

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD THURSDAY, AUGUST 8, 2019, ST. LOUIS COUNTY PUBLIC WORKS, LOWER-LEVEL TRAINING ROOM, VIRGINIA, MN.

11:34 AM – 1:46 PM

Board of Adjustment members in attendance: David Anderson, Alternate
Steve Filipovich
James McKenzie
Dave Pollock
Roger Skraba
Diana Werschay, Chair

Board of Adjustment members absent: Sonya Pineo
Ray Svatos

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

NEW BUSINESS:

- A. Michael Thompson – S19, T57N, R17W (Fayal)
- B. Anthony Traina – S3, T61N, R16W (Vermilion Lake)
- C. Orlynn Olson – S16, T62N, T16W (Greenwood)
- D. Charles McKenzie – S17, T66N, R19W (Camp Five)

OTHER BUSINESS:

Motion by Skraba/Pollock to approve the minutes of the July 8, 2019 meeting with one spelling correction.

In Favor: McKenzie, Pollock, Skraba, Werschay - 4

Opposed: None – 0

Abstained: Anderson, Filipovich - 2

Motion carried 4-0-2

NEW BUSINESS:

Case 6195 – Michael Thompson

The first hearing item was for Michael Thompson, property located in S19, T57N, R17W (Fayal). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow a principal structure to be replaced at a reduced property line setback. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The request is to remove an existing 22 foot by 20 foot dwelling and replace it with a 50 foot by 26 foot dwelling.
- B. The proposed dwelling will have a 12 foot property line setback where a 20 foot property line setback is required.
- C. This property is served by the Fayal municipal system.

Stephen Erickson reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62 requires a 20 foot principal structure setback from property lines in a Residential (RES)-7 zone district.
2. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. The parcel is located in the Lakeshore Development Area on the Future Land Use Map in the Comprehensive Land Use Plan. This area is intended for rural development and redevelopment adjacent to lakes. This includes single family residential uses in size, scale and intensity consistent with the county's developed lake shore area.

B. Practical Difficulty:

1. The parcel is a 50 foot wide platted lot.
2. The plat of Lindstrom Beach was recorded in 1924 prior to the first zoning ordinance in St. Louis County.
3. The lot would have to be 66 feet in width for the applicant's proposal to conform to ordinance requirements.
4. The proposed structure will be centered on the lot, this will maximize side yard setbacks to the greatest extent.

C. Essential Character of the Locality:

1. The character of the neighborhood will not change, as this lot has been developed and the proposal is to redevelop as close to ordinance requirements as is practical on such a small platted lot of record.

D. Other Factors:

1. The applicant's proposal is reasonable per the lot size and zoning requirements. A structure 10 feet in width would meet the setback requirements.
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.
3. The applicant has met the burden to demonstrate sufficient practical difficulty to redevelop a lot that was platted in 1924 and the request is reasonable for the size lot that is existing.

Stephen Erickson noted no items of correspondence.

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 to be replaced at a reduced property line setback, 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 directly discharge into the lake or on adjacent lots.
3. A land alteration permit shall be submitted before the issuance of a land use permit if a walkout basement is constructed.

Michael Thompson, the applicant, stated that the existing cabin is about to fall down. The family has owned the property since 1967 and has passed onto him. They are building the structure to minimize any impact on their neighbors, who are both on board with this project. The new dwelling will be an improvement over the existing structure. There are additional accessory structures that will be removed once the existing cabin is torn down. An existing outhouse will also be torn down and a screen house and shed closer to the lake will remain. They know to abandon the outhouse to St. Louis County standards.

One member of the audience spoke in favor:

Kurt Thompson, 9650 Highway 37, Iron, stated he is the applicant's father and there have been no issues with the neighbors regarding this project. The foundation on the cabin is rotted out. The outhouse has not been used in years. They have been renting a portable toilet for the past ten years.

No other audience members spoke.

DECISION

Motion by Skraba/Anderson to approve a variance to allow a principal structure to be replaced at a reduced property line setback of 12 feet where 20 feet is required, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 requires a 20 foot principal structure setback from property lines in a RES-7 zone district.
2. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. The parcel is located in the Lakeshore Development Area on the Future Land Use Map in the Comprehensive Land Use Plan. This area is intended for rural development and redevelopment adjacent to lakes. This includes single family residential uses in size, scale and intensity consistent with the county's developed lake shore area.

B. Practical Difficulty:

1. The parcel is a 50 foot wide platted lot.
2. The plat of Lindstrom Beach was recorded in 1924 prior to the first zoning ordinance in St. Louis County.
3. The lot would have to be 66 feet in width for the applicant's proposal to conform to ordinance requirements.
4. The proposed structure will be centered on the lot, this will maximize side yard setbacks to the greatest extent.

C. Essential Character of the Locality:

1. The character of the neighborhood will not change, as this lot has been developed and the proposal is to redevelop as close to ordinance requirements as is practical on such a small platted lot of record.

D. Other Factors:

1. The applicant's proposal is reasonable per the lot size and zoning requirements. A structure 10 feet in width would meet the setback requirements.
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.
3. The applicant has met the burden to demonstrate sufficient practical difficulty to redevelop a lot that was platted in 1924 and the request is reasonable for the size lot that is existing.

