

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, DECEMBER 14, 2023.

9:00 AM – 11:24 AM

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

Board of Adjustment members absent: Tom Coombe

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

NEW BUSINESS:

- A. Rubin Rusco, S29, T57N, R19W (Cherry)
- B. Jack and Teresa Boytim, S16, T61N, R13W (Unorganized)
- C. Lucia Magney, S20, T54N, R16W (Cotton)

OTHER BUSINESS:

Motion by McKenzie/Manick to approve the minutes of the November 9, 2023 meeting.

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

Opposed: None - 0

Motion carried 6-0

Motion by McKenzie/Manick to approve the minutes of the November 16, 2023 meeting.

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

Opposed: None - 0

Motion carried 6-0

NEW BUSINESS:

Rubin Rusco

The first hearing item is for Rubin Rusco, subject property located in S29, T57N, R19W (Cherry). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.2 B., to allow a second detached principal structure not properly placed on a parcel so the property can be divided at a later date into conforming lots without variance. *Skyler Webb*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing a variance for the change in use of an accessory structure to a second principal dwelling.

- B. The parcel is zoned Multiple Use (MU)-4 which requires that all principal dwellings have a property line setback of 50 feet.
- C. To conform with the ordinance requirements, the applicant's two principal dwellings would need to be 100 feet apart, so that the property can be divided at a later date into conforming lots without variance.
- D. The current structures are located 46 feet (field measurement) apart where 100 feet is required.
- E. The parcel contains a house with an attached garage, a detached garage, two pole buildings, and a small storage structure.
- F. There is adequate vegetative screening from neighboring properties and from the roadway.
- G. The parcel is relatively flat with an overall elevation change of 6 feet.
- H. There are wetlands to the rear of the parcel that will not be affected by the proposal.

Skyler Webb reviewed staff facts and findings as follows:

A. Official Controls:

- 1. St. Louis County Zoning Ordinance 62, Article VI, Section 6.2 B., states that there shall be sufficient lot area per structure to equal the dimensional standards required and the structures be placed so that the property can be divided at a later date into conforming lots without variance.
 - a. The property is zoned Multiple Use (MU)-4 which requires 4.5 acres and 300 feet in lot width.
 - i. The property has sufficient area and width for two dwellings.
 - b. The MU-4 zone district requires a principal structure property line setback of 50 feet.
 - i. The current structures are 46 feet (field measurement) apart where 100 feet would be required to meet principal structure setbacks if property were to be divided.
- 2. 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.
- 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. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

B. Practical Difficulty:

- 1. There are no unique physical circumstances of the property.
- 2. The subject property conforms to the minimum zoning requirements for lot size.
- 3. There are alternatives that do not require a variance:
 - a. There is sufficient area and width for two dwellings. Construct a new dwelling that is placed so that the property can be divided at a later date into conforming lots without variance.

C. Essential Character of the Locality:

1. The property is located in a rural area consisting of large tracts of land with limited residential development.
2. No similar request has been made in the area.

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. The applicant has applied for a new septic system to service the proposed second principal dwelling.
3. The applicant stated that they would like to use the existing accessory building for the project because it is structurally sound.
4. If the variance request is approved, the applicant will need to submit a change in use application for the structure.

Skyler Webb noted no items of correspondence.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance to allow a second detached principal structure as proposed include, but are not limited to:

1. St. Louis County Onsite Wastewater SSTS standards shall be followed.
2. All local, state and federal requirements shall be met.

