

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD THURSDAY, SEPTEMBER 12, 2019, ST. LOUIS COUNTY PUBLIC WORKS, LOWER-LEVEL TRAINING ROOM, VIRGINIA, MN.

10:06 AM – 1:10 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. Landon Carlberg – S31, T51N, R15W (Canosia)
- B. Stephen Roskoski – S12, T62N, R17W (Greenwood)
- C. Knutson Construction – S17, T53N, R13W (North Star)
- D. Jared Noack – S6, T69N, R21W (Kabetogama)

OTHER BUSINESS:

Motion by McKenzie/Filipovich to approve the minutes of the August 8, 2019 meeting.

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

Opposed: None – 0

Abstained: Pineo, Svatos - 2

Motion carried 5-0-2

NEW BUSINESS:

Case 6199 – Landon Carlberg

The first hearing item was for Landon Carlberg, property located in S31, T51N, R15W (Canosia). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow the lot coverage on a parcel located in a COM-11 zone district to exceed 25 percent. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting the lot coverage on his property to exceed the zone district maximum of 25 percent.
- B. The applicant is proposing a lot coverage of 35 percent.
- C. The property is 16.85 acres in size.
- D. The total proposed lot coverage is approximately 256,895 square feet.

- E. This property is the current location of St. Germain's Cabinets and the Tongue and Groove Store.
- F. The property is located in a Commercial (COM)-11 zone district.
- G. The current lot coverage is just under 25 percent.
- H. The proposed development will increase the lot coverage to 27.9 percent.
- I. The applicant is proposing future development, about 52,000 square feet, which will equal 35 percent lot coverage.
- J. All impervious surface is calculated into lot coverage, including structures, tar, sidewalks and parking lots.

Mark Lindhorst reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62 states that the maximum allowed lot coverage for a dimensional district of eleven is 25 percent; the applicant is requesting a total lot coverage of 35 percent.
 - a. The property currently has a lot coverage of about 25 percent.
 - b. The applicant's proposed building and addition would bring the lot coverage to approximately 27.9 percent.
- 2. Dimensional district eleven is one of the least restrictive zone districts for lot coverage.
 - a. The dimensional districts of 5-11 all have a maximum allowed lot coverage of 25 percent.
- 3. The property falls within the Crossroads Commercial category of the future land use map found within the Comprehensive Land Use Plan.
 - a. The major goal of this category is to direct new commercial development to existing commercial nodes and currently undeveloped areas with adequate highway access.
 - b. Objective LU-7.1 is to encourage expansion of regional commercial opportunities in existing commercial corridors along collector or arterial routes and at nodes where infrastructure and traffic volumes can support economic growth.

B. Practical Difficulty:

- 1. This is a fairly large piece of property with a significant amount of development.
- 2. The amount of development is consistent with what Zoning Ordinance 62 allows.
- 3. The amount of development on the property is already occupying the maximum area allowed by lot coverage requirements in this zone district.
 - a. One alternative is to restore some of the parking/driving surface area to allow additional area to be covered by the proposed structure.
- 4. There may currently already be reasonable use of the property.
 - a. Not approving a variance to exceed lot coverage would limit the development on the property to what there is now, unless some other lot coverage is removed.
- 5. The meeting minutes for the Conditional Use Permit that was issued by Canosia Township mentioned that the lot coverage on the property was within the 25 percent requirement.

C. Essential Character of the Locality:

1. This property is located in the Four Corners area of Canosia Township.
 - a. The property is located adjacent to the southwest of the intersection of Miller Trunk Highway and Midway Road.
2. The intersection of Miller Trunk Highway and Midway Road is a very highly developed area. There are a variety of commercial uses near this intersection.
3. Many of the commercial properties in this area exceed the impervious surface coverage allowed in the zone district.
4. The property across Midway Road to the east of the applicant's property contains several businesses such as Super One Foods, Super One Liquor Store (formerly Pike Lake Liquor), Dairy Queen, and others.
 - a. The structures, combined with the parking surfaces on these properties is covered by approximately 92 percent impervious surface.
5. The Holiday Stationstores and the St. Louis County Public Works Department complex are located across Miller Trunk Highway from the applicant's property.
 - a. These properties also have significantly more impervious surface than what the zoning district allows.
 - b. The St. Louis County property also has a stormwater pond to manage runoff.
6. Much of the area to the south of the applicant's property is within the city of Hermantown.
 - a. Much of the area to the south appears to be residential.
7. The Miller Trunk Highway corridor to the southeast of the applicant's property towards Duluth contains a variety of uses.

