

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, FEBRUARY 8, 2024.

10:26 AM – 11:46 AM

Board of Adjustment members in attendance: Tom Coombe
Steve Filipovich
Dan Manick
Pat McKenzie
Dave Pollock
Diana Werschay, Chair
Andrea Zupancich

Board of Adjustment members absent: None - 0

Also present: Kristen E. Swanson, St. Louis County Attorney's Office

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

NEW BUSINESS:

- A. Douglas Olson, S31, T63N, R17W (Unorganized)
- B. William Hutchins and Kathleen Nyquist, S26, T53N, R15W (Unorganized)
- C. Jack Kirley and Teresa Boytim, S16, T61N, R13W (Unorganized)

OTHER BUSINESS:

Motion by McKenzie/Manick to approve the corrected minutes of the January 11, 2024 meeting.

In Favor: Coombe, Filipovich, Manick, McKenzie, Pollock, Werschay - 6

Opposed: None - 0

Abstained: Zupancich - 1

Motion carried 6-0-1

NEW BUSINESS:

Douglas Olson

The first hearing item is for Douglas Olson, subject property located in S31, T63N, R17W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow an addition to a principal structure to be located at a reduced property line setback where 20 feet is required and Article IV, Section 4.3 D., to allow an addition to a nonconforming principal structure where no addition is allowed, and to exceed the allowed height for a nonconforming principal structure that is located within the shore impact zone. *Skyler Webb*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct three additions to a nonconforming principal structure, totaling 626 square feet, where no additions are allowed.
 - One addition is for a mud room on the northwest corner totaling 389 square feet.
 - One addition is for a covered porch to the northwest corner totaling 83 square feet.
 - One addition is for a bedroom rearrangement to the southeast corner totaling 154 square feet.
- B. The applicant is requesting to extend the height of the current structure from 16 feet to 23 feet where a structure 20 feet in height is allowed.
- C. The applicant is requesting a principal structure property line setback of five feet where 20 feet is required.
- D. The current structure is located at a nonconforming property line setback of 10 feet.
- E. The requested additions will not decrease the existing nonconforming shoreline setback of 18 feet.
- F. There is adequate vegetative screening from neighboring properties and from the shoreline.
- G. There is an overall elevation change of 14 feet, sloping from the east side of the parcel towards the shoreline.
- H. The structure is located within the floodplain. The structure will need to meet all Federal Emergency Management Agency (FEMA) requirements.

Skyler Webb reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.2, states that the property line setback for a principal structure is 20 feet in the Residential (RES)–8 zone district. The current structure is located at a nonconforming property line setback of 10 feet. The applicant is requesting a property line for a principal structure setback of five feet.
 - 2. Zoning Ordinance 62, Article IV, Section 4.3 D., states that if a structure is located between zero and 25 feet from the shoreline, no additions are allowed. The applicant is requesting a total addition of 626 feet to a nonconforming principal structure that is located at an 18 foot shoreline setback where a 75 foot setback is required. The proposed additions will not decrease the existing shoreline setback.
 - 3. Zoning Ordinance 62, Article IV, Section 4.3 D., states the height of the proposed addition, or completed principal structure, shall not exceed 20 feet in height maximum if any part of the structure is within the shore impact zone. The current structure is 16 feet in height. The applicant is requesting to extend the structure to a finished height of 23 feet.
 - 4. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county’s planning-related regulation by minimizing and improving management of nonconformities.
 - 5. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 - 6. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

B. Practical Difficulty:

1. The parcel is a nonconforming lot of record.
2. There are alternatives that do not require a variance:
 - a. Construct a new dwelling that meets all required setbacks. A new dwelling that meets all required setbacks may be allowed with an approved land use permit.

C. Essential Character of the Locality:

1. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
2. There have been no similar variance requests within the area.

D. Other Factors:

1. The Onsite Wastewater division did not pass the record review of the proposal.
 - a. If the variance request is approved, the applicant will need to work with the St. Louis County Onsite Wastewater Division to obtain a septic permit prior to the issuance of a land use permit.
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.

