

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY THURSDAY, JUNE 11, 2020.

10:55 AM – 12:40 PM

Board of Adjustment members in attendance: Steve Filipovich
James McKenzie
Sonya Pineo
Dave Pollock
Roger Skraba
Ray Svatos
Diana Werschay, Chair

Board of Adjustment members absent: None - 0

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

NEW BUSINESS:

- A. Leonard Groom, S9, T57N, R17W (Fayal)
- B. Neil Sorensen, S28, T63N, R12W (Morse)
- C. Kellie Rae Theiss, S19, T50N, R20W (Fine Lakes)

OTHER BUSINESS:

Motion by McKenzie/Skraba to approve the minutes of the May 7, 2020 meeting.

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

Opposed: None – 0

Motion carried 7-0

NEW BUSINESS:

Case 6215 – Leonard Groom

The first hearing item was for Leonard Groom, property located in S9, T57N, R17W (Fayal). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.7, to allow a garage at a reduced road centerline and right-of-way setback. Board member *Skraba* disclosed that he does know the applicant but has no financial interest in this variance proposal. The Board did not ask that he recuse himself from the hearing. Mark *Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is to allow the construction of a 28 foot by 32 foot garage located 33 feet from the centerline of a public road where 48 feet is required and located 3 feet from the road right-of-way where 15 feet is required.
- B. The property contains a house with an attached garage, three small accessory buildings and one water oriented accessory structure.
- C. The property is serviced by the Fayal Municipal Sewer District.
- D. The shoreline screening is limited and it is recommended that additional vegetation be planted.

- E. The proposed building site is level.

Mark Lindhorst reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article III Section 3.7, requires a minimum 48 foot centerline and 15 foot right-of-way setback for a structure.
2. The property falls under the Lakeshore Development Area of the St. Louis County Comprehensive Land Use Plan which is intended for rural development adjacent to lakes, including infill, new development or redevelopment of existing residential areas.
3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. 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. The size of the parcel and location of existing development limits suitable building area. However, a smaller structure would allow an increase in the setback from the road.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area as there are other residential properties in the neighborhood.
2. There have been no similar variances approved in the area.

D. Other Factors

1. The parcel is part of a large plat that was established in 1946.
2. The proposed structure will not exceed the building coverage and lot coverage limits of the parcel.

Mark Lindhorst noted one item of correspondence from Judy and John Nyhus in support of this variance request. This item was given to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a garage 33 feet from the centerline and 3 feet from the right-of-way of Cedar Island Drive, the following conditions shall apply:

Condition Precedent:

1. A plan to enhance vegetation within the shore impact zone shall be submitted, approved by the county, and shall be implemented by the property owner no later than July 1, 2020.

Condition Concurrent:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.

Leonard Groom, the applicant, stated they were looking for additional storage space and tried to find a location on the property to place a garage. One of the small outbuildings on the property will be removed. The Fayal municipal water line runs along the front of the structure and the Fayal municipal sewer line goes to the northeast. The location of the garage will not impact either line.

No audience members spoke.

DECISION

Motion by Skraba/Svatos to approve a variance to allow a garage 33 feet from the centerline and 3 feet from the right-of-way of Cedar Island Drive, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article III Section 3.7, requires a minimum 48 foot centerline and 15 foot right-of-way setback for a structure.
2. The property falls under the Lakeshore Development Area of the St. Louis County Comprehensive Land Use Plan which is intended for rural development adjacent to lakes, including infill, new development or redevelopment of existing residential areas.
3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. 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. The size of the parcel and location of existing development limits suitable building area. However, a smaller structure would allow an increase in the setback from the road.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area as there are other residential properties in the neighborhood.
2. There have been no similar variances approved in the area.

D. Other Factors

1. The parcel is part of a large plat that was established in 1946.
2. The proposed structure will not exceed the building coverage and lot coverage limits of the parcel.

The following conditions shall apply:

Condition Precedent:

1. A plan to enhance vegetation within the shore impact zone shall be submitted, approved by the county, and shall be implemented by the property owner no later than July 1, 2020.

Condition Concurrent:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.

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

Opposed: None - 0

Motion carried 7-0

Case 6036/6216 – Neil Sorensen – Interpretation/Business Meeting

A 2015 variance approval (Case 6036) was granted to Mr. Sorensen for a 375 square foot dwelling to be located on the property with the following condition of approval: “There shall be no other structures on the island.” The Board of Adjustment will need to make a determination of whether this condition was intended to not allow any other structure on the island or whether a privy structure would be allowed on the island. If that condition was intended to apply to a privy structure, the applicant’s current request may not be allowed.