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 directly discharge into the lake or on adjacent lots.
3. A land alteration permit shall be submitted before the issuance of a land use permit if a walkout basement is constructed.
4. Demolition debris shall be disposed of in accordance with St. Louis County Solid Waste Ordinance 45.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Werschay - 6

Opposed: None - 0

Motion carried 6-0

Case 6196 – Anthony Traina

The second hearing item was for Anthony Traina, property located in S3, T61N, R16W (Vermilion Lake). The applicant is requesting relief from St. Louis County Zoning Ordinance 60, Article VI, Section 6.1, to allow a parent parcel that is not along a public road, but has legally demonstrated access to a public road to be subdivided into parcels less than 4.5 acres. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is to allow a parent parcel that is not along a public road but has legally demonstrated access to a public road to be split into parcels less than 4.5 acres.
- B. The parent parcel is 13 acres in size.
- C. The applicant is proposing to split the parcel into a 2.5 acre parcel and a 10.5 acre parcel.
- D. The parcel is along St. Odilia Beach Road, which is a private road.
- E. The minimum acreage required for a Performance Standard Subdivision in this case is 4.5 acres and 300 feet of width. This is due to the parcel being on a private road.
- F. There are wetlands on the property but most of the parcel is upland.
- G. The zone district is Residential (RES)-9.
- H. The purpose of the parcel split is for one of the neighboring properties to build a garage across the road from their riparian property.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Subdivision Ordinance 60 states that a parent parcel not along a public road, but with legally demonstrated access to a public road may be split into parcels no less than 4.5 acres and 300 feet of width with a performance standard subdivision; the applicant is proposing to split a parent parcel into a 2.5 acre and 13 acre parcel with a performance standard subdivision.
 - 2. One purpose of Ordinance 60 is to provide avenues for flexibility and innovation in the subdivision of land.
 - a. The regulations already provide flexibility in subdivision.
 - b. The applicant is proposing additional flexibility beyond what is already allowed.
 - 3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- B. Practical Difficulty:
 - 1. There are no unique physical circumstances of the property.
 - 2. A variance is not the only option.
 - 3. One alternative is to split the parent parcel into two parcels that are a minimum of 4.5 acres and 300 feet of width.
 - 4. Another option is to split the parent parcel as proposed with a minor subdivision.
 - a. A minor subdivision allows a parent parcel that is not along a public road, but has legally demonstrated access to a public road to be subdivided into lots no smaller than 2.5 acres and 200 feet of width.
 - b. A minor subdivision provides an option for an applicant to split a parent parcel into parcels that are smaller than what is allowed with a performance standard subdivision in this case.
 - c. The minor subdivision requires additional review and additional documents to be submitted.
 - 5. St. Odilia Beach Road is used by many landowners for access and likely receives a higher volume of traffic than many private roads.

- a. There may be a higher volume of traffic on the road, but it may not receive the same level of maintenance as a public road and is likely not developed to the standards of a public road.
6. Ordinance 60 and Zoning Ordinance 62 would allow the parcel to be subdivided into smaller lots with additional review by means of conventional subdivision platting.

C. Essential Character of the Locality:

1. The west and north sides of the parcel are bordered by the plat of Immaculate Heart of Mary Beach.
2. The south and east sides of the parcel are bordered by larger, un-platted parcels.
3. The plat of Immaculate Heart of Mary Beach was platted in 1956, long before the first zoning and subdivision ordinances were adopted.

D. Other Factors:

1. In similar situations, other applicants have applied for a minor subdivision or met the performance standard subdivision requirements.
2. Ordinance 60 allows greater flexibility in the subdivision process than the previous subdivision ordinance.
3. Approval of this variance could set precedent for other landowners to request a variance from subdivision requirements because they do not feel they need to meet the required standards when there are reasonable alternatives to meet the standards.
4. The applicant has not met their burden to demonstrate sufficient practical difficulty.
5. Zoning Ordinance 62, Article VIII, Section 8.6 B.4, 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 a variance.

Jared Ecklund noted three items of correspondence from Richard Baratta, Axel Ahlstrand and James B. Laine in support of this request. These items were provided to the Board of Adjustment.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a parent parcel that is not along a public road, but has legally demonstrated access to a public road to be subdivided into parcels less than 4.5 acres, the following condition shall apply:

1. Any future subdivision of the parcels shall require platting.

Anthony Traina, the applicant, stated he wants to provide a small lot for his neighbor to build a garage on. He wants to keep the rest of his parcel for his personal use. He originally requested 2 acres and went to 2.5 acres after working with staff. The parent parcel is currently a vacant lot with walking/nature trails.

He did not want to go through a minor subdivision because of the cost. His only option other than a variance would be a performance standard subdivision, which would require a 4.5 acre parcel. Access to the parent parcel would be restricted if more than 2.5 acres was subdivided. He would

need an easement to get to his own property. This was the reason why the 2.5 acre parcel was configured the way it was.

One member of the audience spoke in support.

Axel Ahlstrand, 9443 St. Odilia Beach Road, Tower, stated that he is the Lot 22 landowner that will get the parcel from the applicant in order to build the garage. The road was not built where it was supposed to have gone. There would be direct access to that property and not cross anyone else's property.