Skyler Webb noted four items of correspondence from Jack Peterson, Tod Polley, Joe and Jennifer Stanaway, and Mark Ludlow in support of this request. These items were provided to the Board of Adjustment prior to the hearing.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance to allow an addition to a nonconforming principal structure where no additions are allowed, for the structure to be located at a reduced property line setback, and for the structure to exceed allowed height as proposed, include, but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
3. All St. Louis County Onsite Wastewater SSTS standards shall be followed.
4. In the event that it is determined that the structure is not structurally sound to be added onto or is replaced, a new structure may be allowed and shall require a permit. All setback requirements shall be met.
5. All FEMA and St. Louis County Floodplain standards shall be met.
6. All local, state, and federal requirements shall be met.

Douglas Olson, 382 Winslow Avenue, St. Paul, the applicant, stated this path started with a leaky roof. They have had this property for almost 14 years. They have been able to see what needs to be corrected with the cabin to preserve it. The existing cabin has three different rooflines on it. They want to increase the pitch and add a metal roof, so the snow comes from it to prevent any leaks and to preserve the cabin. They are trying to mitigate rodent issues in the crawlspace and this area will be sealed. They want better mechanicals in the place. They want more than one heating

source just in case. They want to increase the size of the bedrooms slightly and they want a functional mud room to store hats, coats, and any outdoor equipment.

Charlene McEvoy, 382 Winslow Avenue, St. Paul, the applicant, thanked the Board of Adjustment for hearing their request.

One audience member spoke.

Marcy Townsend and *Sara Whicher*, Chisel Architecture, 328 Barry Avenue South, Suite 110, Wayzata, were online. They stated they visited the property, and the cabin is structurally sound.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* stated the staff report indicated there is a 23 foot height request but the architectural plans indicate 19 feet and 2.5 inches. Is the 23 foot structure height because of the chimney? *Skyler Webb* stated the architect's height measurement was from the main floor to the roof peak and did not include the exposed foundation. The 23 foot height measurement is from the lowest part of the exposed foundation at ground level to the roof peak.
- B. Board member *McKenzie* asked if the chimney would count in the structure height. *Skyler Webb* stated the chimney does not count. *Donald Rigney*, Acting Secretary, stated the structure height is just to the roofline of the structure.
- C. Board member *Coombe* asked how St. Louis County measures height and noted the state of Minnesota measures height differently. *Skyler Webb* stated it is Ordinance language that height is measured from the lowest point where the floor meets the ground to the roof peak. Board member *Coombe* asked why the county is different from the state. *Donald Rigney* stated because the county can be more restrictive and that was decided before his time.
- D. Board member *McKenzie* asked if there are three different rooflines. *Douglas Olson* said yes. Board member *McKenzie* asked if this happened because there were three different buildings that were joined together. *Douglas Olson* stated this was one building that, over time, evolved. This cabin was built in the 1940s. There was the original cabin, the kitchen was expanded, and there was another expansion after that. They just want one roofline for the cabin.
- E. Board member *McKenzie* asked what type of foundation is under the cabin. *Douglas Olson* stated the foundation varies from area to area. The building itself is solid, level, and square. They have had no issues with sloping. The majority of the foundation is footings with cinder blocks.
- F. Board member *McKenzie* asked if there is a historical outbuilding. *Douglas Olson* stated there is a woodburning log cabin-style sauna near the northwest portion of the property. Board member *McKenzie* asked if this sauna is older than the cabin. *Douglas Olson* stated he does not know as the structures were built when he purchased the property.
- G. Board member *McKenzie* asked about the septic. *Douglas Olson* stated the septic passed inspection when he purchased the property in 2010. There were two bedrooms indicated because one bedroom was so small and did not have a closet. He is having Vermilion Barging look at the septic system in the spring, and he is lined up with Northern Waters

Septic to potentially correct any issues that are found. In speaking with Sheri Sawatzky, she thought the system may pass for three bedrooms.