The applicant is requesting approval for an approximately 4 foot by 6 foot privy structure to be located at approximately 50 feet from the shoreline of Shagawa Lake where 75 feet is required. A condition of a variance approval from 2015 does not allow another structure on the property. The applicant is requesting that condition be reconsidered to allow variance request for a privy on the property.

In 2013, the previous owner of the property applied for a variance to construct a 768 square foot dwelling located 50 feet from the shoreline. At that time, the applicant stated that there was not room on the property for a privy to meet the required setback and a composting toilet was proposed.

In 2015, the current owner of the property applied for a variance for a 375 square foot dwelling located 55 feet from the shoreline. It was determined that the request was different from the original request that was denied in 2013. The 2015 variance request was approved. One condition of the variance approval stated that there shall be no other structures on the island. A privy was not requested at that time and a composting toilet was allowed as a sewage treatment exemption located within the dwelling.

Since the cabin was built, it has been used as a short term rental, at which time no permit was required for short term rental use. Recent On-site Wastewater Division policy changes no longer allow sewage treatment exemptions (composting toilets) as the sole means for sewage treatment. It is now required that there is another form of permitted sewage treatment for new uses, including short term rental use that now requires permitting. The sewage treatment exemption was previously allowed on the property; however, the short term rental use per On-site Wastewater policy does not allow for a composting toilet for the sole means of sewage treatment. The applicant

intends to seek a permit for a short term rental on the property. Therefore, the applicant is requesting a variance for a privy as the primary means for sewage treatment on the property. The proposed privy location will not meet the required shoreline setback.

The applicant is requesting the Board of Adjustment reconsider a condition of a previous variance approval that does not allow another structure on the property.

Board member *Skraba* asked why a composting toilet is not allowed in a short-term rental. Jared Ecklund stated that there was a change of use from a residential property to a short term rental property. *Keith Wiley*, Planning Manager for On-Site Wastewater division, stated that the policy changed when the short term rental ordinance took effect. The composting toilet can still be used by the applicant and his renters. In order to provide safe and adequate facilities for the public using the property, a privy would be a safer alternative in case the composting toilet does not work properly. The public may be unaware of how to safely dispose of waste in a composting toilet.

Board member *Werschay* stated the reason she made the condition “There shall be no other structures on the island” was because she did not want a boathouse on the island. She did not want any other livable structures on the island aside from the cabin.

Board member *Filipovich* asked if this issue will come up with other short term rental properties in the future. *Jenny Bourbonais*, Acting Secretary, stated it would depend on each application and this is a unique situation. Based on this instance, there may be changes needed to the Ordinance in the future at the Planning Commission level.

The Board of Adjustment determined that the condition “There shall be no other structures on the island” was because there should not be any other livable structures on the island aside from the cabin. The variance for a privy structure can move forward. No vote was taken.

Case 6216 – Neil Sorensen

The second hearing item was for Neil Sorensen, property located in S28, T63N, R12W (Morse). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a privy structure to be located at a reduced shoreline setback where 75 feet is required. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval for a privy structure approximately 50 feet from the shoreline of Shagawa Lake where 75 feet is required.
- B. The variance request is for the structure and not for the sewage treatment system.
- C. The applicant constructed a 375 square foot dwelling in 2016 based upon variance approval for the dwelling in 2015.
- D. The privy would be located in approximately the widest portion of the property.
- E. The island appears to be well vegetated with good screening.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.4 states that the required shoreline setback on a General Development Lake is 75 feet; the applicant is requesting a privy structure at a setback of approximately 50 feet.

2. The property is located within the Forest and Agriculture (FA) land use category of the future land use map found in the St. Louis County Comprehensive Land Use Plan.
3. A condition of the previous variance approval does not allow any other structures on the property.
 - a. Due to new ordinance requirements regarding short term rentals, a privy would be required in order to operate a short term rental on the property.
 - b. This request is allowed to be brought forward because of the recent ordinance changes regarding short term rentals.

B. Practical Difficulty:

1. There is no location on the property for a privy to meet the required shoreline setback.
2. At the time of the previous variance requests and the construction of the dwelling, sewage treatment exemptions were allowed for composting toilets.
 - a. Sewage treatment exemptions as the sole means for sewage treatment are no longer allowed.
3. At the time of the previous variance requests and the construction of the dwelling, there was no ordinance language in St. Louis County regulating the short term rental use of a parcel.
 - a. Short Term Rental ordinance language was adopted in early 2020.
4. The only alternative is to continue to use the composting toilet and not move forward with the permitting for the short term rental use.
 - a. A short term rental would not be allowed on the property with this alternative.

