.

The applicant then shared a presentation. Staff's alternative location would require massive and unnatural excavation in order to retain a walk-out basement, a window-less basement, a two-story structure located on the high point of the property, or a redesign of the footprint where there is no room on the property. The driveway is steep and a U-turn would be required. This is not about being closer to the lake, but it is about not doing major dirt work and removing vegetation.

Bob Kanuit, 232 Larson Lane, Duluth MN, stated he is the applicant's attorney. The presentation made the point that one of the goals 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 and it was suggested it would not happen by granting this variance. However, the applicant is removing an unsightly cabin. Otherwise, the landowner would have to repair the existing cabin and continue a driveway. Granting this variance would further that goal of the Comprehensive Land Use Plan. There are a number of variances that were granted to other property owners along the shoreline due to topography. The landowner is only asked to be treated the same way. Under state law, practical difficulties are exceptional circumstances. It is difficult to get a driveway down Larson Lane because of the slope. The big practical difficulty is Larson Lane.

No audience members spoke.

The Board of Adjustment discussed the following:

- A. Board member *Pollock* asked how the 85 feet shoreline setback was determined in staff's recommended conditions. *Donald Rigney* stated that 85 feet was determined through shoreline averaging.
- B. Board member *Pollock* asked if shoreline averaging was discussed with the applicant. *Donald Rigney* stated that while the 85 feet was not discussed, they did discuss moving the structure back some. The applicant and their designer determined the proposed location

was the best location. They also discussed removing the roof over the deck to get a 74 foot setback.

- C. Board member *Skraba* asked if there would be an issue to remove the roof over the deck. That would move the structure back 12 feet. *Todd Rothe* stated that the additional square footage would be better. If this is something that would move the structure to the 74 foot setback, they could forego the roof.
- D. Board member *Skraba* asked if a pergola would be allowed over the deck. *Jenny Bourbonais*, Acting Secretary, stated a pergola would be considered an attached roof.
- E. Board member *Pollock* stated that some of this proposal requires that what the applicant wants could be changed to lessen the number of variances being asked for.
- F. Board member *McKenzie* stated that this is design over function; the garage could be rotated to meet the required structure width facing the lake. There will be excavation required that the ridge should not come into play, including the trees. The elevation of the roadway may not be much of a factor.
- G. Board chair *Werschay* stated that having the applicant move the structure away from the lake is better. The applicant should also keep the covered deck. Board member *Pollock* stated that the redesign to remove the covered deck would allow the applicant to better follow the rules. This would also include moving the deck.

DECISION

Motion by Skraba/Pineo to approve a variance to allow a principal structure at a reduced shoreline setback, to allow a principal structure width facing the water to exceed 40 percent of the lot width if located within the shoreline setback, and to allow a principal structure height to exceed 25 feet when between the shore impact zone and the required setback, based on the following facts and findings:

A. Official Controls:

- 1. Fish Lake Reservoir is a Recreation Development Lake which requires a shoreline setback of 100 feet; the proposed principal structure will be located at a shoreline setback of 62 feet.
- 2. Zoning Ordinance 62 states that a nonconforming principal structure width facing the water shall not exceed 40 percent of the lot width, if located within the shoreline setback; the proposed structure will be 49 percent of the lot width.
- 3. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback; the proposed principal structure will have a height of 27 feet.
- 4. The subject lot does not qualify for shoreline averaging. If shoreline averaging was implemented utilizing the two dwellings on adjoining lots, the required shoreline setback would be 85 feet.
- 5. The parcel is a Minnesota Power lease lot and is a legal lot of record for permitting purposes.
- 6. 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.

7. 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.
8. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
9. 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.
10. The topography, the ridge and Larson Lane make building on this property difficult.
11. To build beyond the ridge and build at the 100 foot setback would not be practical.
12. The variance is in harmony with official controls to an extent by replacing a structure at a further setback than the current structure.

B. Practical Difficulty:

1. A majority of the riparian portion of the lease lot contains steep slope. Any development of the lot, at a conforming location or not, will be effected by the steep slope and will require a design that takes the topography into account.
2. Practical difficulty has been demonstrated. The topography, the ridge, vegetation (including White Pine trees) and the road are all practical difficulties.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year round dwellings.
2. Most principal structures in the Minnesota Power lease plat located on Larson Lane do not meet shoreline setback.
3. There have been three similar variances granted in the area since 2000. All three have been for principal structures that did not meet shoreline setback.
 - a. In 2000, a variance was granted on the adjoining lot to the east of the subject lot for a principal structure 70 feet from the shoreline where 100 feet is required.
 - b. In 2006, a variance was granted on the adjoining lot to the west for a principal structure 50 feet from the shoreline where 100 feet is required.
 - c. In 2017, a variance was granted on the lot two lots to the east for a principal structure 80 feet from the shoreline where 100 feet is required.
4. The variance will not alter the essential character of the locality.

D. Other Factors:

1. The applicant is applying for a structure height of 27 feet where 25 foot height is allowed. The difference is two feet. With a ridge located behind the structure, it would not be noticed as much as if the site were flat.
2. The applicant should remove the roof over the deck in order to reach a 75 foot shoreline setback.

The following conditions shall apply:

1. The setback for the proposed structure shall be maximized to the greatest extent possible, and shall be no closer than 75 feet from the shoreline.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
4. 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 within two years from the issuance of a land use permit.

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

Opposed: McKenzie - 1

Motion carried 6-1

Motion to adjourn by Skraba. The meeting was adjourned at 2:25 p.m.