- H. Board member *Zupancich* asked if the deck is measured from the shoreline. *Skyler Webb* stated the 18 foot measurement was from the shoreline to the front of the structure. Board member *Zupancich* asked how wide the deck is. *Douglas Olson* stated the deck is maybe 10 to 12 feet wide. The deck is close to the lake.
- I. Board member *McKenzie* stated the applicant is requesting a five foot property line setback. *Douglas Olson* stated one addition will be five feet from the Stanaways property line. Their option was to request a variance for the property line setback or ask for a part of this property. These properties are in the woods. They cannot even see each other's properties.
- J. Board member *Coombe* asked to remove part of condition 4 that reads: "All setback requirements shall be met." This is regarding replacing the structure if the cabin is not structurally sound to be added onto or is replaced. This takes away the applicant's ability to apply for a variance.
- K. Board member *Pollock* requested that another fact to be taken into consideration as justification is the health, safety and welfare of the inhabitants of this cabin as well as the applicant's reasonable use of the property.

DECISION

Motion by Manick/Coombe to approve a variance to allow a 626 square foot addition to a nonconforming principal structure where no additions are allowed, for the structure to be located at a reduced property line setback of five feet, and for the structure to exceed the allowed height of 20 feet for a total structure height of 23 feet, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62, Article III, Section 3.2, states that the property line setback for a principal structure is 20 feet in the Residential (RES)–8 zone district. The current structure is located at a nonconforming property line setback of 10 feet. The applicant is requesting a property line for a principal structure setback of five feet.
- 2. Zoning Ordinance 62, Article IV, Section 4.3 D., states that if a structure is located between zero and 25 feet from the shoreline, no additions are allowed. The applicant is requesting a total addition of 626 feet to a nonconforming principal structure that is located at an 18 foot shoreline setback where a 75 foot setback is required. The proposed additions will not decrease the existing shoreline setback.
- 3. Zoning Ordinance 62, Article IV, Section 4.3 D., states the height of the proposed addition, or completed principal structure, shall not exceed 20 feet in height maximum if any part of the structure is within the shore impact zone. The current structure is 16 feet in height. The applicant is requesting to extend the structure to a finished height of 23 feet.
- 4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The parcel is a nonconforming lot of record.
- 2. The lot is undersized in lot area and there are angled property lines. The applicant is increasing functionality in the cabin by increasing the size of the bedrooms.
- 3. This is a thoughtful and conservative request to approve this current structure.

4. There are three different rooflines the applicant wishes to fix.
5. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
2. There should be very little impact on the neighbors as opposed to relocating the cabin elsewhere.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant will work with county staff to obtain a septic permit.
2. The roof height increase will allow for a new roof which will allow for the health, safety and welfare of the applicant and his family. The new roof will protect the family from leaks and will allow for snow removal.
3. This variance request will allow for a more reasonable use of the property.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
3. All St. Louis County Onsite Wastewater SSTS standards shall be followed.
4. In the event that it is determined that the structure is not structurally sound to be added onto or is replaced, a new structure may be allowed and shall require a permit.
5. All FEMA and St. Louis County Floodplain standards shall be met.
6. All local, state, and federal requirements shall be met.

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

Opposed: None - 0

Motion carried 7-0

William Hutchins and Kathleen Nyquist

The second hearing item is for William Hutchins and Kathleen Nyquist subject property located in S26, T53N, R15W (Unorganized). 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 at a reduced shoreline setback to exceed square footage and height allowed. *Paul Butler*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing an addition to an existing nonconforming dwelling.
- B. The proposed addition is 38 foot by 32 foot (1,216 square feet).
- C. The proposed addition has a structure height of 30 feet where 25 feet is allowed.
- D. The existing nonconforming dwelling is 48 foot by 28 foot (1,344 square feet) in size and is located 88 feet from Island Lake where 100 feet is required.
- E. The proposed addition will not decrease the shoreline setback.
- F. There is good vegetative screening from the road and property lines. There is also good vegetation screening in the shoreland area with mature trees present.

- G. The property contains a bluff area which is approximately 48 percent slope. The applicant's proposed project will be 30 feet or more from the top of the bluff.
- H. This case is a rehearing from a variance heard June 8, 2023 where the motion was to: "deny a variance to allow a 1,064 square foot addition with a structure height of 32 feet that is greater than the 400 square foot addition size allowed and greater than the 25 foot height allowed, without prejudice in order for the applicants to provide additional information on what the entire structure will look like with the addition and the deck, show why the 25 foot structure height would be a practical difficulty, what the front elevation will be, and to explain what the retaining wall will look like."