C. Essential Character of the Locality:

1. There is another small island located approximately 500 feet east of the applicant's property that is also developed.
 - a. This island appears to have been developed for some time prior to current ordinance requirements.
 - b. This island is similar in size, but appears to be narrower.
2. The nearest mainland property is located approximately 450 feet to the north of the applicant's property.
3. There have been a few variance requests on islands on Shagawa Lake in the recent past.
 - a. Two variance requests, including on this island, were approved for dwellings with a sewage treatment exemption.
 - b. One recent variance request for a dwelling on a third island was denied.

D. Other Factors:

1. The residential use on the property was allowed through variance and the sewage treatment exemption.
 - a. Short term rentals were not regulated at the time of development.
 - b. Now that there are regulations, additional standards need to be met, including sewage treatment standards for a privy as the primary means for sewage treatment.
 - c. The new short term rental ordinance requirements resulted in the need for an additional variance request for the proposed use.

Jared Ecklund noted eleven items of correspondence from Steven and Teresa Kleist opposed to this variance, Rose Hauge, Pam Bowers, John E. Mack, Carl Sorensen, David Anderson, James W. Foster, Gregory McQuoid, Mary Zupancich on behalf of the Grand Ely Lodge and Mary Sorensen in support of this variance. Additionally, a Town of Morse resolution was opposed to this variance request. These items were given to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a 4 foot by 6 foot privy structure to be located at a reduced shoreline setback where 75 feet is required, the following conditions shall apply:

1. The shoreline setback of the structure shall be maximized to the greatest extent possible and shall be no closer than fifty feet.
2. The structure shall be unobtrusive, earth tone colors.
3. The property shall comply with the St. Louis County SSTS Ordinance 61 and On-site Wastewater Division policies.

Neil Sorensen, the applicant, stated they just began renting the property out last year which made it feasible to own the property. With the new short term rental regulations, the privy would be required. The proposed location would not require removing any trees and is in the center of the island. He has an arrangement with Boundary Waters Septic to pump the privy. He has an agreement with the Grand Ely Lodge to utilize parking and their docks for their guests.

One member of the audience spoke in support:

David Anderson, 317 East James Street, Ely, stated that the applicant has employed him to be the building caretaker and manager. The privy will not be seen from the shoreline as the vegetation is fairly thick. Screening will not be a problem.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked what barge service is being utilized. *Neil Sorensen* stated that Boundary Waters Septic has a utility pontoon and they have a contract with other islands in the area.
- B. Board member *Pollock* asked if the On-Site Wastewater division has any issues with this variance. *Keith Wiley*, Planning Manager for On-Site Wastewater division, stated that Mr. Sorensen has submitted an application and the department has no issue.
- C. Board member *Pineo* asked if because this property is now a rental property that the composting toilet is no longer adequate. *Keith Wiley* stated the change in the zoning regulations requiring licensing for short term rentals triggered an evaluation of the existing composting toilet. For non-short term rental properties, they can continue to use a composting toilet. A composting toilet can be used as a secondary system, but the primary system should be at least a privy.
- D. *Jenny Bourbonais*, Acting Secretary, clarified that this variance is for the structure. This variance does not have to do with the short term rental. There is no variance for the use, because use variances are not allowed.

DECISION

Motion by Skraba/Pollock to approve a variance to allow a 4 foot by 6 foot privy structure to be located at a reduced shoreline setback where 75 feet is required, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.4 states that the required shoreline setback on a General Development Lake is 75 feet; the applicant is requesting a privy structure at a setback of approximately 50 feet.
2. The property is located within the Forest and Agriculture (FA) land use category of the future land use map found in the St. Louis County Comprehensive Land Use Plan.
3. A condition of the previous variance approval does not allow any other structures on the property.
 - a. Due to new ordinance requirements regarding short term rentals, a privy would be required in order to operate a short term rental on the property.
 - b. This request is allowed to be brought forward because of the recent ordinance changes regarding short term rentals.

B. Practical Difficulty:

1. There is no location on the property for a privy to meet the required shoreline setback.
2. At the time of the previous variance requests and the construction of the dwelling, sewage treatment exemptions were allowed for composting toilets.
 - a. Sewage treatment exemptions as the sole means for sewage treatment are no longer allowed.
3. At the time of the previous variance requests and the construction of the dwelling, there was no ordinance language in St. Louis County regulating the short term rental use of a parcel.
 - a. Short Term Rental ordinance language was adopted in early 2020.
4. The only alternative is to continue to use the composting toilet and not move forward with the permitting for the short term rental use.
 - a. A short term rental would not be allowed on the property with this alternative.