Rubin Rusco, 10292 Highway 37, Hibbing, the applicant, stated the reason they are converting their garage into a dwelling is because the cost of a new modular home is too much. This is a cost-effective project that will give them the money to make everything more efficient.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Manick* asked about the application stating there will be 2x4s placed along the walls. *Rubin Rusco* stated he intends to use 2x4s on the interior side of the exterior walls.
- B. Board member *Pollock* asked if this variance approval meant the applicant would not need to come for another variance for anything else. *Donald Rigney*, Acting Secretary, stated a variance would not be necessary now if the structures were 100 feet apart. If the property was subdivided, a property line could be placed between the two structures and, at 100 feet apart, both structures would be conforming. Both structures would be nonconforming now due to the structures being less than 100 feet apart if the property was subdivided. *Skyler Webb* clarified that the request reads the property can be subdivided into conforming lots without a variance if the structures were placed 100 feet apart.
- C. Board member *McKenzie* asked if this variance would impact the ability for short term rental. *Donald Rigney* stated that both structures would be considered principal structures. If the applicant applied for a short term rental, the applicant could potentially meet all

standards and a permit could be issued. If the applicant wanted to apply for both dwellings, it would be considered a commercial short term rental and would need a conditional use permit.

- D. Board member *McKenzie* asked if one of the requirements of a short term rental is to have a conforming lot. *Donald Rigney* stated in a Multiple Use zone district, the parcel would need to be a lot of record.

DECISION

Motion by Manick/Pollock to approve a variance for a second detached principal structure, based on the following facts and findings:

A. Official Controls:

1. St. Louis County Zoning Ordinance 62, Article VI, Section 6.2 B., states that there shall be sufficient lot area per structure to equal the dimensional standards required and the structures be placed so that the property can be divided at a later date into conforming lots without variance.
2. This is not an unreasonable request with a family situation handcuffed by the 100 foot requirement.
3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. Constructing a new building would be considered a practical difficulty when there is a structurally sound building.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. There is not a high residential area.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant has applied for a new septic system to service the proposed second principal dwelling.
2. The applicant stated that they would like to use the existing accessory building for the project because it is structurally sound.
3. If the variance request is approved, the applicant will need to submit a change in use application for the structure.

The following conditions shall apply:

1. St. Louis County Onsite Wastewater SSTS standards shall be followed.
2. All local, state and federal requirements shall be met.

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

Opposed: None - 0

Motion carried 6-0

Jack and Teresa Boytim

The second hearing item is for Jack 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, Section 3.2 and 3.4, to allow a principal structure at a reduced property line setback where 20 feet is required and 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 an existing principal structure with a 30 foot by 40 foot (1,200 square foot) principal structure to be located 10 feet from the east property line where 20 feet is required, and located 54 feet from the shoreline of Bear Island Lake where 100 feet is required.
- B. The applicant is proposing a structure height of 25 feet.
- C. The existing dwelling is unlivable as the roof has caved in.
- D. The existing dwelling 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.

Paul Butler reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. St. Louis County Zoning Ordinance 62, Article III, Section 3.2, requires a setback of 20 feet from all property lines. The applicant is proposing a structure located 10 feet from the east property line.
 - 2. Zoning Ordinance 62, Article III, Section 3.4, requires a setback of 100 feet from Recreation Development lakes. The applicant is proposing a structure located 54 feet from Bear Island Lake.
 - 3. 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.
 - 4. 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.
 - 5. 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 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. The proposed dwelling could be shifted towards the center of the lot eliminating the need for a property line setback variance.

- b. 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 proposed addition may affect the ability of any future development.

Paul Butler noted one item of correspondence from Charlie and Jean Leibfried not in support. This correspondence was provided to the Board of Adjustment prior to the hearing.

RECOMMENDED CONDITIONS

Conditions that may mitigate the 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 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. St. Louis County Onsite Wastewater SSTS standards shall be followed.
- 3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.

Jack Kirley, PO Box 7, Loretto, MN, the applicant, stated they are asking to replace the dwelling with a new dwelling in the same location. The shoreline cuts in on one side and they cannot measure straight out where they would have a greater shoreline setback. They may be able to move the structure further west. However, they are limited in how far back they can move the structure. There is an approved septic holding tank for a location behind the existing cabin. If the tank were to be moved, it could be uphill from the cabin and closer to the power lines. This is a unique lot with their development wedged in between the lake, driveway, and powerlines.

