

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD BOTH VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES BUILDING, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, JUNE 10, 2021.**

12:55 PM – 5:06 PM

Board of Adjustment members in attendance: Steve Filipovich  
James McKenzie  
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. Steve Wedan, S36, T53N, R15W (Unorganized)
- B. Shelby Trost, S26, T56N, R16W (Unorganized)
- C. John Taylor, S21, T63N, R12W (Morse)
- D. Margaret McCaffery, S15, T63N, R18W (Beatty)
- E. John Almeida, S5, T62N, R16W (Greenwood)
- F. David Carisch, S21, T63N, R18W (Beatty)
- G. David Sorensen, S19, T60N, R21W (French)
- H. Tom Hren, S22, T60N, R21W (French)

**OTHER BUSINESS:**

**Motion by Skraba/McKenzie** to approve the minutes of the May 13, 2021 meeting.

**In Favor:** Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

**NEW BUSINESS:**

**Case 6254 – Steve Wedan**

The first hearing item was for Steve Wedan, property located in S36, T53N, R15W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a replacement principal structure at a reduced shoreline setback, where a minimum 100 foot shoreline setback is required. *Donald Rigney*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 1,930 square foot principal dwelling located 50 feet from the shoreline of Island Lake Reservoir where 100 feet is required.

- B. The dwelling will replace an existing 720 square foot nonconforming dwelling that is located 37 feet from the shoreline.
- C. The proposed height of the dwelling will be 21 feet where 25 feet is allowed.
- D. Much of the conforming 100 foot shoreline setback area is taken up by the existing septic system and the driveway.

*Donald Rigney* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Island Lake Reservoir is classified as a DNR Recreational Development lake and requires a minimum 100 foot shoreline setback.
  - a. The shore impact zone for Recreational Development lakes is 50 feet.
  - b. The current structure is located 37 feet from the lake.
  - c. The proposed principal structure will be located at 50 feet from the lake.
- 2. Zoning Ordinance 62 requires that if a nonconforming structure is moved any distance or if structural changes are made, the structure shall be moved to conform to setback requirements.
- 3. The parcel is a Minnesota Power lease lot and is a legal lot of record for permitting purposes.
- 4. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 5. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 6. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

B. Practical Difficulty:

- 1. There are no unique physical circumstances of the property.
- 2. A variance is not the only option.
- 3. Alternative: The current design of the structure is self-created. Although a variance is still required, there is suitable area to relocate the dwelling further from the shoreline through a redesign.
- 4. Alternative: An addition of up to 200 square feet may be done with a performance standard permit.
- 5. The applicant has not provided sufficient evidence as to why a greater setback could not be achieved. As stated in the St. Louis County Comprehensive Land Use Plan, nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statutes.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round dwellings.

D. Other Factors:

1. The proposed dwelling will have three bedrooms. The existing septic system, which was permitted in 1992, was designed for a two-bedroom single family dwelling.
  - a. The system is sized for a three-bedroom Class I dwelling per the certificate of compliance issued on May 5, 2021.
2. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
3. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.
  - a. Replacing a nonconformity with another nonconformity with a greater intensity of use, where alternatives exist, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Ordinance or St. Louis County Comprehensive Land Use Plan.

*Donald Rigney* noted no items of correspondence. The applicant provided a copy of his own presentation prior to the hearing and presented a powerpoint to the Board and for the record.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance as proposed for a 1,930 square foot principal dwelling, 50 feet from the shoreline of Island Lake Reservoir where 100 feet is required include but are not limited to:

1. The setback for the proposed structure shall be maximized to the greatest extent possible and shall be no closer than 50 feet from the shoreline.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
4. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county and shall be implemented by the property owner within two years from the issuance of a land use permit.

