

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD THURSDAY, MARCH 14, 2019, ST. LOUIS COUNTY PUBLIC WORKS, LOWER-LEVEL TRAINING ROOM, VIRGINIA, MN.

12:03 P.M. – 1:51 P.M.

Board of Adjustment members in attendance: David Anderson, Alternate
James McKenzie
Sonya Pineo
Dave Pollock
Roger Skraba, Vice Chair
Ray Svatos

Board of Adjustment members absent: Steve Filipovich
Diana Werschay, Chair

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

NEW BUSINESS:

- A. CalZion Construction – S2, T50N, R16W (Solway)
- B. Robert Riewe – S36, T56N, R15W (Colvin)
- C. Thomas Perell – S33, T63N, R15W (Unorganized)
- D. Jon and Kim Anderson – S9, T63N, R18W (Beatty)

OTHER BUSINESS:

Motion by Pollock/McKenzie to approve the minutes of the February 14, 2019 meeting.

In Favor: Anderson, McKenzie, Pineo, Pollock, Skraba, Svatos - 6

Opposed: None - 0

Motion carried 6-0

NEW BUSINESS:

Case 6178 – CalZion Construction

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

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

- A. The applicant is requesting an after-the-fact variance for a principal structure to be located at a reduced property line setback.

- B. The newly-built dwelling is currently located 19.6 feet from the property line where 50 feet is required.
- C. The applicant applied for and received a land use permit for a new dwelling to be located at a 75 foot property line setback. The dwelling was relocated without Planning Department review and was constructed 19.6 feet from the property line.
- D. The applicant is also requesting an after-the-fact variance for an accessory structure to be located at a reduced property line setback.
- E. The newly-constructed accessory structure (garage) slab/foundation is located 17.4 feet from the property line where 25 feet is required.
- F. The applicant applied for and received a land use permit for a new accessory structure to be located 25 feet from the property line. The garage was relocated without Planning Department review and a slab for the structure was poured 17.4 feet from the property line.
- G. A survey of the property line was conducted during construction which revealed the errors. However, construction of the home was continued and completed.
- H. The zone district is Forest Agricultural Management (FAM)-3.
- I. There are wetlands located on the property.

Stephen Erickson reviewed staff facts and findings as follows:

A. Official Controls:

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

B. Practical Difficulty:

- 1. There are no unique physical circumstances of the property.
- 2. A variance is not the only option as Land Use permits were issued for both the dwelling and garage at conforming locations.
- 3. There are alternatives that do not require a variance.
 - a. Alternative: a minor boundary adjustment may be done to obtain more land to meet conforming setbacks.
 - b. Alternative: relocate structures to conforming setbacks as originally permitted.
- 4. The dwelling was constructed and the garage slab was poured prior to seeking approval of the revised locations with the Planning Department.
- 5. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states:

- a. “The plight of the landowner is due to circumstances unique to the property not created by the landowner.”
 - b. “Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance.”
 6. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.iv states:
 - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, section 394.27 subdivision 7 and all acts amendatory thereof.
- C. Essential Character of the Locality:
1. The applicant is not proposing a new use to the area, the dwelling will be used as a year-round residence.
 2. The neighboring parcel to the west was granted a variance in 1988 to allow a principle structure at a reduced property line setback. The 1988 variance on the neighboring property does not indicate the reasoning or approval criteria for allowing a structure at a reduced property line setback.
- D. Other Factors:
1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
 2. When any land use permit is issued, it is sent with a cover letter that states: “if any changes in design of location are made to what was requested and approved, you must contact the Department for additional approval.”
- E. Was the construction completed prior to applying for the variance? If not, what extent of the construction has been completed?
1. The applicant stated that construction on the home has been completed while construction on the garage has been stopped and is currently a slab.
 2. The applicant applied for a land use permit for the principle structure in May 2018. In that application, the applicant indicated that the structure would conform to the required setbacks.
 3. The applicant applied for a land use permit for an accessory structure in July 2018. In that application, the applicant indicated that the structure would conform to the required setbacks.
 4. The applicant stated that the construction began in June 2018 and was completed in December 2018. The survey submitted showing location of the house and garage is dated July 30, 2018.
- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The County would benefit by enforcement of the ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan.

2. Approval of an after-the-fact variance for structures that were permitted at conforming locations without sufficient practical difficulty is not keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

Stephen Erickson noted the resolution from the Town of Solway that would support the Board of Adjustment's decision if they approved the variance.