D. Other Factors:

1. The use of the property was approved by Canosia Township in 2018.
2. The stormwater pond on the property helps contain runoff on the property for the current development.
 - a. It is not known whether the stormwater pond is adequately sized for the existing or proposed development.
3. Since the development plans for the future driving surfaces and parking areas are not complete, it is not reasonable to determine if practical difficulty has been demonstrated for a lot coverage total of 35 percent.
4. Based on the known information of the proposed development, it may be reasonable to make a decision on a lot coverage of 27.9 percent for the currently proposed structure and addition. Without information on future parking and driving surfaces, there is no justification for a lot coverage of 35 percent.

Mark Lindhorst noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow the lot coverage on a parcel located in a Commercial (COM) -11 zone district to exceed 25 percent, the following conditions shall apply:

1. An engineered stormwater management plan shall be submitted.

2. The total lot coverage on the property shall be minimized to the greatest extent possible and shall not exceed 28 percent.

Landon Carlberg, the applicant and property owner, shared more recent aerial photographs with the Board. He stated the lot coverage on the other three corners of this intersection have lot coverage of 85 percent plus. They have worked to clean up the property. They have worked with AMI Engineering to work on the new project. The stormwater pond was designed for the St. Germain's building plus faith of an additional expansion of 10,000 square feet. The pond was designed for about 84,400 square feet, or 11.5 percent lot coverage. This was done before they reached 25 percent lot coverage.

He is requesting 35 percent lot coverage which will include the stormwater pond and the possibility of adding parking spaces and sidewalks to support the existing buildings. They were not required to add the pond, but they did so anyway.

Kyle Anderson, 5718 Miller Trunk Highway, stated he is the owner of the Tongue and Groove Store. He was also on the Canosia Township Planning Commission and Board of Adjustment. Their business has been at this location for the past ten years. This property needs a certain lot coverage to remain viable. The 25 percent lot coverage limit does not differentiate between what type of property it is. He researched into what other entities allow for lot coverage on commercial properties. Hermantown allows 50 percent lot coverage in a commercial zone district, 75 percent in an industrial zone district and 35 percent in a business zone district that increases to 65 percent with a landscaping plan. The only zone district that limits 25 percent is open space. Midway Township, which still administers its own zoning, has one commercial zone district and two manufacturing zone districts which all allow 75 percent lot coverage.

He leases this building from the property owner. Adding an additional 14,000 square feet would double the size of their existing space. They are investing a lot of money in both space and equipment. He does not want to sign another lease if there is a limit on how much they can expand. They want the comfort to make the right investments and capital expenditures.

Cory Stafne, 5724 Miller Trunk Highway, stated he is the owner of St. Germain's Cabinets. The facility they put up was a \$5,000,000 investment. He thought there would be the opportunity for expansion. If this variance is approved, both businesses can develop the whole piece of property. He moved into this facility in May and has already hired employees. It does not make sense for a property to be zoned commercial and be limited to 25 percent lot coverage.

Mike Podgornik, 5401 Samuelson Road, stated that it is hard for a business to develop and grow in order to keep operating. It would be hard to force any other business owner out of the area. These businesses employ people and they pay taxes. The other businesses at the intersection benefit from having both of the businesses on this property here. If neither business is able to expand, they might move somewhere else. The businesses are located outside of the residential area which is wooded and blocked off.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Canosia Township was the zoning authority for the three corners of the intersection of Miller Trunk Highway and Midway Road.
- B. The ability for the applicant/landowner to subdivide the property. *Mark Lindhorst* stated that staff is calculating the lot coverage percentage based on all of the property owned. The variance, if approved, would be based upon the total calculation of the entire property. To parcel off would make every other parcel nonconforming due to lot coverage. *Jenny Bourbonais*, Acting Secretary, explained that while there is a potential to subdivide, they are asking that the parcels be kept together for the landowner's benefit. To subdivide any lot would increase the amount of lot coverage which would be over what would be allowed by zoning requirements and above what could be approved by variance. To subdivide and build in the future could be determined as a self-imposed hardship. This is just a suggested condition for the applicant's benefit.
- C. There is area on the property that is not developable because of wetlands. This land would likely not be able to be developed without wetland authority approval.