*Steve Wedan*, the applicant, gave a brief presentation. He stated the plight of the landowner is due to circumstances unique to the property and not those created by the landowner. The property owner proposes to use the property in a reasonable manner not permitted by an official control. The variance, if granted, will not alter the essential character of the locality. One such unique circumstance is the geography and location of the subject parcel. There are 42 lots on distal section of Breezy Point. The property is the only lot where the shoreline scribes an acute angle that uniquely squeezes the area on the lot that is compliant with the 100 foot shoreline setback. The property is the only lot that does not have direct access to a road, which further restricts the possible location of a dwelling. Their driveway connects with a neighbor's driveway that crosses through that lot. The unique wedge shape of the lot is formed by the required setbacks and the unique driveway allows for no other location option. Another unique circumstance is the pre-existing infrastructure, which includes the septic system, use of the garage, and the driveway. This

infrastructure reduces the available area to build to near zero, unless a wooded area is cleared in conflict with the essential character of the locality and negative impact on a neighbor.

They are proposing to build a year-round dwelling to replace an existing seasonal dwelling, which is a reasonable use and will not alter the essential character of the locality. While the official control of the 100 foot shoreline setback protects the shoreline and preserves the nature of the lake, this proposal places the new dwelling in essentially the same location as the existing dwelling. This moves as far away from the shoreline as possible while maintaining the 10 foot septic tank setback. The roof will be slanted opposite of the existing dwelling for the section closest to the water and will minimize the dwelling's profile as seen from the lake. A second level will be added behind that section and will not contribute to a monolithic profile as seen from the lake. The shoreline setback for the proposed structure will be maximized to the greatest extent possible and will be no closer than 50 feet.

No other audience members spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* asked how the ordinary high water level (OHWL) is found on a reservoir lake. *Donald Rigney* stated on reservoir lakes, the OHWL is considered the summer pool water level.
- B. Board member *Filipovich* asked if the septic system was designed for two bedrooms. *Donald Rigney* stated that the system was designed for two bedrooms, but upon inspection could be a three-bedroom Class I system. The system will be able to handle the proposed dwelling.
- C. Board member *McKenzie* asked what needs to be done with floodplain requirements. *Donald Rigney* stated it does not need to be addressed now. If the variance is approved and applicant applies for a land use permit, the floodplain requirements will be reviewed at that time.

## **DECISION**

**Motion by McKenzie/Skraba** to approve a variance to allow a 1,930 square foot principal dwelling, 50 feet from the shoreline of Island Lake Reservoir where 100 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. The proposed dwelling will be a reasonable use.
- B. Practical Difficulty:
  - 1. It is difficult to place a dwelling that meets shoreline setback on this property with the existing infrastructure including the septic, garage, and driveway.
- C. Essential Character of the Locality:
  - 1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round dwellings.

D. Other Factors:

1. The applicant will maximize the shoreline setback to the greatest extent and will add vegetative screening to help mitigate any potential visual impacts from the lake.

The following conditions shall apply:

1. The setback for the proposed structure shall be maximized to the greatest extent possible and shall be no closer than 50 feet from the shoreline.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
4. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county and shall be implemented by the property owner within two years from the issuance of a land use permit.

**In Favor:** Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay - 6

**Opposed:** None - 0

**Motion carried 6-0**

**Case 6255 – Shelby Trost**

The second hearing item was for Shelby Trost, property located in S26, T56N, R16W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a replacement principal structure at a reduced shoreline setback, where a minimum 100 foot shoreline setback is required. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to remove two nonconforming cabins that are 518 square feet and 528 square feet in size and replace with a 2,800 square foot dwelling.
- B. The dwelling will have an attached garage.
- C. The proposed dwelling will be located 65 feet from the shoreline where a 100 foot setback is required.
- D. There are currently two dwellings and three accessory structures on the parcels.

*Stephen Erickson* reviewed staff facts and findings as follows:

A. Official Controls:

1. Long Lake is a Recreational Development lake which requires a 100 foot shoreline setback. The applicant is requesting a 65 foot shoreline setback.
2. Goal LU-3 in the St. Louis County Comprehensive Land Use Plan states: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.

B. Practical Difficulty:

1. There appears to be space on the parcel for a structure to be constructed in a conforming location.
2. At the time of this report significant information has not been provided regarding septic tank location to ensure the required structure setbacks cannot be met.

C. Essential Character of the Locality:

1. The plats of Long Lake Estates First and Second Addition were platted in 1949.
2. Most of the lots were platted at less than 50 feet in width.