STAFF RECOMMENDATION

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

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

Dan Buerskin, CalZion Construction, 2524 West Maple Grove Road, spoke as the contractor and variance applicant. He stated the first survey was completed in July 2018 for a utility easement. This involved a survey for a 150 foot by 15 foot piece of land where the utility line would be run into the property. He only had the property line surveyed in November or December 2018. Once they saw they did not meet setbacks, he contacted staff. ALTA did both the utility easement survey for Lake Country Power and the property line survey. He admitted he made a mistake in incorrectly assuming the property line setback was 25 feet for a dwelling as he has constructed on other parcels in St. Louis County and was not aware that there were different setbacks. He normally has ALTA site a house based on a survey, but the house was sited before the survey was done because this was a larger lot. The house was located 38 feet from what he thought was the property line. He had the second survey after they rotated the house and discovered they were closer to the property line. It was only after ALTA surveyed the line that he realized the dwelling was 19.6 feet from the property line.

Rick Misiewicz, the landowner, stated that they purchased the property from his son. They had to clear 50 feet from around where the power pole was located. There was a driveway and a building area cleared when they purchased the property. There had been a survey on this property done 15 years ago. This piece of property as well as adjoining landowners' property has been in his son's wife's family.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Anderson* inquired as to how staff became aware. *Stephen Erickson* stated that the applicants contacted staff and asked what the next step was.
- B. Inquired about why a minor boundary adjustment would be an alternative. *Stephen Erickson* stated that the minor boundary adjustment is used to adjust the property line so

that both structures would become conforming. It would require working with the adjoining landowner.

- C. Board member *McKenzie* inquired if the minor boundary adjustment was an alternative suggested to the applicant. *Stephen Erickson* stated that this was an option discussed with the applicant when they originally applied for a variance.
- D. Inquired if the landowner has spoken with the neighbor. *Rick Misiewicz* stated they have spoken with the neighbor. She was initially upset they had cleared trees out, but did not object to the location of the dwelling. She had variance approval in 1988 for a reduced property line setback of 25 feet. The neighbor is aware of the situation now. They have yet to discuss a minor boundary adjustment with her. The neighbor cannot see the dwelling anyway and once the garage is built, she would not be able to see anything.
- E. Inquired if land use permits include setback information. *Jenny Bourbonais*, Acting Secretary, stated that land use permits do not contain setback information as the setbacks are variable throughout the county. There is a letter attached with every land use permit mailed out of both offices that states: "If any changes in design or location are made to what was requested and approved, you must contact the Department for additional approval."
- F. Noted that while the contractor assumed the property line setback was 25 feet, the dwelling is only 19.6 feet from the property line. The garage slab is also located 17.4 feet from the property line.

FIRST MOTION

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

A. Official Controls:

- 1. The variance request is only for a few feet difference than allowed at the closest point to the property line. The majority of the structure will meet the setback or be no closer than the existing garage.
- 2. This will preserve property value and make the property sellable.
- 3. It is reasonable to move the garage slab to a conforming setback.
- 4. The landowner could also work with the adjoining landowner in order to purchase additional property to make both structures conforming.

B. Practical Difficulty:

- 1. The dwelling cannot reasonably be moved.
- 2. The contractor did cease construction and had a survey done once it was made clear they could not meet the property line setback.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area. The variance will not alter the essential character of the locality.
- 2. This is a rural area.
- 3. The principal structure will be screened from the neighboring properties.

D. Other Factor

1. The contractor has admitted this was an unintentional and genuine mistake.

The following conditions shall apply:

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

In Favor: Anderson, McKenzie, Skraba - 3

Opposed: Pineo, Pollock, Svatos - 3

Motion failed 3-3

DISCUSSION ON MOTION

The original survey was done on the utility easement. The property line survey was not completed until November 2018. Board member *Pollock* noted there had been a previous survey from the original landowner before the current landowners purchased the property.

Board member *Pineo* asked if the applicants would be able to return for a rehearing. *Jenny Bourbonais* stated that the denial without prejudice would allow the applicants to obtain additional information the Board is requesting. In this case, the applicant and the adjoining landowner would need to discuss if a minor boundary adjustment is possible. If not, the applicant could obtain this in writing and return to the Board of Adjustment and the Board can have a different discussion and make a decision. If they are able to come to an agreement, the applicant does not have to return to the Board of Adjustment at all.