DECISION

Motion by Skraba/McKenzie to approve a variance to allow the lot coverage on a parcel located in a Commercial (COM)-11 zone district to exceed 25 percent, based on the following facts and findings:

- A. Official Controls:
 - 1. The request is partially in harmony with the general purpose and intent of official controls.
 - 2. The property falls within the Crossroads Commercial category of the future land use map found within the Comprehensive Land Use Plan.
 - a. The major goal of this category is to direct new commercial development to existing commercial nodes and currently undeveloped areas with adequate highway access.
 - b. Objective LU-7.1 is to encourage expansion of regional commercial opportunities in existing commercial corridors along collector or arterial routes and at nodes where infrastructure and traffic volumes can support economic growth.
- B. Practical Difficulty:
 - 1. This is a fairly large piece of property with a significant amount of development.
 - 2. The three other corners of the intersection of Miller Trunk Highway and Midway Road exceed lot coverage. The commercial properties in this area exceed the impervious surface coverage allowed in the zone district.
 - 3. The loss of the ability to expand the businesses in this location outweighs the percent lot coverage allowed.
- C. Essential Character of the Locality:
 - 1. The variance will not change the essential character of the locality. The commercial development already exists on the property.
- D. Other Factors:
 - 1. The use of the property was approved by Canosia Township in 2018.

2. The stormwater pond on the property helps contain runoff on the property for the current development.
3. It is suggested that all four parcels shall remain tied together.

The following conditions shall apply:

1. An engineered stormwater management plan shall be submitted.
2. The total lot coverage on the property shall be minimized to the greatest extent possible and shall not exceed 35 percent.
3. The applicant shall obtain road access from the appropriate road authority.

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

Opposed: None - 0

Motion carried 7-0

Case 6200 – Stephen Roskoski

The second hearing item was for Stephen Roskoski, property located in S12, T62N, R17W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow an accessory structure (garage) at a reduced shoreline setback, and relief from Article III, Section 3, to allow an accessory structure (garage) at a reduced road right-of-way and road centerline setback. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The request is for a 32 foot by 40 foot garage located 69 feet from the shoreline where 75 feet is required, zero feet from the road right-of-way where 15 feet is required and 28 feet from the centerline of a private road where 48 feet is required.
- B. There is a dwelling, existing garage and shed located on the property.
- C. The road right-of-way is not built within the actual road because the road shifts over. The property line does not extend to the road.
- D. Topography of the property limits where a structure can be built.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62, Article III, Section 3.4, requires a 75 foot shoreline setback.
 2. Zoning Ordinance 62, Article III, Section 3.7, requires a 15 foot right-of-way and 48 foot road centerline setback.
 3. The parcel is located in the Lakeshore Development Area on the Future Land Use Map found in the St. Louis County Comprehensive Land Use Plan. This area is intended for rural development and redevelopment adjacent to lakes. This includes single family residential uses in size, scale and intensity consistent with the county's developed lake shore area.
- B. Practical Difficulty:
 1. The rear of the property has a steep slope which includes bedrock and most of the septic area which limits building area for additional storage.
 2. There are alternatives that would reduce the variance request or need for a variance:

- a. Reduce the size of the garage to meet shoreline setback. There is suitable area for a 32 foot by 34 foot garage that would meet shoreline setback thereby reducing the variance request.
- b. An addition to the side of the existing garage per Article IV, Section 4.3 E., would be allowed without variance.

C. Essential Character of the Locality:

1. The majority of the large parcels in the neighborhood have conforming structures from the shoreline.

D. Other Factor:

1. Property lines were provided by the applicant based on survey pins found on the property. It is recommended that the right-of-way be certified by a surveyor. The property has limited building area for additional storage due to the steep slope, septic location and bedrock. The applicant could reduce the size of the garage to meet shoreline setback reducing the variance request or add additional storage area by adding on to the existing garage without variance.

Mark Lindhorst noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a garage 69 feet from the shoreline, zero feet from the road right-of-way and 28 feet from the centerline of the road, the following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof
2. Vegetative screening shall be retained between the garage and shoreline.
3. The right-of-way shall be surveyed to ensure that the structure will not be located within the right-of-way.

Steve Roskoski, the applicant, stated that they would like the garage for additional storage in order to keep their things from being outside. They plan to move out to the cabin. They also plan to add to the rear of the cabin. He handed out a sketch to the board on how the space in the new garage would be utilized. If they added onto the existing garage, it would not leave them much space to move around between the garage and the house. Their current garage is full and an addition would not be able to provide enough storage space. The proposed garage would face the other one and allow them to access both garages from the driveway. He would not back out into the right-of-way. If they had to blast into the bedrock, they would need to add a new driveway in order to access that garage. There is considerable tree growth between the location of the proposed garage and the lake. The corner of the garage would be located 20 feet from the back of the neighbor's cabin. If there was not a shoreline cut-out on the neighbor's property, they would likely meet the natural 75 foot shoreline setback.