Their son is disabled, and they use the driveway to bring their van down to the cabin. They want to keep the driveway so they can drive around the side of the cabin and give him access. The existing cabin fell apart, and they want to replace the cabin where it is at. They do not want to cut down trees, dig into the hill, disrupt the ecosystem, deal with any water situations, or have any septic issues.

He does not know why his neighbors from down the road are against him getting rid of a decrepit cabin on this property. If this variance is not approved, it would make no sense for him to just build the cabin anyway. His son is in a wheelchair, and they cannot do a walkout basement or do stairs because his son cannot walk down a steep set of stairs to get to the shoreline. If the cabin is moved to the west, the cabin would block the driveway and there is no way for his son to get to the shoreline. Measuring straight out, the setback would have been 65 to 70 feet.

Three members of the audience spoke in opposition.

Charles Leibfried, 502 Claymore Street, Duluth, stated their property is at 9038 Bear Island Cabin Drive. He submitted a letter in opposition. He is glad to see the property will be improved. His concerns are the structure being too close to the property line and the cabin should be moved as far back from the lake as possible just out of environmental concerns.

Roger Erickson, 37257 Loon Drive, Cohasset, stated his cabin is at 9058 Bear Island Cabin Drive. He stated he has gone to this cabin for the past 69 years. When his father built the cabin, there was no electricity on the property. They replaced the cabin five years ago. The original cabin was 75 feet from the shoreline. They were required to move the structure back 100 feet. They were able to use shoreline averaging and were able to get from 75 feet to 91 feet back. This cabin could use shoreline averaging. The standards now for septic systems help with the environment. They followed floodplain requirements which this applicant may also need to do. While septic can be flexible, any designer would need to know where that dwelling will be in order to come up with a plan. He disagrees with this project. This property was vacant for years, which was why it collapsed. On lakeshore, there are requirements to build.

Larry Erickson, 6398 Church Road, Duluth, stated his cabin is next door to his brother Roger's cabin and it was once owned by his uncle. His cabin is located 58 feet from the shoreline. These were originally boat-access only lots. Someone from the state was there to tell them where to put their cabin in 1956. The rules have changed since then. He did some work remodeling a cabin on Comstock Lake and noted that someone would only be allowed a 200 square foot addition if the structure was located within the shoreline setback. This property is not steep. There is plenty of room if the driveway is moved to get a boat access road down to the lake. The applicant does not want to remove any trees? There are only two red pine trees and a bunch of 80-year-old popples. They have dealt with boulders at their cabin and any backhoe would be able to remove them. There has been no evidence of ledge rock. The cabin is also 25 feet in height, which would allow for a two-story house. At 54 feet from the shoreline, that will stand out.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked if staff came up with alternative locations for the new dwelling. *Paul Butler* stated staff did propose an alternative location that would meet the side property line setback and would be located 90 feet to the shoreline. Board member *Pollock* asked if staff considered an alternative location where the dwelling is located on the driveway. *Paul Butler* stated that was considered except the applicant would need to park on top of the steep slope to access the house. Board member *Pollock* stated there are alternatives where the applicant could meet all setbacks.
- B. Board member *Werschay* asked how far the existing structure is from the lake. *Paul Butler* stated it is about 58 feet. The new dwelling is proposed to be 54 feet from the shoreline.
- C. Board member *Pollock* asked how far the side of the cabin is from the side property line. *Paul Butler* stated he measured approximately 20 feet. Board member *Pollock* asked about the other side of the cabin. *Paul Butler* stated it was between 40 and 50 feet. Board member *Pollock* stated the perfect spot for this cabin is in the middle where it could meet the property line setback.