Paul Butler reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62, Article IV, Section 4.3, states addition requirements for nonconforming principal structures.
 - a. The applicant is requesting an addition of 1,216 square feet in size where a 400 square foot addition may be allowed through a performance standard permit.
 - b. The applicant is requesting a structure height of 30 feet where a structure height of 25 may be allowed through a performance standard permit for an addition.
- 2. St. Louis County Comprehensive Land Use Plan Goal LU-3 is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 3. St. Louis County Comprehensive Land Use Plan Objective LU-3.1 is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 4. St. Louis County Comprehensive Land Use Plan 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. A variance is not the only option, as there are alternatives:
 - a. A 400 square foot addition with a height of up to 25 feet would be allowed to the existing nonconforming dwelling through a performance standard permit.
 - b. If the existing dwelling was relocated to the conforming shoreline setback, an addition may be allowed with a land use permit.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area. Most of the parcels on Island Lake Reservoir are utilized for seasonal or year-round residential use.
- 2. There have been no past variance requests within the proximity of the proposed project.

D. Other Factors:

- 1. The proposal has been changed since the June 8, 2023, public hearing:
 - a. The proposed addition to the nonconforming principal structure of 1,064 square feet has increased in size to 1,216 square feet.

- b. The proposed addition height of 32 feet has decreased to 30 feet.
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.

Paul Butler noted no items of correspondence.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance to allow an addition to a nonconforming principal structure located at a reduced shoreline setback to exceed square footage and height allowed as proposed include, but are not limited to:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim, and roof.
2. Stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent parcels.
3. All St. Louis County Onsite Wastewater SSTS standards shall be followed.
4. Excavation shall meet all land alteration standards in St. Louis County Zoning Ordinance 62, Article VI, Section 6.16.
5. The shore impact zone shall be preserved in a natural state and screening shall be retained.

William Hutchins, 4366 East Viking Lane, Wyoming, the applicant, stated they will need to install a new septic system because the addition will be placed where the existing septic system is located.

Kathleen Nyquist, 4366 East Viking Lane, Wyoming, the applicant, stated she had nothing to add.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked if the applicant could do anything they wanted if the structure were located 100 feet from the shoreline. *Paul Butler* stated yes. The applicant could apply for a land use permit. Board member *McKenzie* asked if by virtue of the addition being attached to the other building a variance is required. *Paul Butler* stated yes. Board member *McKenzie* asked if changing the topography by adding a walkout basement would be a separate permit or variance request. *Donald Rigney*, Acting Secretary, stated this would be a land alteration permit. Without the proposed addition, this would be a standalone permit. With another permit, the land alteration application may be filled out by the applicant just so staff is aware of the project, but the land alteration permit fee would not be charged.
- B. Board member *Pollock* asked for clarification on the request because this is a rehearing and the Board of Adjustment requested specific actions to be taken by the applicant in order to come back. *Donald Rigney*, Acting Secretary, read the original June 8, 2023 motion to “deny a variance to allow a 1,064 square foot addition with a structure height of 32 feet that is greater than the 400 square foot addition size allowed and greater than the 25 foot height allowed, without prejudice in order for the applicants to provide additional information on what the entire structure will look like with the addition and the deck, show why the 25 foot structure height would be a practical difficulty, what the front elevation

will be, and to explain what the retaining wall will look like.” He added that the main concern was how the addition would tie into the existing structure and what the deck would look like.

- C. Board member *Pollock* stated that the applicant was to work with staff and an architect, etc., and noted how the applicant’s current proposal is larger than what was previously requested. Did the applicant work with their architect and septic in order to make something work or did they justify this to make the proposed addition larger? Board member *Coombe* summarized the original motion. There was a concern about what the cabin would look like from the lake as well as what the massive retaining wall would look like.
- D. Board member *Werschay* asked about the change in height and the additional square footage. *William Hutchins* stated they are trying to add a loft at the back of the cabin. In order to make the loft big enough, they decreased the structure height and made it wider, so they had additional space there. They also dropped the basement height by a foot.
- E. Board member *Manick* stated one concern about the walkout basement was the amount of excavation would be done towards the shoreline. The applicants provided a nice sketch showing what the walkout basement will look like. Board member *Coombe* added there is about 26 to 30 feet of elevation between the shoreline and the cabin. No matter where the applicant excavates, they will still need to protect the shoreline. *William Hutchins* stated the picture shows the stakes of where the walkout basement will be. The addition will be five feet below the current grade there. They want to match the floor of the existing cabin.