The property has been in his family since 1984 and was signed over to him in 1993. The road has about eight year-around residents. Breezy Point Road Association currently contracts with the county to plow. Further down the road, residents take care of the road themselves.

He spoke with all of his neighbors and they signed a letter of support of his proposal.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired if the right-of-way could be vacated. *Mark Lindhorst* stated that it would take all of the residents along the road signing off on it. It would be very difficult to vacate the right-of-way.
- B. Inquired if there is a limit on the size of garage allowed. *Mark Lindhorst* stated that lot coverage would be the limit. The size of the garage proposed would fit within the lot coverage allowed.
- C. There is one corner of the garage that would not meet the shoreline setback.

DECISION

Motion by Skraba/Pineo to approve a variance to allow a garage 69 feet from the shoreline where 75 feet is required, zero feet from the right-of-way where 15 feet is required and 28 feet from the centerline of a private road where 48 feet is required, based on the following facts and findings:

- A. Official Controls:
 - 1. The variance request is in harmony with the general purpose and intent of official controls.
 - 2. This structure will be difficult to see from the lake because of the tree cover.
 - 3. The structure will be located outside the road right-of-way and not effect maintenance of the road.
- B. Practical Difficulty:
 - 1. This is the only logical place to build a garage because of the road right-of-way, shoreline setback, sewer line and the location of bedrock.
- C. Essential Character of the Locality:
 - 1. The applicant is not proposing a new use to the area.
 - 2. This will remain the same use.
- D. Other Factor:
 - 1. There is no other location on the property that is suitable for building a garage due the location of the road, road right-of-way and topography of the property.

The following conditions shall apply:

- 1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof
- 2. Vegetative screening shall be retained between the garage and shoreline.
- 3. The right-of-way shall be surveyed to ensure that the structure will not be located within the right-of-way.

In Favor: Filipovich, Pineo, Pollock, Skraba, Svatos, Werschay - 6

Opposed: McKenzie - 1

Motion carried 6-1

Case 6201 – Knutson Construction

The third hearing item was for Knutson Construction, property located in S17, T53N, R13W (North Star). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow additions to a nonconforming principal structure at a reduced shoreline setback, and relief from 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 allowed and to exceed the height allowed.

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

- A. The request is for additions to a nonconforming principal structure at a reduced shoreline setback that will exceed square footage allowed and exceed the height allowed.
- B. The applicant is proposing to construct three additions to an existing 32 foot by 20 foot cabin that is located 78 feet from the shoreline where 150 feet is required.
- C. The first proposed addition will be a 30 foot by 20 foot addition to the northeast side of the existing structure.
- D. The second proposed addition will be a 62 foot by 10 foot covered porch on the lake side of the structure.
- E. The third proposed addition will be a 22 foot by 10 foot porch located to the rear of the structure.
- F. The structure is currently located outside of the shore impact zone.
- G. The structure is not parallel to the shoreline; the addition of the covered porch to the lakeside will increase an already nonconforming setback.
- H. The covered porch addition to the front of the structure will reduce the shoreline setback to 65 feet and be located within the shore impact zone.
- I. The maximum height allowed within the shore impact zone is 20 feet.
- J. Without the second proposed addition of a covered porch on the lake side of the structure, the applicants would be allowed a maximum height of 25 feet.
- K. The existing cabin is 640 square feet in size. The proposed additions will total 1,440 square feet bringing the entire structure footprint to 2,080 square feet.
- L. The structure is located on top of a ridge that slopes forward to the lake and slopes behind towards the road.

Stephen Erickson reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Little Alden Lake is classified as a Natural Environment lake; Zoning Ordinance 62 requires a 150 foot shoreline setback from natural environment lakes. The shore impact zone for a natural environment lake is 75 feet from the shoreline. The applicant is proposing a 65 foot setback from the shoreline. The current structure is located 78 feet from the lake and outside the shore impact zone; the proposed porch addition will increase a nonconformity and is proposed to be within the shore impact zone.
 - 2. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 - 3. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that

community health and safety is protected, and that the overall character of a given area is preserved.

4. The parcel is located in the Natural Areas on the Future Land Use Map in the Comprehensive Land Use Plan. This area is intended to protect areas of St. Louis County that are unsuitable for intensive development due to existing environmental constraints, such as flood-prone areas, areas under conservation easement, significant wildlife habitat areas, or other features likely to be harmful to the community if development is not properly managed in these areas.