- D. Board member *McKenzie* asked if the applicant is prohibited from building in the utility corridor. *Donald Rigney*, Acting Secretary, stated there are no utility setbacks in Ordinance 62. Those setbacks are determined by the power company. Board member *Pollock* stated if this is Lake Country Power, they may not be allowed to build in the utility corridor.
- E. Board member *McKenzie* asked if anything was seen during the site visit that would prevent the cabin from moving away from the property line. *Paul Butler* stated if the applicant wants to eliminate the access driveway, that could be removed to move the dwelling closer to that.
- F. Board member *Manick* stated there is no reason the cabin cannot be moved ten feet to the west. There could be benefits from removing some of the larger trees. Moving the structure back may not block the driveway but could impede some. *Jack Kirley* stated they need the driveway access on the side of the cabin. Board member *Manick* stated he does not see rock issues in the pictures. *Jack Kirley* stated he had several excavators on the property, and none were too eager to start digging into the hill. There are a lot of cabins in this area that are nonconforming and as close to the lake. This is not unusual for this shoreline. Board member *Pollock* stated this gets solved with the proper rules and regulations.
- G. Board member *Pollock* stated if the septic tank is not installed yet, the system could still be moved. The septic pump can eject uphill.
- H. Board member *Werschay* stated the ground appears stable now and to start digging into the land would loosen everything up. Board member *Manick* stated there may not need to be a lot of excavation. Board member *Werschay* stated that the dwelling would be even higher if there was no excavation. *Jack Kirley* asked if staff saw the topography while on site. *Paul Butler* stated there is a steep slope there. Board member *Pollock* asked if staff saw ledge rock. *Paul Butler* stated he saw ledge rock further up the driveway. Board member *Pollock* stated there is an open area already there for a cabin to be placed. The septic tank can be moved with the cabin. The driveway can be adjusted in order to fit the cabin in that location. Board member *Manick* stated there is a nice flat area further west and further back from the shoreline. The applicant may not be able to get to 100 feet, but it would be better than it is. *Jack Kirley* stated this would be in the middle of his driveway. Pulling the structure over would block the driveway and would require the holding tank to be installed in his driveway.
- I. Board member *McKenzie* asked if the applicant has a plan for this new dwelling, including the egress from where the dwelling would be accessed from the driveway. *Jack Kirley* stated he has a basic open floor plan so his son can move around with his wheelchair. The exterior will include wide doors to get the wheelchair in. He will not spend money on a plan until a variance is approved. If things change regarding where he can place the dwelling, he would be wasting more money. Board member *McKenzie* noted that a septic does not dictate where a house goes. The problem he has with this is there is no solid idea of what is planned. There is no reason stating why the structure cannot go to the west or be moved further back. *Jack Kirley* stated they can move the structure further from the property line but cannot move back. Board member *McKenzie* stated they need something more concrete on how they can justify building at this location. *Jack Kirley* stated time is not on their side. The best natural location for the structure is right where the existing structure is at. They cannot move the structure back because it will block the driveway.
- J. Board member *Pollock* asked what the shoreline averaging would be on this property. *Donald Rigney* stated this would be over 100 feet. The average is going out 150 feet and

then adding 25 feet. As the neighboring property meets the 100 foot setback, it will not help the landowner here.