DECISION

Motion by Coombe/Manick to approve a variance to allow a 1,216 square foot addition to a nonconforming principal structure located at a reduced shoreline setback of 88 feet where 100 feet is required and at a structure height of 30 feet where 25 feet is allowed, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62, Article IV, Section 4.3, states addition requirements for nonconforming principal structures.
 - a. The applicant is requesting an addition of 1,216 square feet in size where a 400 square foot addition may be allowed through a performance standard permit.
 - b. The applicant is requesting a structure height of 30 feet where a structure height of 25 may be allowed through a performance standard permit for an addition.
- 2. The addition will be set back 100 feet from the water’s edge. The addition will be to the east side of the existing 1,344 square foot dwelling. The addition will be set back at least ten feet from the front of the existing dwelling.
- 3. Looking from aerial photos and that presented by staff the lot appears to have good lake shore screening.
- 4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The applicant is using the present dwelling and would like to add an addition to the east side of the dwelling with at least a 100 foot setback from the lake.
- 2. The Ordinance alone allows a 400 square foot addition. The applicant is requesting a larger addition.

3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The lot has good screening from property lines and the road. The lot is already developed with an existing garage and dwelling. This is not a new use to the property.
2. The applicant is not proposing a new use to the area. Most of the parcels on Island Lake Reservoir are utilized for seasonal or year-round residential use.
3. The variance request will not alter the essential character of the locality.

The following conditions shall apply:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim, and roof.
2. Stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent parcels.
3. All St. Louis County Onsite Wastewater SSTS standards shall be followed.
4. Excavation shall meet all land alteration standards in St. Louis County Zoning Ordinance 62, Article VI, Section 6.16.
5. The shore impact zone shall be preserved in a natural state and screening shall be retained.

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

Opposed: None - 0

Motion carried 7-0

Jack Kirley and Teresa Boytim

The third hearing item is for Jack Kirley and Teresa Boytim, subject property located in S16, T61N, R13W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, 3.4 to allow a principal structure at a reduced shoreline setback where 100 feet is required. *Paul Butler*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to replace the existing principal structure with a 30 foot by 32 foot (960 square feet) principal structure located 65 feet from the shoreline of Bear Island Lake where 100 feet is required.
- B. The applicant proposes a structure height of 25 feet.
- C. The parcel currently contains a dwelling (unlivable), sauna and shed.
- D. The existing dwelling (unlivable) has minimal screening from the road and minimal screening from adjacent properties.
- E. The property has a steep slope toward Bear Island Lake. The topography is relatively flat where the existing structure is located.
- F. There is a floodplain on the property. Any new structures will need to meet all Federal Emergency Management Agency (FEMA) requirements.
- G. This case is a rehearing from a variance heard December 14, 2023 where the motion was to: “deny a variance to allow a 1,200 square foot principal structure located at a reduced property line setback where 20 feet is required and located at a reduced shoreline setback where 100 feet is required without prejudice in order for the applicant to work with staff and return with a plan for a replacement dwelling to conform to the 20 foot east property line setback and maximize the shoreline setback, along with a layout of the property that includes the location of the septic holding tank, well and cabin design.”

Paul Butler reviewed staff facts and findings as follows:

A. Official Controls:

1. St. Louis County Zoning Ordinance 62, Article III, Section 3.4, requires a shoreline setback of 100 feet from Recreation Development lakes. The applicant is proposing a shoreline setback of 65 feet from Bear Island Lake.
2. St. Louis County Comprehensive Land Use Plan Goal LU-3 is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. St. Louis County Comprehensive Land Use Plan Objective LU-3.1 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. St. Louis County Comprehensive Land Use Plan 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 is part of an official plat (Bear Island South West) that was platted in 1989.
2. The applicant's lot, as well as all the lots in the plat of Bear Island South West, do not conform to current zoning requirements.
3. The parcel has limited conforming buildable area due to the size of the nonconforming lot; however, alternatives do exist.
 - a. There is a suitable area that would not interfere with the powerline corridor that may conform to all setbacks or would maximize the shoreline setback.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. Bear Island Cabin Drive is developed with many seasonal and year-round residential uses.