B. Practical Difficulty:

1. The existing cabin has a footprint of 640 square feet. The proposed additions will increase the footprint to 2,080 square feet. This will increase the existing structures footprint by nearly three times its current size.
2. There are alternatives that do not require a variance:
 - a. Alternative: The structure would be allowed up to a 400 square foot addition through a performance standard permit.
 - b. Alternative: The existing structure could be relocated or rebuilt at a conforming location on the parcel.
 - c. Alternative: A structure similar in size to the existing structure may be allowed through a performance standard permit, if the structure setback was maximized to the greatest extent.
3. The existing structure is located on top of a ridge. To meet the required shoreline setback, the structure could be located on the back side of the ridge.
4. There may be wetlands located on the parcel but the wetland location will not impact the structure's ability to meet the required setback or be maximized to the greatest extent possible.
5. The proposed septic system is located to the north of the existing driveway and south of North Little Alden Lake Road. This proposed location would not prevent the structure from being relocated to the 150 setback.

C. Essential Character of the Locality:

1. A variance was approved on a parcel approximately 400 feet to the east of the applicants parcel. The approved variance allowed an addition to a structure at a reduced shoreline setback. The reduced setback was 112 feet from the shoreline. The 1995 variance does not give reasoning for approval.

D. Other Factors:

1. The proposed additions will increase the cabin footprint by 1,440 square feet.
2. The proposed septic location will not impede the structure's ability to be moved to a conforming shoreline setback.
3. 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.

Stephen Erickson noted one item of correspondence from Matt Schiller in support of the variance request. This correspondence was read into the record.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow additions to a nonconforming principal structure at a reduced shoreline setback of 65 feet and relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow a 1,140 square foot addition to a nonconforming principal structure located at a reduced shoreline setback and to exceed the height allowed, the following conditions shall apply:

1. If it is determined that the principal structure is not structurally sound enough for an addition, the structure shall be rebuilt at the 150 shoreline setback.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
4. A land alteration permit shall be submitted before the issuance of a land use permit.
5. All SSTS sewage treatment standards shall be met.
6. The Wetland Conservation Act shall be followed.

Andrew Knutson, the applicant and contractor, stated that his clients asked him to design the cabin keeping the old cabin design in place. The original cabin was built by the landowners and there are family ties that make it an important structure to keep. One of the complexities was designing a new cabin encompassing the old cabin and keeping its location intact. The new design will encompass the old cabin. To move the structure back would drop them 12 feet behind the hill and prohibit their view to the lake. There is a septic system planned behind the hill. There were three designs they came up with. This current design will have minimal impact on the lake. The existing cinder block foundation makes the cabin difficult to move. The new footing system would be a slab on grade with minimal impact. They will also utilize the existing foundation on the old cabin. The landowners are trying to increase the size of the structure in order to retire at the cabin and to accommodate their family. They are proposing a structure height of 25 feet.

Two property owners also spoke:

Brian Marsolek, 4412 Gladstone Street, Duluth, stated they are the landowners. This cabin was built in the 1960s and there have been four generations able to use this property. They want the cabin to be used for generations to come. Behind the slope, there is a low area.

Seth Marsolek, 3930 Martin Road, Duluth, stated the intention is to transfer the title over to him. They want to move out to this property long-term. This was the second original property built on Little Alden Lake. The reason for the screen porch is because of the amount of bugs and this would allow them to enjoy the outdoors. They intend to keep the legacy of the original cabin and have no interest in building a brand new structure. He disagrees that they could build at the 150 foot setback because there is normally standing water in that location.

Andrea Gagne Marsolek, 4412 Gladstone Street, asked if there could just be a deck across the front. If they were to move the whole building back, would they need to build at the 150 foot shoreline setback?

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. The covered porch addition on the lake side is increasing the nonconformity by building into the shore impact zone. If the applicant would turn this addition into a deck, that would be allowed and they would be able to keep their proposed 25 foot height.
- B. Inquired if there are wetlands located on the property. *Jenny Bourbonais*, Acting Secretary, stated that this was not a wetland delineation but the low area was depicted by the septic designer. The wetlands location would not impact the ability of a structure's setback from the lake to be maximized to the greatest extent possible.
- C. A 400 square foot addition could be allowed by a performance standard permit.
- D. *Jenny Bourbonais* stated that the topography may limit where a structure could be built. There could be another structure built to maintain the view of the lake, but not necessarily in the same location.
- E. There is an option to deny the request without prejudice to discuss alternative options. *Jenny Bourbonais* stated the only way to deny a permit without prejudice would be for the Board to clearly state what information they require from the applicant/landowners in order for the Board of Adjustment to make a decision. Staff has already worked with the applicant and this was the proposal that was received. The applicant/landowners can work with staff in order to agree upon a location and obtain a performance standard permit for nonconforming structure replacement. If there is no agreement, another variance may be required.
- F. Board member Werschay stated that while there is topography on the property, the structure was built before the rules were in place. As long as the structure is not built into the shore impact zone, the Board could allow the additions.
- G. Board member *Pollock* stated that to deny without prejudice would allow the applicants to maximize the setback to the greatest extent, to build the structure outside of the shore impact zone and to preserve sight lines to the lake.