- K. Board member *Pollock* asked if *Larry Erickson* has done any work on his property being the cabin is only 58 feet from the shoreline. *Larry Erickson* stated they remodeled the bedrooms. They only added seven feet to the side of the cabin because that was as large as they could go.
- L. Board member *Pollock* asked the applicant if the driveway is utilized to bring a disabled child down to the shoreline. *Jack Kirley* stated yes.
- M. Board member *McKenzie* stated he is considered a denial without prejudice so the applicant can return with a plan. Right now, he does not see a practical difficulty at this point and the applicant seems unwilling to do any excavation which may be required. There is not enough information to make an informed decision. Board member *Werschay* stated if there is any excavation of boulders, that will make a hole. There could be a lot of runoff. That is a practical difficulty. The applicant also noted wanting to protect trees. It does not matter what type of trees these are. Different people like different trees. People with disabilities should be considered. Board member *McKenzie* stated they are considering this. However, the Board does not know if the location of the dwelling will accommodate access or if anything has been planned other than the proposed cabin being located where the cabin is now. Board member *Pollock* agreed with a denial without prejudice. The applicant could work with staff to get a much better plan that might be closer to rules and regulations. The handicap part of this will be addressed. The Board needs to see the design and the whole part incorporated. Without that, he would recommend denial. The applicant could meet the 20 foot property line setback and maximize the setback from the shoreline. The applicant could work with staff to meet the maximized setback.
- N. Board member *Manick* stated the applicant has shown a slight willingness to work with them. They do care about the handicap part of this but the accessibility should work with the driveway. They just do not know how a wheelchair will access this building. The applicant also mentioned steps. Why would there be steps if someone is in a wheelchair? If the applicant would move the structure ten feet from the property line and a bit further back from the lake and work with the Board, that might be better. No septic designer will state that the system has to be in this location. A designer will work on where the septic would be located if the cabin were moved. Board member *Pollock* noted that if the tank had been installed that might be different. Now is the opportunity to fix the 20 foot property line setback.
- O. Board member *McKenzie* stated he is not averse to destroying the hillside behind the cabin. There is no apparent reason the property line setback cannot be met. The roadblock is he does not have a clear idea of exactly what will be required for accessibility. There is not enough information here. There could be a flat area and a perfect building site west of the existing cabin.
- P. *Donald Rigney* stated another option is to approve part of the request and deny another part. For example, to deny the property line setback, but approve of the shoreline setback. Board member *McKenzie* asked if they could make the property line setback a condition. *Donald Rigney* stated that the motion could state all other setbacks shall be met, which the applicant could shift the dwelling to meet the side property line setbacks.
- Q. Board member *Werschay* asked if approving the shoreline setback and denying the property line setback would allow the applicant to get everything done today. *Donald*

Rigney stated it could be. Board member *Manick* asked how they should request maximizing the shoreline setback. Board member *Pollock* stated that maximizing the shoreline setback to the greatest extent possible means that the Board is not happy with the current proposed setback. They want a better location.

- R. Board member *Zupancich* asked when the applicant purchased this property. *Jack Kirley* stated this had been in his family for many years. They bought out other family members. Board member *Zupancich* asked if a point of sale inspection was done. *Jack Kirley* stated no. The family was always the owners.

DECISION

Motion by Pollock/Manick 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.

In Favor: Manick, McKenzie, Pollock, Zupancich - 4

Opposed: Filipovich, Werschay - 2

Motion carried 4-2

Lucia Magney

The third hearing item is for Lucia Magney, subject property located in S20, T54N, R16W (Cotton). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., to allow an addition to a principal dwelling located between the shore impact zone and required setback to exceed 400 square feet allowed and to exceed the maximum height allowed of 25 feet. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is requesting to construct additions to a nonconforming principal dwelling located 53 feet from the shoreline where 100 feet is required.
- B. The additions will be off to the sides and rear of the existing structure, totaling 493 square feet.
- C. Much of the proposed addition will be a two-story addition to the rear.
- D. The current height of the dwelling is approximately 13 feet and is proposed to be 27 feet following the proposed project.
- E. The property has good screening from all sides of the property.
- F. There is a steep slope from the existing dwelling to the shoreline. The rest of the property is relatively flat.
- G. The parcel was recently subdivided.

Ada Tse reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., allows a maximum addition of 400 square feet and a maximum height of 25 feet to a nonconforming structure located between the shore impact zone and required setback.
 - a. The existing dwelling is located 53 feet from the shore and the applicant is requesting additions totaling 493 square feet to the sides and rear.

- b. The existing dwelling is on piers with an approximate height of 13 feet. The applicant is proposing a two-story addition, increasing the height to 27 feet.
- 2. 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.
- 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statue 394.22 Subd. 10.