C. Essential Character of the Locality:

1. There is another small island located approximately 500 feet east of the applicant's property that is also developed.
 - a. This island appears to have been developed for some time prior to current ordinance requirements.
 - b. This island is similar in size, but appears to be narrower.
2. The nearest mainland property is located approximately 450 feet to the north of the applicant's property.
3. There have been a few variance requests on islands on Shagawa Lake in the recent past.
 - a. Two variance requests, including on this island, were approved for dwellings with a sewage treatment exemption.
 - b. One recent variance request for a dwelling on a third island was denied.

D. Other Factors:

1. The residential use on the property was allowed through variance and the sewage treatment exemption.
 - a. Short term rentals were not regulated at the time of development.
 - b. Now that there are regulations, additional standards need to be met, including sewage treatment standards for a privy as the primary means for sewage treatment.
 - c. The new short term rental ordinance requirements resulted in the need for an additional variance request for the proposed use.

The following conditions shall apply:

1. The shoreline setback of the structure shall be maximized to the greatest extent possible and shall be no closer than fifty feet.
2. The structure shall be unobtrusive, earth tone colors.
3. The property shall comply with the St. Louis County SSTS Ordinance 61 and On-site Wastewater Division policies.

In Favor: McKenzie, Pollock, Skraba, Svatos, Werschay - 5

Opposed: Filipovich, Pineo - 2

Motion carried 5-2

Case 6217 – Kellie Rae Theiss

The third hearing item was for Kellie Rae Theiss, property located in S19, T50N, R20W (Fine Lakes). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to build a replacement accessory structure at a reduced shoreline setback where 100 feet is required. *George Knutson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to build a replacement accessory structure at a reduced shoreline setback where 100 feet is required.
- B. The existing structure is a 12 foot by 20 foot accessory structure located 26 feet from the shoreline of Prairie Lake.
- C. The proposed replacement structure would be 14 foot by 22 foot in size and would be located 30 feet from the shoreline.
- D. The proposed height of the replacement structure is 12 feet where 20 feet is allowed.
- E. There are three accessory structures located on the property, including a boathouse.
- F. There is topography on this parcel. The existing dwelling is located on the high point of the parcel. The existing garage is on a steep slope.
- G. The existing garage is well screened from the road, neighboring properties and the lake.

George Knutson reviewed staff facts and findings as follows:

A. Official Controls:

1. Prairie Lake is classified as a Recreational Development lake and requires a minimum 100 foot shoreline setback.
 - a. The shore impact zone for Recreational Development lakes is 50 feet.
 - b. The current structure is located 26 feet from the lake and the replacement structure is proposed 30 feet from the lake.

2. Zoning Ordinance 62, Article IV, Section 4.3, states that any nonconforming structure replacement shall conform to all terms of this ordinance.
3. The property falls within the Lakeshore Development Areas future land use category in the St. Louis County Comprehensive Land Use Plan.
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 applicants 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. Buildable area is limited on the parcel due to the lake setback having to be met from both the south and the west.
2. The subject parcel contains a lot of topographic relief. The elevation rises 22 feet from the shoreline to the high point on the parcel.
3. The landowner has not clearly demonstrated why the variance is the only available option as there are alternatives.
 - a. Alternative: Build a replacement structure at a conforming location. Topography may present a challenge to construction in a conforming location.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. There are numerous residential dwellings on Prairie Lake.
2. There have been no similar variances within the Sunnyside Park Plat.
 - a. There is a previously approved variance on this parcel which was for a 14 foot by 18 foot addition to the dwelling in 1997.

D. Other Factors:

1. Zoning Ordinance 62 allows for certain structures (water oriented accessory structures) to be built with a 30 foot setback from the shoreline of General Development Lakes and Recreational Development Lakes.
 - a. The replacement structure is proposed 30 feet from the shoreline of Prairie Lake; however, it does not meet the water oriented accessory structure standards for size and the property already has its one allowed water oriented accessory structure (boathouse).
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. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.
 - a. Increasing a nonconformity in size and intensity of use where alternatives exist, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Ordinance or St. Louis County Comprehensive Land Use Plan.

George Knutson noted one item of correspondence from Burt and Corinne Suonvieri in support of this variance request. This item was given to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow the replacement of a non-conforming 12 foot by 20 foot accessory structure located 26 feet from the shoreline of Prairie Lake with a 14 foot by 22 foot structure located 30 feet from the shoreline of Prairie Lake, the following conditions shall apply:

1. The replacement structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater from the proposed structure shall not discharge directly into the lake or onto adjacent parcels.
3. An erosion control plan shall be submitted, approved by the county, and shall be implemented by the property owner prior to issuance of the land use permit.
4. All SSTS sewage treatment standards shall be met.