DECISION

Motion by Pollock/Pineo to deny without prejudice a variance request for the relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow additions to a nonconforming principal structure at a reduced shoreline setback of 65 feet and relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow a 1,140 square foot addition to a nonconforming principal structure located at a reduced shoreline setback and to exceed the height allowed, in order for the applicant to work with staff on a proposal that will maximize the shoreline setback to the greatest extent possible, be constructed at an optimal location outside of the shore impact zone and to preserve the sight lines to the lake.

In Favor: Filipovich, McKenzie, Pineo, Pollock, Skraba - 5

Opposed: Svatos, Werschay - 2

Motion carried 5-2

Case 6202 – Jared Noack

The fourth hearing item was for Jared Noack, property located in S6, T69N, R21W (Kabetogama). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a structure to remain at a reduced shoreline setback, relief from Zoning Ordinance 62, Article III, Section 3.4, to allow a new permanent foundation when located within the shoreline setback; relief from Zoning Ordinance 62, Article III, Section 3.4, to allow an after-the-fact addition extending towards the shoreline where no addition is allowed; relief from Zoning Ordinance 62, Article IV, Section 4.3, D., to allow an addition that exceeds 200 square feet; relief from Zoning Ordinance 62, Article IV, Section 4.3, D., to allow a structure to exceed 20 feet in height; and relief from Zoning Ordinance 62, Article III, Section 3.6, to allow an occupied structure to not meet the minimum setback requirements of the St. Louis County sewage treatment standards.

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

- A. The request is for an existing structure to remain at a reduced shoreline setback. A 2005 conditional use permit condition was that the structure be moved to the required shoreline setback or be approved by variance.
- B. The applicant is requesting a new permanent foundation when located within the shoreline setback.
- C. The applicant is requesting an after-the-fact addition extending towards the shoreline where no addition is allowed.
- D. The addition is a 5 foot by 20 foot covered deck that was constructed without benefit of a land use permit or variance. This after-the-fact addition increased an already nonconforming shoreline setback.
- E. This addition was added by the previous landowner.
- F. The applicant is requesting an addition that exceeds 200 square feet. The applicant is proposing three additions to the existing dwelling that will total 512 square feet. A 200 square foot addition is allowed where it will not increase the nonconformity.
- G. The first proposed addition is an 8 foot by 8 foot addition to the west side of the dwelling.
- H. The second proposed addition is a 7 foot by 8 foot addition to the west side of the dwelling. The first and second proposed additions would square off the west side of the dwelling.
- I. The third proposed addition is a 28 foot by 14 foot addition to the rear of the dwelling.
- J. The third proposed addition to the rear will not meet the required septic tank setback of 10 feet.
- K. The applicant is requesting the structure to exceed 20 feet in height. The applicant is proposing a structure height of 35 feet.
- L. The structure is currently located 26 feet from the shoreline.
- M. The parcel is relatively flat.
- N. Nothing was done after the conditional use permit hearing in 2005 to resolve the shoreline setback issue.
- O. The property is Unit 2 of Rocky Point CIC.

Stephen Erickson reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62 requires a 75 foot setback from General Development lakes. The after-the-fact addition is located 26 feet from the shoreline.
2. Zoning Ordinance 62 allows up to a 200 square foot addition for structures located between 25 feet from the shoreline and the shore impact zone. The structure is located 26 feet from the shoreline and the proposed additions will total 512 square feet.
3. Zoning Ordinance 62 states a maximum height of 20 feet for structures located within the shore impact zone. The proposed height of the additions is 35 feet.
4. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
5. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

B. Practical Difficulty:

1. A condition of the 2005 conditional use permit was:
 - a. Units one and two shall be moved back to their alternate location meeting their 75 foot setback unless the applicant is granted variances for shoreline setbacks. No variances have been granted to allow the structure at a reduced setback.
2. There is an identified alternative location where the existing structure could conform to shoreline setbacks.
3. The structure could be relocated to the alternative structure location as shown on the Rocky Point Condominiums preliminary plat. At the alternate location, the structure would be allowed a maximum height of 35 feet.
4. The after-the-fact addition increased an already nonconforming shoreline setback and was constructed without variance or land use permit.
5. The applicant stated he will replace the existing foundation. This is not consistent with the previous conditions and Zoning Ordinance 62.
6. There are no alternatives that do not require a variance due to the structure not being in compliance.
7. If the structure were brought into compliance at the current location, a 200 square foot addition would be allowed with a maximum height of 20 feet.