B. Practical Difficulty:

- 1. There are no unique physical circumstances of the property.
- 2. There are alternatives that exist that do not require a variance or minimize the degree of variance:
 - a. The existing structure may be moved and added onto at a conforming setback with a land use permit.
 - b. An addition of up to 400 square feet may be allowed with a Performance Standard Permit.
 - c. The proposed second story could be removed or altered to eliminate the need for a height variance.
 - d. Practical difficulty for height variance has not been demonstrated.

C. Essential Character of the Locality:

- 1. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
- 2. There had been three approved variances in the area to allow for additions to nonconforming dwellings and one for a new dwelling at a reduced shoreline setback.

D. Other Factors:

- 1. The applicant spoke to the Land Use division staff regarding alternatives to avoid a variance and chose to move forward with the variance request.
- 2. The applicant currently has a land use permit to construct a conforming accessory dwelling (consisting of combined relocated existing nonconforming bunkhouses), a new pole building and new sauna.

Ada Tse noted one item of correspondence from Douglas Magney in support of the variance. This correspondence was provided to the Board of Adjustment prior to the hearing.

RECOMMENDED CONDITIONS

Conditions that may mitigate the variance to allow additions to exceed the maximum allowed 400 square feet and to exceed the maximum allowed height of 25 feet to a nonconforming principal structure as proposed include, but are not limited to:

- 1. St. Louis County Onsite Wastewater SSTS standards shall be followed.

2. The structure shall be unobtrusive earth-toned colors, including siding, trim, and roof.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake.
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 ordinance setbacks and requirements shall be met.

Lucia Magney, 2712 41st Avenue South, Minneapolis, the applicant, stated she never stated why it would be a problem to move this structure in the application. She is worried about the environmental impact of the ground around the building. There are several large trees around the cabin. There are more trees now than there were 50 years ago because they cultivated these trees. In the past 50 years, the roots have grown up. Removing the building and piers would damage those big trees. The cost of moving the structure is \$10,000 plus the cost of the new piers. That would be somewhat of a barrier. The piers in the drawings were not to scale on what they really are. The front north corner of the structure has a higher pier. This was where she measured the 27 foot height from.

Her father designed and helped build this cabin. She does not want to wreck the landscape and she does not want to wreck the building. They are trying their hardest to work with the Ordinance.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* stated the staff report read that practical difficulty for a height variance has not been demonstrated. Does that mean the applicant needs to drop two feet from the request? *Ada Tse* stated that means the applicant could reduce the structure height by two feet or the applicant could remove the second story. Board member *Pollock* asked if that means the applicant could not have a two-story structure and meet the 25 foot height allowed. *Ada Tse* stated she is not saying that. The height of the second story could be shortened to meet the 25 foot height allowed.
- B. Board member *McKenzie* asked if there are buildings being moved as part of this overall plan. Is this a plan to clean up the property and to make things legal? *Ada Tse* stated yes. The applicant is cleaning up the property. The accessory dwelling was built with two separate buildings, and this will make one conforming accessory dwelling.
- C. Board member *Pollock* stated the application said the structure height will not be over 25 feet. *Ada Tse* stated that piers add more height. The applicant was measuring from the base of the structure, not from the piers. Board member *Pollock* stated there are fewer piers to the rear of the structure. Board member *McKenzie* added there is a basement planned for this addition.
- D. Board member *Pollock* asked if there is a basement going under this structure. *Lucia Magney* stated the basement will be added under the new addition. Board member *Pollock* asked if the basement is added and the dirt is brought up to the concrete pad, would that add to the 25 foot structure height? *Ada Tse* stated she measured from the base of the existing foundation. *Donald Rigney*, Acting Secretary, stated the entire structure as a whole will be greater than 25 feet in height. Board member *Pollock* asked if the piers are tapered out and if there is landscaping that would decrease the structure height. The grade can be

done by filling. *Donald Rigney* stated that would be a technicality. Board member *Manick* stated the ground is the ground. Adding dirt and claiming more feet would not work. Board member *Werschay* stated a land alteration permit would be needed then.