Kellie Rae Theiss, the applicant, stated she is a full time nature artist and works out of the accessory structures and removing them is not an option. She is also a substitute teacher in Floodwood. The reason for placing the garage in this location is because there is a well on one side of the house and a septic system on the other side. There are also wetlands located on the property, including down where the boathouse is located. She does not want to build a garage where it might flood. There are two 250-year-old burrow oak trees she does not want to cut down. The shortest width of garage she was able to get was 14 foot wide because they do not make 12 foot wide garages. The current garage is falling apart. She will cut four feet into the hill in order to keep the garage away from the well and to have a 30 foot shoreline setback. The garage will not be seen from the shoreline except for during the winter. The garage would be used for her car and to store equipment.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* asked if the area where the two accessory structures are located is the only area on the property that meet setback. *George Knutson* stated that one accessory structure may need to be removed but a garage could fit there.
- B. Board member *Werschay* inquired if the applicant could replace the structure in the exact same footprint? *Jenny Bourbonais*, Acting Secretary, stated that this could be done only if there was no other location to meet or to maximize the shoreline setback. The structure would also have to be the exact same size.

- C. Board member *Skraba* stated part of his concern is moving dirt around, especially with the steep slope and how close the proposed structure is to the lake.
- D. Board member *McKenzie* inquired if trees are the only barrier. *Kellie Rae Theiss* stated that the location near where the boathouse is floods. Her house is up on the hill. There is a well on the east side and a septic system on the other side. The structure of the hill is also a barrier. This is the only location that could work.
- E. *Jenny Bourbonais* stated that to build the structure in the exact same spot would still require a variance. If there was no other location on the property, it would be allowed.
- F. Board member *Skraba* stated the property is basically a hilltop that one would have to build around. They built the structures this way for a reason. There is value in trees. He is concerned about having to clear-cut and haul gravel which could hurt the lake.
- G. Board member *Filipovich* stated the garage is so close to the drop-off to the shoreline. If something happened and the garage collapses down the drop-off, the site might not be suitable.

DECISION

Motion by McKenzie/Filipovich to deny a variance to allow the replacement of a nonconforming 12 foot by 20 foot accessory structure located 26 feet from the shoreline of Prairie Lake with a 14 foot by 22 foot structure located 30 feet from the shoreline of Prairie Lake, based on the following facts and findings:

A. Official Controls:

- 1. Prairie Lake is classified as a Recreational Development lake and requires a minimum 100 foot shoreline setback.
 - a. The shore impact zone for Recreational Development lakes is 50 feet.
 - b. The current structure is located 26 feet from the lake and the replacement structure is proposed 30 feet from the lake.
- 2. Zoning Ordinance 62, Article IV, Section 4.3, states that any nonconforming structure replacement shall conform to all terms of this ordinance.
- 3. The property falls within the Lakeshore Development Areas future land use category in the St. Louis County Comprehensive Land Use Plan.
- 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 applicants 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. Buildable area is limited on the parcel due to the lake setback having to be met from both the south and the west.
- 2. The subject parcel contains a lot of topographic relief. The elevation rises 22 feet from the shoreline to the high point on the parcel.

3. The landowner has not clearly demonstrated why the variance is the only available option as there are alternatives.
 - a. Alternative: Build a replacement structure at a conforming location. Topography may present a challenge to construction in a conforming location.
4. While there is topography on the property, the applicant seems unwilling to cut down trees.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. There are numerous residential dwellings on Prairie Lake.
2. There have been no similar variances within the Sunnyside Park Plat.
 - a. There is a previously approved variance on this parcel which was for a 14 foot by 18 foot addition to the dwelling in 1997.

D. Other Factors:

1. Zoning Ordinance 62 allows for certain structures (water oriented accessory structures) to be built with a 30 foot setback from the shoreline of General Development Lakes and Recreational Development Lakes.
 - a. The replacement structure is proposed 30 feet from the shoreline of Prairie Lake; however, it does not meet the water oriented accessory structure standards for size and the property already has its one allowed water oriented accessory structure (boathouse).
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. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.
 - a. Increasing a nonconformity in size and intensity of use where alternatives exist, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Ordinance or St. Louis County Comprehensive Land Use Plan.
4. The garage is already too close to the shoreline. If permitted, the garage would be located in the shore impact zone.

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

Opposed: Skraba, Svatos, Werschay - 3

Motion carried 4-3

Motion to adjourn by Skraba. The meeting was adjourned at 12:40 p.m.