D. Other Factor:

1. The proposal has been changed since the December 14, 2023 public hearing.
 - a. The proposed principal dwelling of 1,200 square feet in size has decreased in size to 960 square feet.
 - b. The current proposal has eliminated the need for variance for property line setback by increasing the proposed setback to 20 feet. The previously proposed ten foot property line setback for a principal structure is not a part of the current request.

Paul Butler noted no items of correspondence.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance to allow a 960 square foot principal structure at a reduced shoreline setback of 65 feet where 100 feet is required include, but are not limited to:

1. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
2. All FEMA and St. Louis County Floodplain standards shall be met.
3. All St. Louis County Onsite Wastewater SSTS standards shall be followed.
4. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.

Jack Kirley, PO Box 7, Loretto, MN, the applicant, stated their request has changed since their December 2023 variance hearing. They moved the structure away from the property line and moved it further back from the shoreline. They want to keep the structure as level as possible. Their son is in a wheelchair, and they need a large area to unload and to access the cabin. There is a steep grade on this property which makes things challenging. There was a question about how long they have owned this property at the previous hearing. They have owned this property for close to 40 years. It is not their choice that they are in this situation. They want to be able to use this property and enjoy this property, including his son. This is one way they can do this. He believes they have addressed everything that the Board of Adjustment asked for at the December hearing. There are boulders and rocks on this property. What they are proposing makes sense as far as the other properties in the area go. Their shoreline setback is not out of line for what the other properties have.

Teresa Boytim, PO Box 7, Loretto, MN, the applicant, had nothing to add and thanked the Board for their time.

One member of the audience spoke in opposition.

Roger Erickson, 37257 Loon Drive, Cohasset, stated they built five years ago on their property. Their existing cabin was torn down, and they used shoreline averaging to build their cabin at the reduced shoreline setback. He asked if shoreline averaging could be used for this applicant. All the cabins in the area do not meet the shoreline setback by today's standards. The road was not built where it was located on the map. If they would have built at the 100 foot shoreline setback, their cabin would have been on the road.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Manick* noted that the applicant also increased the shoreline setback from the previous request. The applicant requested a 54 foot shoreline setback in December and is now requesting a 65 foot shoreline setback.
- B. Board member *Werschay* stated she appreciated the pictures the applicant provided showing the space and distance required for their van. *Jack Kirley* stated that until one understands the space needed in order to unload or even park a van, they do not know how much space is involved.
- C. Board member *Manick* stated the Board was hard on this applicant in December. He appreciates the applicant eliminated the property line setback and improved on the shoreline setback. He hopes that this square footage will be functional for the applicant and his family. He did not want to force this structure to be smaller. *Jack Kirley* stated they shrunk the size of the structure so they could keep their access to the driveway. While the

space will be open concept because there is not enough room for walls, their original design did have walls. As a cabin this space should be okay. If they were living here, it would be more challenging.