- E. Board member *McKenzie* asked if the architect came up with the height measurement. *Lucia Magney* stated they did not want to get in trouble if the structure was a few inches above the 25 feet allowed. The architect has already designed the second floor to be as short as it can be. The problem is they have to measure from that front corner. This measurement did not come from the architect. The building was measured to the foundation at first and then the height of the piers was added in.
- F. Board member *McKenzie* asked if topography was not factored in, would the building height be under 25 feet? *Lucia Magney* stated yes.
- G. Board member *McKenzie* asked what the applicant would do if the flat roof was not able to be fixed. *Lucia Magney* stated if the roof is not structurally sound, they will need to demolish and start over again. This roof has been there for 50 years and has been solid. There is nothing complicated about building onto the structure. Board member *McKenzie* stated that buildings now compared to building practices back then are very different as structures are not built to last as long.
- H. Board member *McKenzie* asked if there had been any excavation to see what is underneath the structure. *Lucia Magney* stated they hand-dug a well down 20 feet and they found clay and rock, some of which were larger. She does not anticipate any issues with bedrock.
- I. Board member *McKenzie* stated the intent of the ordinance has been met regarding the structure height. The structure's height will be 25 feet even if there are a few exposed piers that push the structure height higher. Board member *Werschay* stated the applicant is trying to be in compliance with the Ordinance. She is removing two other structures to make room for the new additions.
- J. Board member *Pollock* asked if the applicant is adding a new sauna. *Lucia Magney* stated after the property was subdivided, the sauna ended up on her sister's part of the property. She does not want the sauna and she wants it to be moved. This sauna will move 30 feet across the property lines and will move back to the required setback. Board member *Pollock* stated that the sauna may not need to meet a 100 foot setback.

DECISION

Motion by McKenzie/Pollock to approve a variance to allow 493 square foot dwelling additions to exceed the maximum allowed 400 square feet and to exceed the maximum allowed height of 25 feet to a nonconforming principal structure, based on the following facts and findings:

A. Official Controls:

- 1. St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., allows a maximum addition of 400 square feet and a maximum height of 25 feet to a nonconforming structure located between the shore impact zone and required setback.
 - a. The existing dwelling is located 53 feet from the shore and the applicant is requesting additions totaling 493 square feet to the sides and rear.
 - b. The existing dwelling is on piers with an approximate height of 13 feet. The applicant is proposing a two-story addition, increasing the height to 27 feet.
- 2. One of the tenets of official controls is to promote health, safety and general welfare of inhabitants as well as encouraging the most appropriate use of the land and regulating setbacks.

3. The applicant wishes to improve the structure with a fairly primitive use now to one she and her family can comfortably use as they age.
4. The applicant wishes to use the property in a reasonable manner.
5. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The applicant's structure was constructed in the 1960's within what is now the shoreline setback. The applicant plans to expand and improve the original structure and make it usable year-round. The family cabin does not conform to modern setback requirements.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The neighborhood consists of primarily seasonal cabins which were likely constructed before the advent of modern land use regulations. The applicant has indicated that they intend to keep vegetative screening on the building which looks effective according to the County Land Explorer.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant indicates the additions to the footprint of the building will be to one side and to the rear of the existing cabin.
2. The survey attached to the variance request seems to indicate several small buildings will be moved out of the shoreline setback.
3. One item of correspondence was received in favor of the proposal.

The following conditions shall apply:

1. St. Louis County Onsite Wastewater SSTS standards shall be followed.
2. The structure shall be unobtrusive earth-toned colors, including siding, trim, and roof.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake.
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 ordinance setbacks and requirements shall be met.

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

Opposed: None - 0

Motion carried 6-0

Motion to adjourn by McKenzie. The meeting was adjourned at 11:24 AM.