DECISION

Motion by Pollock/Svatos to deny, without prejudice, an after-the-fact variance to allow a principal structure to be located at a reduced property line setback of 19.6 feet where 50 feet is required and to deny, without prejudice, an after-the-fact variance to allow an accessory structure to be located at a reduced property line setback of 17.4 feet where 25 feet is required, based on the following facts and findings:

A. Official Controls:

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

B. Practical Difficulty:

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

C. Essential Character of the Locality:

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

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. When any land use permit is issued, it is sent with a cover letter that states: "if any changes in design of location are made to what was requested and approved, you must contact the Department for additional approval."

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

1. The applicant stated that construction on the home has been completed while construction on the garage has been stopped and is currently a slab.

2. The applicant applied for a land use permit for the principle structure in May 2018. In that application, the applicant indicated that the structure would conform to the required setbacks.
 3. The applicant applied for a land use permit for an accessory structure in July 2018. In that application, the applicant indicated that the structure would conform to the required setbacks.
 4. The applicant stated that the construction began in June 2018 and was completed in December 2018. The survey submitted showing location of the house and garage is dated July 30, 2018.
- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The County would benefit by enforcement of the ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan.
 2. Approval of an after-the-fact variance for structures that were permitted at conforming locations without sufficient practical difficulty is not keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

The applicant shall work with the adjoining landowner to determine if a minor boundary adjustment can be done.

In Favor: McKenzie, Pineo, Pollock, Svatos - 4

Opposed: Anderson, Skraba – 2

Motion carried 4-2

Case 6179 – Robert Riewe

The second hearing item was for Robert Riewe, in S36, T56N, R15W (Colvin). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to a cabin that is located within 25 feet of the shoreline. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is to construct an addition to a cabin located within 25 feet of the shoreline where no addition is allowed.
- B. The applicant is proposing a 200 square foot addition to the rear of the existing cabin.
- C. The applicant provided a survey that indicated the structure is located within the 25 foot shoreline setback. The structure is 6.5 feet from the property line.
- D. The applicant would be allowed the 200 square foot addition without variance if the structure were located greater than 25 feet from the shoreline.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62, Article IV, Section 4.3 D states that no expansion of a structure is allowed when located within 25 feet of the shoreline.

2. The property is located in the Lakeshore Development Area (LDA) which allows for redevelopment of existing residential properties.
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. The structure cannot be expanded without variance due to proximity of the structure to the shoreline.
2. Lot depth prevents a structure from meeting both shoreline and road setbacks.

C. Essential Character of the Locality:

1. The area consists of small shoreland parcels with many lacking sufficient depth for structures to meet shoreline and road setbacks.

D. Other Factor:

1. Due to the configuration of the parcel and location of the structure, there are no alternatives (other than to not build) that would not require a variance. The size of the addition is consistent to what would be allowed if located more than 25 feet from the shoreline.

Mark Lindhorst noted one item of correspondence from Robin Dudzik with no issues with the variance request as long as construction is behind the existing cabin, is not two stories, will not encroach on the existing property line and the view to the lake is not blocked.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a 200 square foot addition to a nonconforming structure, the following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. In the event that the structure is replaced, it shall be done to maximize the shoreline setback to the greatest extent possible.

Brett Riewe, 17630 Johnson Court NW, Elk River, spoke on behalf of the applicant and stated he had nothing to add.

No audience members spoke.

DECISION

Motion by Pollock/Svatos to approve a variance request to allow a 200 square foot addition to a nonconforming structure within 25 feet of the shoreline, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article IV, Section 4.3 D states that no expansion of a structure is allowed when located within 25 feet of the shoreline.

2. The property is located in the Lakeshore Development Area (LDA) which allows for redevelopment of existing residential properties.
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. The structure cannot be expanded without variance due to proximity of the structure to the shoreline.
2. Lot depth prevents a structure from meeting both shoreline and road setbacks.

C. Essential Character of the Locality:

1. The area consists of small shoreland parcels with many lacking sufficient depth for structures to meet shoreline and road setbacks.
2. The structure will allow the applicants to have a working bathroom and adequate living area.

D. Other Factor:

1. Due to the configuration of the parcel and location of the structure, there are no alternatives (other than to not build) that would not require a variance. The size of the addition is consistent to what would be allowed if located more than 25 feet from the shoreline.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. In the event that the structure is replaced, it shall be done to maximize the shoreline setback to the greatest extent possible.