Two members of the audience spoke with concerns.

Robert Pratt, 9411 St. Odilia Beach Road, Tower, stated that the adjoining landowner notice did not reference a garage construction at all. He agreed that the road was platted but was never constructed in the right place. He would have been opposed if this parcel was being created for a new dwelling. He added St. Louis County should take responsibility for that road.

Linda Keith, 9413 St. Odilia Beach Road, Tower, stated there is no legally demonstrated road access. There is only an easement through private property to get to St. Odilia Beach Road from County Road 77. The access to the road could be cut off at any time. She asked that the road should be fixed before more parcels and legal descriptions are made.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired what a minor subdivision would allow for lot size. *Jared Ecklund* stated that a minor subdivision would allow 2.5 acre parcels. That would meet the minimum zone district requirement. Any further division would require platting.
- B. St. Odilia Beach Road should be a public or township road. The road was not built in the platted right-of-way and cuts through a number of parcels within the plat.
- C. Requested the definition of 'legally demonstrated access.' *Jared Ecklund* stated legally demonstrated access is when there is a private jurisdictional road that grants landowners access to a public road. There is not direct access to a public road, but there is access.

FIRST MOTION

Motion by McKenzie/Pollock to deny a variance request to allow a parent parcel that is not along a public road, but has legally demonstrated access to a public road to be subdivided into parcels less than 4.5 acres, based on the following staff facts and findings:

- A. Official Controls:
 - 1. Subdivision Ordinance 60 states that a parent parcel not along a public road, but with legally demonstrated access to a public road may be split into parcels no less than 4.5 acres and 300 feet of width with a performance standard subdivision; the applicant is proposing to split a parent parcel into a 2.5 acre and 13 acre parcel with a performance standard subdivision.
 - 2. One purpose of Ordinance 60 is to provide avenues for flexibility and innovation in the subdivision of land.

- a. The regulations already provide flexibility in subdivision.
- b. The applicant is proposing additional flexibility beyond what is already allowed.
- 3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

B. Practical Difficulty:

- 1. There are no unique physical circumstances of the property.
- 2. A variance is not the only option.
- 3. One alternative is to split the parent parcel into two parcels that are a minimum of 4.5 acres and 300 feet of width.
- 4. Another option is to split the parent parcel as proposed with a minor subdivision.
 - a. A minor subdivision allows a parent parcel that is not along a public road, but has legally demonstrated access to a public road to be subdivided into lots no smaller than 2.5 acres and 200 feet of width.
 - b. A minor subdivision provides an option for an applicant to split a parent parcel into parcels that are smaller than what is allowed with a performance standard subdivision in this case.
 - c. The minor subdivision requires additional review and additional documents to be submitted.
- 5. St. Odilia Beach Road is used by many landowners for access and likely receives a higher volume of traffic than many private roads.
 - a. There may be a higher volume of traffic on the road, but it may not receive the same level of maintenance as a public road and is likely not developed to the standards of a public road.
- 6. Ordinance 60 and Zoning Ordinance 62 would allow the parcel to be subdivided into smaller lots with additional review by means of conventional subdivision platting.

C. Essential Character of the Locality:

- 1. The west and north sides of the parcel are bordered by the plat of Immaculate Heart of Mary Beach.
- 2. The south and east sides of the parcel are bordered by larger, un-platted parcels.
- 3. The plat of Immaculate Heart of Mary Beach was platted in 1956, long before the first zoning and subdivision ordinances were adopted.

D. Other Factors:

- 1. In similar situations, other applicants have applied for a minor subdivision or met the performance standard subdivision requirements.
- 2. Ordinance 60 allows greater flexibility in the subdivision process than the previous subdivision ordinance.
- 3. Approval of this variance could set precedent for other landowners to request a variance from subdivision requirements because they do not feel they need to meet the required standards when there are reasonable alternatives to meet the standards.
- 4. The applicant has not met their burden to demonstrate sufficient practical difficulty.

5. Zoning Ordinance 62, Article VIII, Section 8.6 B.4, 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 a variance.

In Favor: McKenzie, Pollock, Skraba - 3

Opposed: Anderson, Filipovich, Werschay - 3

Motion fails 3-3

DISCUSSION ON MOTION

- A. Board member *Skraba* stated that the practical difficulty could include cost of a minor subdivision, but cost alone cannot be considered as the only factor. The road status is also a major consideration.
- B. If the parent parcel was along a public road, a 2.5 acre parcel would be allowed. Because the maintenance on a public road is different, minimum lot sizes are smaller. On a private road, larger parcels limit potential development.
- C. Inquired if a 4.5 acre split would require road access. *Jared Ecklund* stated that this could be split into 4.5 acre pieces with a performance standard subdivision with legally demonstrated access to a public road.
- D. *Jared Ecklund* stated that just because the intent now is to construct a garage does not mean that at some point in the future there could be residential development with a dwelling.
- E. *Jenny Bourbonais* stated that the status of the road and not its location is in question. *Jared Ecklund* added there are private jurisdiction roads located within platted right-of-ways.
- F. There is a sign on this road that reads the ownership is private and states it is minimally maintained.
- G. Board member *Pollock* stated there are a number of these private jurisdiction roads throughout Greenwood Township. This variance could set precedent for subdividing on lots along these private jurisdiction roads.