C. Essential Character of the Locality:

1. A variance was approved on a parcel approximately a half mile away from the applicants parcel. The approved variance granted a three season porch to be located 25 feet from the shoreline. There are no recorded variances within the CIC.

D. Other Factors:

1. Conclusions from the October 5th, 2005 Planning Commission hearing stated: "The location and character of the proposed use is considered consistent with a desirable pattern of development: Yes, if the units one and two are relocated to meet the 75 foot setback, or a variance obtained to retain them at the current location."

2. At the time of the 2005 CIC request, it was stated that units one and two had newer foundations. The applicant is now proposing to replace the existing foundation with a new permanent foundation.
 3. A condition of the 2005 CUP was units one and unit two shall be moved back to their alternative location unless a variance is granted for shoreline setback.
 4. The alternative location shows both units one and unit two meeting the required shoreline setback.
 5. The relocation of unit two would not impact access to the other unit as the preliminary plat has a documented access road to both units at the alternative setback sites.
 6. 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.
- E. Was the construction completed prior to applying for the variance? If not, what extent of the construction has been completed?
1. The construction of the covered deck was completed between 2010 and 2013 without benefit of a land use permit or variance. The construction was completed by a previous owner.
- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The county would benefit by enforcement of the ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan, Ordinances 61 and 62, as well as a previous Planning Commission condition of CUP approval of the CIC.

Stephen Erickson noted one item of correspondence from Rhace Gelo that was neither for nor against the variance request. This correspondence was read into the record.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a structure to remain at a reduced shoreline setback; to allow a new permanent foundation when located within the shoreline setback; to allow an after-the-fact addition extending towards the shoreline where no addition is allowed; to allow an addition that exceeds 200 square feet; to allow a structure to exceed 20 feet in height; and to allow an occupied structure to not meet the minimum setback requirements of the St. Louis County sewage treatment standards, the following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
3. St. Louis County Ordinance 43 and FEMA floodplain regulations shall be met.
4. Structure shall be setback a minimum of 10 feet from the septic tank.

Jared Noack, the applicant, stated he and his father purchased the cabin in 2015. They want to try and improve the cabin. One issue is the foundation. There is standing water in the crawl space. They have been working to repair the foundation. They are looking for a structure that is one and a half stories in height with a vaulted ceiling. They were not aware that a land use permit for the covered porch had not been applied for. They have talked with the CIC and both adjoining property owners to clean this up.

The addition to the west would be for an entrance so they do not have to walk down the rocky façade in the front to access the dwelling. They are also building a deck, which does not require a variance and was not included in the variance request.

The location of the water house limits where they can move the cabin back to. There is also the septic system located behind the cabin. The proposed addition to the rear would be about 4 to 5 feet from the septic system. Their current foundation is concrete piers and they are waiting for the variance decision before going to the contractor with options.

David Noack, Decorah IA, stated they were unaware that the previous landowners had done nothing after the CIC approval in 2005. If they were to move the structure back to the 75 foot setback, the cabin would be located in the driveway and cut off the access to unit one. They have done as much as they can to fix the water problem. They just want more living space to get the whole family under one roof. The CIC has given them the green light to move forward. The current septic system is 20 to 22 feet behind the existing dwelling. The septic system handles both unit one and the water house. They would like to repair the foundation they have and table any new permanent foundation.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired why this is being heard now when CUP approval was in 2005. *Jenny Bourbonais*, Acting Secretary, stated that nothing was ever done after the 2005 hearing to bring the structure into compliance nor was a variance applied for the structure to remain at a reduced shoreline setback. This issue was found when the applicant applied for additions.
- B. There are things to consider, such as the building being in its current location. The roof over the deck could be removed. It might not be practical to move the entire building. There is also the location of the septic system which would limit how far back the structure could be moved.
- C. Board member *Skraba* stated it would be difficult to move the structure back to the 75 foot setback. It would be easier to move it further back from the lake and to approve the additions. However, there is also the septic system located behind the cabin.
- D. The disruption to move the structure could be worse for the shore impact zone than just leaving the structure where it is.
- E. Environmental Services Department recommended that the 10 foot septic tank setback should be maintained.
- F. The two proposed additions on the west side of the dwelling would almost equal the 200 square feet allowed with a performance standard permit. Neither addition would increase the nonconformity.