- D. Board member *Pollock* asked what would happen if the applicant went back to the original size of the cabin. Is the smaller size because the structure was moved away from the property line? *Jack Kirley* stated they moved the structure back because the Board of Adjustment wanted them to maximize the shoreline setback. They lost ten feet in width moving the structure away from the property line. Moving the structure back did not gain them any structure width. The lot is only 90 feet wide.
- E. *Donald Rigney*, Acting Secretary, stated in response to Mr. Erickson that shoreline averaging does not require the variance process. Shoreline averaging is a means to allow for a reduced shoreline setback while not requiring a variance.
- F. Board member *Filipovich* stated this plat was recorded in 1989. Board member *McKenzie* stated he had the same question as to how these small lots are lots of record when the plat was recorded in 1989. Board member *Zupancich* stated these are previous lease lots. There are other lease lots on Birch Lake. If they looked at the County Land Explorer, it would show one large area with each individual leaseholder having their lot.
- G. Board member *Werschay* asked Board member *McKenzie* if he would consider allowing the applicant a larger structure. Could there be leeway on the property line setback? Board member *McKenzie* stated there was objection from the neighbor in December. *Donald Rigney* stated part of the denial without prejudice is to conform to the 20 foot property line setback. He added that because there was no property line setback legally noticed, they cannot allow for a decreased property line setback. The only setback they can legally allow a reduced setback for is the shoreline setback. Board member *McKenzie* stated if the structure could be moved further back to the power line, they could have more room. Board member *Manick* stated he could build further back. Board member *Werschay* stated the applicant would then need to remove trees and would be over the location of the septic.
- H. Board member *Pollock* stated that the applicant would not need a variance if they moved the structure back and were willing to cut down trees. If the Board wants the opportunity for the applicant to change the size of the structure, there could be a second denial without prejudice. That would allow the applicant to request a larger structure with a reduced property line setback. Board member *Manick* stated he is comfortable with this structure now that the property line setback has been eliminated. *Jack Kirley* stated he would rather not come back a third time.
- I. Board member *Werschay* stated there is also a power line to consider. There could be a 40 foot easement required for the power line. The structure also needs to be 10 feet from their holding tank.
- J. Board member *McKenzie* stated he asked *Donald Rigney* after the December hearing if the Ordinance requires a specific setback for power lines. *Donald Rigney* stated that Ordinance 62 does not address power line setbacks, but the power provider will. Board member *Werschay* confirmed the power provider in this area is Lake Country Power and there is a set 40 foot easement.
- K. *Donald Rigney* stated that the size of the cabin could be left open, so the applicant has a little flexibility in sizing the structure to fit his property. If dimensions or a specific square footage are listed the applicant would need to go by that. The applicant could change their

proposal if the size of the cabin is open as long as the structure meets all other ordinance standards.

- L. Board member *Coombe* asked if the applicant could have flexibility in the shoreline setback if they cannot change the property line setback. *Donald Rigney* said if the Board grants him a replacement dwelling located 65 feet from the shoreline. The applicant can make the structure deeper if they choose to. The applicant already maximized the shoreline setbacks. The general proposal will provide a little flexibility as long as the cabin meets the property line setbacks and is within the impervious surface allowed. Board member *Manick* stated there is 40 feet to potentially expand to if the applicant is willing to build into the driveway if there is room. The motion was amended to remove the structure size.

DECISION

Motion by McKenzie/Manick to approve a variance to allow a principal structure replacement at a reduced shoreline setback of 65 feet where 100 feet is required, based on the following facts and findings:

A. Official Controls:

1. St. Louis County Zoning Ordinance 62, Article III, Section 3.4, requires a shoreline setback of 100 feet from Recreation Development lakes. The applicant is proposing a shoreline setback of 65 feet from Bear Island Lake.
2. Official controls permit a departure from strict enforcement in circumstances not created by the property owner. In this case, those circumstances appear to be both topography and rock/ledge rock which mostly affect the shoreline setback requirements.
3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. In regard to the shoreline setback, it appears from staff photos that the variance request application the presence of either large boulders or ledge rock and the trees behind the existing cabin would limit moving the proposed structure to the required setback.
2. The parcel is lightly treed, and the adjacent landowners would not benefit from the loss of trees on the parcel.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. Many cabins in the area are seasonal and many do not meet shoreline setbacks. The area was settled before land use regulations existed.
2. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The applicants have a disabled son whose movement requires special accommodations for their vehicle and building access which dictate placement of the structure.

The following conditions shall apply:

1. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
2. All FEMA and St. Louis County Floodplain standards shall be met.
3. All St. Louis County Onsite Wastewater SSTS standards shall be followed.
4. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.

In Favor: Filipovich, Manick, McKenzie, Pollock, Werschay, Zupancich - 6

Opposed: None – 0

Abstained: Coombe - 1

Motion carried 6-0-1

Motion to adjourn by Pollock. The meeting was adjourned at 11:46 AM.