DECISION

Motion by Anderson/Skraba to approve a variance to allow a parent parcel that is not along a public road, but has legally demonstrated access to a public road to be subdivided into a 2.5 acre parcel, which is less than 4.5 acres allowed, based on the following facts and findings:

- A. Official Controls:
 1. The variance request is partially in harmony with the general purpose and intent of official controls.
 2. This parcel is on a “semi-public road” that allows access to landowners and is not a public road.
 3. If this was a public road, the use would remain the same and the parcel could be divided with a performance standard subdivision.
- B. Practical Difficulty:
 1. The cost for a minor subdivision would be prohibitive.
 2. The road was not constructed in its platted right-of-way.

- C. Essential Character of the Locality:
 - 1. The applicant is not proposing a new use to the area.
 - 2. This will remain the same use.
- D. Other Factor:
 - 1. The road is not located within the platted road right-of-way.

The following conditions shall apply:

- 1. Any future subdivision of the parcels shall require platting.
- 2. The 2.5 acre parcel shall only be used for an accessory structure.
- 3. No further subdivision variances shall be allowed on the parent and remnant parcel.

In Favor: Anderson, Filipovich, Skraba, Werschay - 4

Opposed: McKenzie, Pollock - 2

Motion carried 4-2

Case 6197 – Orlynn Olson

The third hearing item was for Orlynn Olson, property located in S16, T62N, T16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to a nonconforming principal structure located between 25 feet from the shoreline and the shore impact zone that exceeds 200 square feet, and to allow the height of a completed principal structure that is located within the shore impact zone to exceed 20 feet.

Jared Ecklund, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is for an addition to a nonconforming dwelling. The dwelling is located approximately 34 feet from the shoreline. The request is to add 715 square feet to a structure that is 525 square feet in size.
- B. The applicant is also requested to exceed the maximum height allowed of 20 feet. The current structure is approximately 19 feet in height. The applicants are proposing 32 feet in height.
- C. The applicants were approved a variance in 2017 for a permanent foundation.
- D. The zone district is Residential (RES)-9.
- E. A good portion of the dwelling is located within the shore impact zone.
- F. The addition will be located both to the rear and to the side of the existing structure. The applicants are also proposing a second story.
- G. There is gradual slope located on the property.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Zoning Ordinance 62 states that the maximum size allowed for an addition to a nonconforming dwelling that is located between 25 feet and the shore impact zone (50 feet) is 200 square feet; the applicant is requesting an addition of 715 square feet.
 - 2. Zoning Ordinance 62 states that the maximum height allowed for a completed principal structure located within the shore impact zone is 20 feet; the applicant is requesting a height of 32 feet for the dwelling.

3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. Objective LU-3.3 of the 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 circumstances on the property that the landowner did not create.
2. In May 2017, the applicants applied for a variance to add a permanent foundation to the dwelling at a reduced shoreline setback. The variance was approved.
3. During the 2017 foundation variance case, staff made the recommendation to move the structure to a conforming location on the property. Had the applicant moved the structure at that time, the current proposal would not have required a variance.
4. The permanent nature of the current structure at a reduced shoreline setback was self-created at the time when the structure could have been moved back to a conforming location.
5. One option is to add 200 square feet to the existing dwelling. Adding 200 square feet to the structure and increasing the height to 20 feet would be allowed with a performance standard permit.
6. A second option is to move the structure to the required shoreline setback of 75 feet. If the structure were located at the required setback, the proposed addition and height increase could be permitted with a land use permit.
 - a. There is approximately 43 feet between the 75 foot setback and the well, which would provide room for a structure to be moved to a conforming location.

C. Essential Character of the Locality:

1. This area was once part of Bayview Resort.
2. The majority of the principal structures in the area are at a greater shoreline setback than the applicant's structure.
 - a. Most of the principal structures appear to be located outside of the shore impact zone.
 - b. The neighboring dwelling to the east appears to be located approximately 60 feet from the shoreline.
 - c. The neighboring dwelling to the west appears to be located approximately 75 feet from the shoreline.
3. Many of the structures in the area appear to be larger than the applicant's current structure but are located at a greater shoreline setback.

D. Other Factors:

1. During the 2017 variance hearing, the applicant stated that the height of the structure was 13 feet; the applicant stated that the height of the structure is 19 feet in the current 2019 application.
 - a. The new foundation was approved in 2017 with a height increase of no more than 3 feet.

- b. It is possible that the new foundation exceeded the three foot increase in height that was allowed through the 2017 variance decision.
2. During the 2017 hearing, the applicant stated that cost was the biggest difficulty in moving the structure back.
3. It was also stated by the applicant in the 2017 application that they would not be adding living space or adding on to the structure.
 - a. The proposed structure is over two times the size of the existing structure.
4. Part of the justification for the approval of the 2017 variance to allow the permanent foundation was that “the variance will not alter the essential character of the locality. The structure is already there and will not change size.”
5. In the 2017 variance application, the applicant stated that the maximum overall height of the cabin will remain well under the maximum allowable height requirement.
 - a. The applicant is now proposing to exceed the maximum allowed height by 12 feet.
6. Based on the information provided in the 2017 variance application and the current application, it does not appear that sufficient practical difficulty has been demonstrated.
7. Zoning Ordinance 62, Article VIII, Section 8.6 B.4 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 a variance.
8. Based on the site sketch, the proposed covered porch may encroach into the septic tank setback. The record review failed for this reason.
 - a. The setbacks from the septic system would need to be met.