In Favor: Anderson, McKenzie, Pineo, Pollock, Skraba, Svatos - 6

Opposed: None - 0

Motion carried 6-0

Case 6180 – Thomas Perell

The third hearing item was for Thomas Perell, in S33, T63N, R15W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.7, to allow an after-the-fact accessory building 6 feet from the edge of a private road where 15 feet is required.

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

- A. The request is to allow a 22 foot by 28 foot accessory structure 6 feet from the edge of a private road where 15 feet is required.
- B. The property contains steep slope towards the road. To build the garage elsewhere would require excessive excavation and/or fill.
- C. There are two residences beyond the applicant's property along the private road.
- D. The structure is an open-wall pavilion design. This structure could be enclosed.
- E. The structure is more than 160 feet from the shoreline.

Mark Lindhorst reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.7 requires a 15 foot setback from the edge of a private road; the applicant is requesting 6 feet, after-the-fact.
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. The property contains steep slope towards the lake and a bluff on the north side of Mud Creek Road. The parcel has limited area to build due to the elevation of the property.
2. Alternative building sites would require extensive excavation and/or fill.

C. Essential Character of the Locality:

1. There are seven residential properties accessed off of this small private road. The majority of the properties consist of steep slope or bluff with limited building area. In most cases the structures are located at reduced shoreline setbacks; however, this structure is over 100 feet from the lake.

D. Other Factors:

1. Mud Creek Road only serves two other residences beyond the proposed structure.
2. There is limited building area due to steep slope and bluff issues.
3. Based on the topography of the property, the applicant has met the burden to show justification for granting a variance.

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

1. The applicant states that the structure was built in 2013. The applicant did not submit a permit application or obtain a land use permit.
2. The landowner submitted an application after he was notified by the county of the land use violation.

Mark Lindhorst 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 accessory structure 6 feet from the edge of the road, the following condition shall apply:

1. There shall be no further expansion of the structure.

Thomas Perell, the applicant, stated he had nothing to add.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* inquired if the road was plowed. *Thomas Perell* stated the road is plowed by a private landowner.
- B. Board member *Pollock* inquired how this violation became known. *Mark Lindhorst* stated that there was a complaint submitted to staff and the complaint was investigated. *Thomas Perell* stated he did not obtain a land use permit because it did not occur to him that a permit was needed for the structure.
- C. *Jenny Bourbonais*, Acting Secretary, stated that if the appropriate steps had been taken to obtain a permit, staff would have determined that the proposal required a variance based on practical difficulties. A land use permit will still be required for the structure if the variance is approved.

DECISION

Motion by Anderson/McKenzie to approve a variance to allow an accessory structure 6 feet from the edge of the road, based on the following facts and findings:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.7 requires a 15 foot setback from the edge of a private road; the applicant is requesting 6 feet, after-the-fact.
 - 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. The property contains steep slope towards the lake and a bluff on the north side of Mud Creek Road. The parcel has limited area to build due to the elevation of the property.
 - 2. Alternative building sites would require extensive excavation and/or fill.
- C. Essential Character of the Locality:
 - 1. There are seven residential properties accessed off of this small private road. The majority of the properties consist of steep slope or bluff with limited building area. In most cases the structures are located at reduced shoreline setbacks; however, this structure is over 100 feet from the lake.
- D. Other Factors:
 - 1. Mud Creek Road only serves two other residences beyond the proposed structure.
 - 2. There is limited building area due to steep slope and bluff issues.
 - 3. Based on the topography of the property, the applicant has met the burden to show justification for granting a variance.

- E. Was the construction completed prior to applying for the variance? If not, what extent of the construction has been completed?
1. The applicant states that the structure was built in 2013. The applicant did not submit a permit application or obtain a land use permit.
 2. The landowner submitted an application after he was notified by the county of the land use violation.

The following condition shall apply:

1. There shall be no further expansion of the structure.

In Favor: Anderson, McKenzie, Pineo, Skraba, Svatos - 5

Opposed: Pollock - 1

Motion carried 5-1

Jon and Kim Anderson

The fourth hearing item was for Jon and Kim Anderson, in S9, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.10, to construct a boathouse at a reduced lake setback, where 10 feet is required. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is to allow an 18 foot by 26 foot boathouse at a reduced shoreline setback of 0 to 2 feet.
- B. The size of the boathouse is smaller than the maximum size allowed.
- C. The structure would replace an existing 16 foot by 20 foot boathouse.
- D. The existing structure is built into a hillside. Because the proposed boathouse is larger, excavation will be required.
- E. Topography and bedrock make replacing the structure at a conforming lake setback impractical.
- F. The boathouse could be replaced without variance if the size was not increased.
- G. An excavator was on the site and dug trenches behind the existing boathouse. The excavator did locate bedrock.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62 states that the minimum setback for a boathouse from the shoreline is 10 feet. The proposed setback is 0 to 2 feet.
 2. The recently adopted St. Louis County Comprehensive Land Use Plan addresses nonconformities in Section 6, Goal LU-3. The goals are to make equitable decisions on variance proposals, recognize why nonconformities are a concern and to work at decreasing the number of zoning and subdivision nonconformities.
 3. The minimum 10 foot setback applies to all waterbodies where boathouses are allowed.
- B. Practical Difficulty:
 1. Bedrock may impose a practical difficulty in meeting the 10 foot lake setback.

2. It is possible to replace the existing boathouse with one of the same size at the same location. No variance would be required; a performance standard permit may be allowed.

C. Essential Character of the Locality:

1. The character of the neighborhood is primarily residential development on typically deep but narrow parcels.

D. Other Factor:

1. The applicant's house is located approximately 80 feet from the lake and approximately 61 feet from the existing boathouse. The boathouse is not in line with the house. It is offset by approximately 20 feet. Moving the boathouse back will not impact the view from the house as the grade where the house is located is 12 feet higher than the grade at the rear of the boathouse. Since the boathouse is constructed into the hillside, it will not be much higher than the surrounding grade.

Mark Lindhorst noted one item of correspondence from Kerry and Wendy Gerard in support of the variance request.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a boathouse to be constructed at a reduced shoreline setback of 0 to 2 feet, the following conditions shall apply:

1. The setback for the proposed structure shall be maximized to the greatest extent possible.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. Floodplain management rules shall be followed.

Jon Anderson, the applicant, stated the existing boathouse is caving in and there is bedrock pushing up against it. He had applied for a land use permit originally and was told he needed a variance to rebuild the structure. He had an excavator on the property that located bedrock 4 feet below the surface.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired about the floodplain condition. *Mark Lindhorst* stated that if the structure was built within the floodplain, it would require flood vents. However, the size of the proposed structure is smaller than what would be allowed with an accessory structure in a floodplain.
- B. The size of the structure. *Jon Anderson* stated they do not know how wide or how deep they can build the structure because of the bedrock. Board member *Pollock* asked if the applicant could be approved for the maximum size allowed based on if the structure is located in a floodplain or not. *Mark Lindhorst* added that the applicant is trying to make the best use of the land possible. The setback to the lake should be maximized to the greatest extent possible.

DECISION

Motion by Anderson/Pineo to approve a variance request to allow the proposed 18 foot by 26 foot boathouse to be constructed at a reduced shoreline setback of 0 to 2 feet, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 states that the minimum setback for a boathouse from the shoreline is 10 feet. The proposed setback is 0 to 2 feet.
2. The recently adopted St. Louis County Comprehensive Land Use Plan addresses nonconformities in Section 6, Goal LU-3. The goals are to make equitable decisions on variance proposals, recognize why nonconformities are a concern and to work at decreasing the number of zoning and subdivision nonconformities.
3. The minimum 10 foot setback applies to all waterbodies where boathouses are allowed.

B. Practical Difficulty:

1. Bedrock may impose a practical difficulty in meeting the 10 foot lake setback.
2. It is possible to replace the existing boathouse with one of the same size at the same location. No variance would be required; a performance standard permit may be allowed.

C. Essential Character of the Locality:

1. The character of the neighborhood is primarily residential development on typically deep but narrow parcels.

D. Other Factor:

1. The applicant's house is located approximately 80 feet from the lake and approximately 61 feet from the existing boathouse. The boathouse is not in line with the house. It is offset by approximately 20 feet. Moving the boathouse back will not impact the view from the house as the grade where the house is located is 12 feet higher than the grade at the rear of the boathouse. Since the boathouse is constructed into the hillside, it will not be much higher than the surrounding grade.

The following conditions shall apply:

1. The setback for the proposed structure shall be maximized to the greatest extent possible.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. Floodplain management rules shall be followed.

In Favor: Anderson, McKenzie, Pineo, Pollock, Skraba, Svatos - 6

Opposed: None - 0

Motion carried 6-0

Motion to adjourn by Pollock. The meeting was adjourned at 1:51 p.m.