DECISION ON AFTER-THE-FACT DWELLING LOCATION

Motion by Skraba/McKenzie to approve a variance for an existing structure to remain at a reduced shoreline setback, based on the following facts and findings:

A. Official Controls:

1. The variance request is partially in harmony with the general intent and purpose of official controls.
2. There is nowhere to move the structure because of the existence of the septic system, water house and driveway.

B. Practical Difficulty:

1. The development behind the cabin limits where the cabin can be moved.

C. Essential Character of the Locality:

1. The request will not alter the essential character of the locality.
2. This is an old resort property that has been developed.

D. Other Factor:

1. This is cleaning up a condition from conditional use permit approval in 2005.

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

Opposed: None - 0

Motion carried 7-0

DECISION ON AFTER-THE-FACT ADDITION

Motion by Skraba/Svatos to approve a variance, after-the-fact, for a 5 foot by 20 foot covered porch addition extending towards the shoreline where no addition is allowed, based on the following facts and findings:

A. Official Controls:

1. This request is not in harmony with the general purpose and intent of official controls. However, as the structure cannot be moved back, this addition can remain.

B. Practical Difficulty:

1. The development behind the cabin limits where any addition can go.

C. Essential Character of the Locality:

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

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

Opposed: McKenzie, Pineo, Pollock - 3

Motion carried 4-3

DECISION ON PROPOSED ADDITIONS AND HEIGHT INCREASE

Motion by Skraba/Pineo to deny a variance to allow an addition that exceeds 200 square feet and to allow a structure to exceed 20 feet in height, based on the following staff facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 allows up to a 200 square foot addition for structures located between 25 feet from the shoreline and the shore impact zone. The structure is located 26 feet from the shoreline and the proposed additions will total 512 square feet.
2. Zoning Ordinance 62 states a maximum height of 20 feet for structures located within the shore impact zone. The proposed height of the additions is 35 feet.
3. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
4. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
5. The applicant is allowed a 200 square foot addition with a performance standard permit as long as the addition does not increase the nonconformity.
6. The applicant is allowed a 20 foot structure height.

B. Practical Difficulty:

1. There are no alternatives that do not require a variance due to the structure not being in compliance.
2. If the structure were brought into compliance at the current location, a 200 square foot addition would be allowed with a maximum height of 20 feet.

C. Essential Character of the Locality:

1. A variance was approved on a parcel approximately one-half mile away from the applicants parcel. The approved variance granted a three season porch to be located 25 feet from the shoreline. There are no recorded variances within the CIC.

D. Other Factor:

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.

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

Opposed: None - 0

Motion carried 7-0

DECISION ON SSTS SETBACK VARIANCE

Motion by Skraba/McKenzie to deny a variance to allow an occupied structure to not meet the minimum setback requirements of the St. Louis County sewage treatment standards, based on the following staff facts and findings:

A. Official Controls:

1. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.

2. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

B. Practical Difficulty:

1. Environmental Services Department recommended that the 10 foot septic tank setback should be maintained.

C. Essential Character of the Locality:

1. A variance was approved on a parcel approximately a half mile away from the applicants parcel. The approved variance granted a three season porch to be located 25 feet from the shoreline. There are no recorded variances within the CIC.

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.

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

Opposed: None - 0

Motion carried 7-0

DECISION ON PERMANENT FOUNDATION

Motion by Skraba/McKenzie to deny a variance to allow a new permanent foundation when located within the shoreline setback, based on the following staff facts and findings:

A. Official Controls:

1. St. Louis County Comprehensive Land Use Plan states Goal LU-3: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
2. Objective LU-3.1 of the Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
3. The applicant will be able to repair the existing foundation. Staff will work with the applicants on what that requires.

B. Practical Difficulty:

1. The applicant stated he will replace the existing foundation. This is not consistent with the previous conditions and Zoning Ordinance 62.

C. Essential Character of the Locality:

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

2. A variance was approved on a parcel approximately a half mile away from the applicants parcel. The approved variance granted a three season porch to be located 25 feet from the shoreline. There are no recorded variances within the CIC.

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.

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

Opposed: None - 0

Motion carried 7-0

Motion to adjourn by Skraba. The meeting was adjourned at 1:10 p.m.