Jared Ecklund noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow an addition to a nonconforming principal structure located between 25 feet from the shoreline and the shore impact zone that exceeds 200 square feet, and to allow the height of a completed principal structure that is located within the shore impact zone to exceed 20 feet, 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 structure shall not discharge directly into the lake or on adjacent lots.
3. The proposal shall adhere to all local, state and federal regulations.
4. The proposal shall comply with SSTS Ordinance 61.
5. No further additions shall be allowed to the principal structure, unless it is relocated to meet all setbacks and zoning ordinance requirements.

Orlynn Olson, the applicant, handed out a picture packet to the Board. He clarified that the structure height was due to their digging down in order to add the permanent foundation. The new low point is the door which allows them to access the space beneath the dwelling. They are three feet lower because of that door. This is not a full basement. The proposed additions will be located

away from the lake. There will be no further development towards the lake. The cabin, if they are allowed the extra 13 feet in height, will not go above the tree line. The biggest factor for the addition versus moving the structure is cost. They can add 500 square feet to the back of the cabin which would cost far less than demolition. Part of the addition includes a covered porch/deck to the side. If they remove the screen porch addition, the addition would be about 200 square feet in size.

The height increase would have no impact on neighbors or their aesthetic. They want to be able to be comfortable and have additional living space.

Donna Olson, the applicant, stated that they are going to live at this dwelling year-round and would need more living space. The intent is to add a bedroom upstairs. They want a little more space than what would be allowed with the 200 square foot addition allowed with a performance standard permit. They need to replace the roof and re-side the structure and are waiting to see what would be allowed before they continue work on the cabin.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. The 2017 variance was the discussion between whether or not this was considered a ‘repair’ of a foundation or a ‘rebuild’ of a foundation. The Board had determined that the variance request met the definition of a ‘repair.’
- B. Cost cannot be the sole factor in determining practical difficulty. There is nothing unique that would limit relocating the cabin to the lake setback.
- C. The applicants would be allowed a 200 square foot addition through a performance standard permit.

DECISION

Motion by McKenzie/Skraba to deny a variance request to allow an addition to a nonconforming principal structure located between 25 feet from the shoreline and the shore impact zone that exceeds 200 square feet, and to allow the height of a completed principal structure that is located within the shore impact zone to exceed 20 feet, based on the following staff facts and findings:

- A. Official Controls:
 1. Zoning Ordinance 62 states that the maximum size allowed for an addition to a nonconforming dwelling that is located between 25 feet and the shore impact zone (50 feet) is 200 square feet; the applicant is requesting an addition of 715 square feet.
 2. Zoning Ordinance 62 states that the maximum height allowed for a completed principal structure located within the shore impact zone is 20 feet; the applicant is requesting a height of 32 feet for the dwelling.
 3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

4. Objective LU-3.3 of the 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.
5. The applicant is requesting an addition size 136 percent beyond what already exists and a 60 percent increase in height over what is allowed by ordinance.

B. Practical Difficulty:

1. There are no unique circumstances on the property that the landowner did not create.
2. In May 2017, the applicants applied for a variance to add a permanent foundation to the dwelling at a reduced shoreline setback. The variance was approved.
3. During the 2017 foundation variance case, staff made the recommendation to move the structure to a conforming location on the property. Had the applicant moved the structure at that time, the current proposal would not have required a variance.
4. The permanent nature of the current structure at a reduced shoreline setback was self-created at the time when the structure could have been moved back to a conforming location.
5. One option is to add 200 square feet to the existing dwelling. Adding 200 square feet to the structure and increasing the height to the 20 feet would be allowed with a performance standard permit.
6. A second option is to move the structure to the required shoreline setback of 75 feet. If the structure were located at the required setback, the proposed addition and height increase could be permitted with a land use permit.
 - a. There is approximately 43 feet between the 75 foot setback and the well, which would provide room for a structure to be moved to a conforming location.
7. Cost alone cannot be the sole factor in determining practical difficulty.

C. Essential Character of the Locality:

1. This area was once part of Bayview Resort.
2. The majority of the principal structures in the area are at a greater shoreline setback than the applicant's structure.
 - a. Most of the principal structures appear to be located outside of the shore impact zone.
 - b. The neighboring dwelling to the east appears to be located approximately 60 feet from the shoreline.
 - c. The neighboring dwelling to the west appears to be located approximately 75 feet from the shoreline.
3. Many of the structures in the area appear to be larger than the applicant's current structure but are located at a greater shoreline setback.

D. Other Factors:

1. During the 2017 variance hearing, the applicant stated that the height of the structure was 13 feet; the applicant stated that the height of the structure is 19 feet in the current 2019 application.
 - a. The new foundation was approved in 2017 with a height increase of no more than 3 feet.

- b. It is possible that the new foundation exceeded the three foot increase in height that was allowed through the 2017 variance decision.
- 2. During the 2017 hearing, the applicant stated that cost was the biggest difficulty in moving the structure back.
- 3. It was also stated by the applicant in the 2017 application that they would not be adding living space or adding on to the structure.
 - a. The proposed structure is over two times the size of the existing structure.
- 4. Part of the justification for the approval of the 2017 variance to allow the permanent foundation was that “the variance will not alter the essential character of the locality. The structure is already there and will not change size.”
- 5. In the 2017 variance application, the applicant stated that the maximum overall height of the cabin will remain well under the maximum allowable height requirement.
 - a. The applicant is now proposing to exceed the maximum allowed height by 12 feet.
- 6. Based on the information provided in the 2017 variance application and the current application, it does not appear that sufficient practical difficulty has been demonstrated.
- 7. Zoning Ordinance 62, Article VIII, Section 8.6 B.4 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 a variance.
- 8. Based on the site sketch, the proposed covered porch may encroach into the septic tank setback. The record review failed for this reason.
 - a. The setbacks from the septic system would need to be met.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Werschay - 6

Opposed: None - 0

Motion carried 6-0

Case 6198 – Charles McKenzie

The fourth hearing item was for Charles McKenzie, property located in S17, T66N, R19W (Camp Five). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to a principal structure located between 25 feet from the shoreline and the shore impact zone that exceeds 200 square feet; Article VI, Section 6.2 B, to allow after-the-fact more than one detached principal residential dwelling on a parcel that does not have sufficient lot area per structure to equal the minimum dimensional standards required; Article III, Section 3.2, to allow a principal structure to remain at a reduced property line setback where 20 feet is required.

Jared Ecklund, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is for an oversized addition to a nonconforming dwelling located 25 feet from the shoreline and within the shore impact zone. The applicant is proposing a 336 square foot addition where 200 square feet is allowed with a performance standard permit.
- B. The existing dwelling is 768 square feet in size. With the proposed addition, the structure would be 1,104 square feet in size.

- C. The applicant is also requesting after-the-fact approval for a second principal structure to be located on a parcel that has only enough lot area for one. A parcel would need double the lot area and lot width for a second principal structure.
- D. The second principal structure was permitted as a garage in 2003. Living quarters were added without permit approval.
- E. The applicant is also requesting after-the-fact approval for a second principal structure to remain at a reduced property line setback of approximately 10 feet where 20 feet is required.
- F. The 2003 permit application indicated that the structure would be located 60 feet from the east property line.
- G. The structure was built approximately 17 feet from the east property line. A lean-to was recently added that reduced the property line setback to 10 feet.
- H. Between 2015 and 2016, the lean-to was added on without permit.
- I. There is steep slope on the property. Any development could risk erosion.

Jared Ecklund reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62 states that if a nonconforming principal structure is located between 25 feet from the shoreline and the shore impact zone, it may be expanded one time with an addition of 200 square feet total.
 - a. The applicant is requesting an addition of 336 square feet.
- 2. Zoning Ordinance 62 states that more than one and up to four detached residential principal dwellings are allowed with a land use permit on a single parcel if there is sufficient lot area per structure to equal the minimum dimensional standard required in Article III. One acre per structure would be required for this property for two principal structures to be allowed.
 - a. The applicant is requesting after-the-fact approval for two principal dwellings to remain on the property that only has enough lot area for one.
- 3. Zoning Ordinance 62 states that the required property line setback for a principal structure within a Shoreland Mixed Use (SMU)-7 zone district is 20 feet.
 - a. The applicant is requesting after-the-fact approval for an existing principal structure to remain at a property line setback of approximately 10 feet where 20 feet is required.
- 4. 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.
- 5. Objective LU-3.3 of the Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd. 10.

B. Practical Difficulty:

- 1. The existing dwelling (cabin) that is proposed to be expanded is located within the shore impact zone.
- 2. The slope behind the cabin is a steep slope. The slope is approximately 27 percent behind the cabin.

3. It would be difficult to move that cabin back to the required shoreline setback or outside of the shore impact zone because of the steep slope behind the cabin and the location of the septic system.
4. The area in the location of the proposed addition to the cabin is slightly flatter than much of the property.
 - a. Adding the addition in this area could limit the risk of erosion as long as best management practices are implemented.
 - b. Any development on the property could risk erosion because of the steep slopes on the property.
5. The second principal structure (garage with living quarters) was permitted in 2003 as an accessory structure (garage only).
 - a. The applicant of that permit is the current owner/variance applicant.
6. That permit was issued for an accessory structure and not a principal structure with living quarters.
7. The 2003 permit application also indicated that the structure would be located 60 feet from the closest property line.
 - a. The main portion of that structure was built approximately 17 feet from the property line.
8. Sometime between 2013 and 2016, an addition (lean-to) was added to that structure without a permit.
 - a. The addition further reduced the property line setback of the structure to approximately 10 feet.
 - b. The required property line setback for a principal structure in this zone district is 20 feet.
 - c. The existing structure may meet the property line setback requirement of 10 feet for an accessory structure.
 - d. If the living quarters were removed from the structure, it may be conforming.
9. One option is to remove the living quarters from the second principal structure (garage).
 - a. The structure would then only be required to meet the accessory structure setback of 10 feet.
 - b. Removing the living quarters would eliminate two variance requests since it would no longer be considered a principal structure and would meet the property line setback for an accessory structure.
10. Another option is to remove the unpermitted lean-to.
 - a. This would increase the setback; however, the structure would not meet the required property line setback for a principal structure (garage with living quarters).

C. Essential Character of the Locality:

1. The area is fairly remote, but there is moderate development density on this lake.
2. A similar variance was granted in 2013 for a 140 square foot addition to a nonconforming dwelling on a parcel approximately 750 feet north of the applicant's property.
 - a. In the 2013 case, the structure was located at a reduced shoreline setback.

- b. Justification for approval of that variance indicated in the decision was because the addition could not be seen from the lake and adding to the front of the structure seems more logical due to interior layout of the cabin and rooflines, and due to the unique shape and topography of that property.
- 3. There have been two other variances that were approved for accessory structures at reduced property line setbacks in the area.
 - a. These other variance cases were for accessory structures and not principal structures.
 - b. The neighboring property to the west received a variance in November 2018 for an accessory structure at a reduced property line setback.
 - c. There was very little area on the neighboring property for an accessory structure that met all setbacks and the proposal maximized the setback as much as possible.
- 4. Many of the principal structures in this area are located at reduced shoreline setbacks in part due to being developed prior to zoning ordinance requirements.

D. Other Factors:

- 1. Since the second principal structure was permitted as an accessory structure located at 60 feet from the closest property line, the practical difficulty for the second principal structure to remain on the property and for it to remain at a reduced property line setback is self-imposed.
 - a. The structure was permitted as an accessory structure (garage).
 - b. The structure was built closer to the property line than what was indicated in the application.
 - c. A lean-to was added to the structure without permit approval.
 - d. If the living quarters are removed from the garage, it may be conforming. An after-the-fact permit would be required for an addition to an accessory structure.
- 2. The site sketch submitted by the applicant indicates that the proposed addition may encroach upon the septic tank. It was unable to be determined if the proposed addition would meet the required setback from the septic tank, based on site measurements.
 - a. The proposed addition is required to meet the required setback from the septic tank.

Jared Ecklund noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow an addition to a principal structure located between 25 feet from the shoreline and the shore impact zone that exceeds 200 square feet, to allow, after-the-fact, more than one detached principal residential dwelling on a parcel that does not have sufficient lot area per structure to equal the minimum dimensional standards required and to allow, after-the-fact, a principal structure to remain at a reduced property line setback where 20 feet is required, the following conditions shall apply:

- 1. The structures shall be unobtrusive, earth-tone colors, including siding, trim and roof.
- 2. If it is determined that the principal structure (cabin) is not structurally sound enough for an addition, the structure may be rebuilt in a location that maximizes the shoreline

setback to the greatest extent possible and only one principal structure shall be allowed on the property.

3. The stormwater from the structures shall not discharge directly into the lake or onto adjacent lots.
4. A land use permit shall be obtained for the unpermitted addition to the second principal structure.

Charles McKenzie, the applicant, stated they added bunk beds in the accessory structure and he asked why this is now a dwelling. There is no running water or bathroom in this building. The lean-to is a shed roof that covers a bobcat. He did not think he needed a permit for a shed roof.

One member of the audience spoke.

Steve Long, 3 Hillary Farm Lane, inquired if by removing the beds, it would be conforming? The addition to expand the cabin will include a new bathroom and closet. There is only one bedroom existing in the cabin. That is what would increase the addition size over 200 square feet.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired if there is a size limitation on an accessory structure. *Jared Ecklund* stated there is no limit. To allow the accessory structure to remain as a principal structure, the dwelling by the lake could be converted into an accessory structure. Because of its location, it would be a water oriented accessory structure and still require a variance because it would be an oversized water oriented accessory structure. The maximum size water oriented accessory structure allowed is 250 square feet.
- B. *Jenny Bourbonais*, Acting Secretary, stated that no sleeping or living quarters are allowed within an accessory structure, regardless of pressurized water. That is what would change the definition from accessory structure to principal structure. An accessory dwelling would allow sleeping and living quarters, but would be limited to 700 square feet in size. This accessory structure is too large to be an accessory dwelling.
- C. Inquired if the applicant was going to exceed the 20 foot height limit. *Jared Ecklund* stated that had been a previous request, but after talking it over with the applicant, the applicant stated they would remain at the 20 foot structure height.
- D. Inquired how to make a decision. *Jenny Bourbonais* suggested the Board could approve the entire request, approve a part of the request and deny another part, or to deny the entire request.
- E. *Jared Ecklund* stated that the addition will be adding structure width, but it will not go beyond the allowed structure width facing the lake. The addition will also meet property line setbacks.

DECISION ON ADDITION

Motion by Skraba/McKenzie to approve a variance to allow a 336 square foot addition to a principal structure located between 25 feet from the shoreline and the shore impact zone that exceeds 200 square feet, based on the following facts and findings:

- A. Official Controls:

1. The variance request is in harmony with the general intent and purpose of official controls because the addition will be located away from the lake and to move the entire structure may cause more damage to the landscape due to steep slopes.

B. Practical Difficulty:

1. The topography limits where a structure may be built.
2. The addition will allow more reasonable use of the property in adding a second bathroom and improvement of the structure will also benefit the health and safety of the landowner.

C. Essential Character of the Locality:

1. The request will not alter the essential character of the locality.

D. Other Factors:

1. The addition is located away from the lake and is not large in size.
2. The applicant will remove the living quarters inside the accessory structure to make the property conforming.

The following conditions shall apply:

1. The structures shall be unobtrusive, earth-tone colors, including siding, trim and roof.
2. If it is determined that the principal structure (cabin) is not structurally sound enough for an addition, the structure may be rebuilt in a location that maximizes the shoreline setback to the greatest extent possible and only one principal structure shall be allowed on the property.
3. The stormwater from the structures shall not discharge directly into the lake or onto adjacent lots.
4. A land use permit shall be obtained for the unpermitted lean-to addition.
5. The living quarters shall be removed to convert the second principal dwelling back to an accessory structure.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Werschay - 6

Opposed: None - 0

Motion carried 6-0

DECISION ON SECOND PRINCIPAL STRUCTURE

Motion by Skraba/Anderson to deny a variance to allow, after-the-fact, more than one detached principal residential dwelling on a parcel that does not have sufficient lot area per structure to equal the minimum dimensional standards required and to deny, after-the-fact, a principal structure to remain at a reduced property line setback where 20 feet is required, based on the following staff facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 states that more than one and up to four detached residential principal dwellings are allowed with a land use permit on a single parcel if there is sufficient lot area per structure to equal the minimum dimensional standard required

- in Article III. One acre per structure would be required for this property for two principal structures to be allowed.
- a. The applicant is requesting after-the-fact approval for two principal dwellings to remain on the property that only has enough lot area for one.
 2. Zoning Ordinance 62 states that the required property line setback for a principal structure within a Shoreland Mixed Use (SMU)-7 zone district is 20 feet.
 - a. The applicant is requesting after-the-fact approval for an existing principal structure to remain at a property line setback of approximately 10 feet where 20 feet is required.
 3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 4. Objective LU-3.3 of the Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd. 10.
- B. Practical Difficulty:
1. The second principal structure (garage with living quarters) was permitted in 2003 as an accessory structure (garage only).
 - a. The applicant of that permit is the current owner/variance applicant.
 2. That permit was issued for an accessory structure and not a principal structure with living quarters.
 3. The 2003 permit application also indicated that the structure would be located 60 feet from the closest property line.
 - a. The main portion of that structure was built approximately 17 feet from the property line.
 4. Sometime between 2013 and 2016, an addition (lean-to) was added to that structure without a permit.
 - a. The addition further reduced the property line setback of the structure to approximately 10 feet.
 - b. The required property line setback for a principal structure in this zone district is 20 feet.
 - c. The existing structure may meet the property line setback requirement of 10 feet.
 - d. If the living quarters were removed from the structure, it may be conforming.
 5. One option is to remove the living quarters from the second principal structure (garage).
 - a. The structure would then only be required to meet the accessory structure setback of 10 feet.
 - b. Removing the living quarters would eliminate two variance requests since it would no longer be considered a principal structure and would meet the property line setback for an accessory structure.
 6. Another option is to remove the unpermitted lean-to.
 - a. This would increase the setback; however, the structure would not meet the required property line setback for a principal structure (garage with living quarters).

C. Essential Character of the Locality:

1. The area is fairly remote, but there is moderate development density on this lake.
2. A similar variance was granted in 2013 for a 140 square foot addition to a nonconforming dwelling on a parcel approximately 750 feet north of the applicant's property.
 - a. In the 2013 case, the structure was located at a reduced shoreline setback.
 - b. Justification for approval of that variance indicated in the decision was because the addition could not be seen from the lake and adding to the front of the structure seems more logical due to interior layout of the cabin and rooflines, and due to the unique shape and topography of that property.
3. There have been two other variances that were approved for accessory structures at reduced property line setbacks in the area.
 - a. These other variance cases were for accessory structures and not principal structures.
 - b. The neighboring property to the west received a variance in November 2018 for an accessory structure at a reduced property line setback.
 - c. There was very little area on the neighboring property for an accessory structure that met all setbacks and the proposal maximized the setback as much as possible.
4. Many of the principal structures in this area are located at reduced shoreline setbacks in part due to being developed prior to zoning ordinance requirements.

D. Other Factors:

1. Since the second principal structure was permitted as an accessory structure located at 60 feet from the closest property line, the practical difficulty for the second principal structure to remain on the property and for it to remain at a reduced property line setback is self-imposed.
 - a. The structure was permitted as an accessory structure (garage).
 - b. The structure was built closer to the property line than what was indicated in the application.
 - c. A lean-to was added to the structure without permit approval.
 - d. If the living quarters are removed from the garage, it may be conforming. An after-the-fact permit would be required for an addition to an accessory structure.
2. The site sketch submitted by the applicant indicates that the proposed addition may encroach upon the septic tank. It was unable to be determined if the proposed addition would meet the required setback from the septic tank, based on site measurements.
 - a. The proposed addition is required to meet the required setback from the septic tank.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Werschay - 6

Opposed: None - 0

Motion carried 6-0

Motion to adjourn by Skraba. The meeting was adjourned at 1:46 p.m.