D. Other Factor:

1. The applicant owns three platted lots south of Bay Road West and five lots north of the road.

*Stephen Erickson* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a 2,800 square foot dwelling located at a reduced shoreline setback, as proposed, include but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
3. The setback for the proposed structure shall be maximized to the greatest extent possible.
4. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county and shall be implemented by the property owner within two years from the issuance of a land use permit.
5. St. Louis County On-Site Wastewater SSTS standards shall be followed.

*Tim Warzecha*, the applicant's contractor, 3024 Anderson Road, Hibbing, stated they will remove all the structures on those lots, including the cabins and accessory structures to clear the lot. They want to reserve the space across the road for their septic system and there are low areas and wetlands they do not want to impact. The other concern is if the garage was at the 100 foot setback, the applicant would be backing out blindly onto the road which is a public safety issue.

One member of the audience spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

*Dean Hammermeister*, 1840 Hegberg Road, Duluth, stated he did all the measurements on the sketch before *Tim Warzecha* refined them. If they built a 36-foot-wide building at the 100 foot setback, that would be 136 feet from the shoreline, which is almost on top of the access road right-of-way. If they move back 100 feet from the shoreline, they will be the only cabin at 100 feet and they will look at the back of their neighbors' cabins. He is also the person who clears snow, and the building was designed to help with that. The platted road right-of-way is 50 feet. Two of their buildings are currently in the right-of-way. To the north of the access road, the septic system would require a longer line which needs additional consideration in case of freeze-up. The highland would be ideal for a mound system. The soil there is heavy clay which does not allow for drainage and there is runoff.

The Board of Adjustment discussed the following:

- A. Board member *Filipovich* asked if the footprint dimensions work out to 2,800 square feet? *Shelby Trost* stated that the dwelling will be 2,016 square feet and the rest will be for the attached garage and garage apron.

- B. Board member *Filipovich* asked if there is an issue adding a garage across the road if the applicant owns five lots? *Stephen Erickson* stated what they applied for is on the south side of the road. There may be low area north of the road.
- C. Board member *Skraba* asked how wide the lot is. *Shelby Trost* stated the lot widths total 140 feet and the lot width at the shoreline is 153 feet. Across the road, there is nearly 3.5 acres and this is a dry area. In a wet season, there are marsh areas behind the house and then a higher area.
- D. Board member *Skraba* asked how busy Bay Road West is. *Shelby Trost* stated the road is quite busy with local traffic. This is a narrow, dirt road. There are no year-round residences around her.
- E. Board member *McKenzie* stated there was a variance approved to the west of this subject property for a garage located on the corner of the property because the area across the road was wetland.
- F. Board member *McKenzie* asked about the septic system. *Tim Warzecha* stated there is currently no septic system on the property. There is a privy on the property that they are intending to remove. The area across the road was looked at for a septic system with a septic tank to be located next to the proposed dwelling.
- G. Board member *Skraba* asked if other setbacks will be met. *Tim Warzecha* stated yes. The buildings will be shifted to meet the property line setbacks and the septic tank will be 10 feet from the proposed dwelling.
- H. Board member *Skraba* stated the doors on the garage could be on the west side of the attached garage, not the north. The garage could be shifted to move the dwelling further back from the shoreline. He asked if the land was flat between the house and the existing access? *Tim Warzecha* stated the land there is flat.
- I. Board member *McKenzie* stated this is a self-created practical difficulty. There is room on this property to put this dwelling on the property with a garage and a septic at conforming locations. The attached garage at that location essentially pushes the dwelling towards the lake.
- J. Board member *Skraba* asked if shifting the structures would exceed the lot width facing a lake allowed. *Jenny Bourbonais* stated if the structure met setback they would be allowed 55 percent lot width of structure facing the lake. If the dwelling does not meet setback, they would be allowed 40 percent of lot width facing the lake. *Shelby Trost* stated that she wanted an attached garage that will help cope with winter weather and loading/unloading and for snow removal and access. Board member *Skraba* stated the structure could fit at the 100 foot shoreline setback. There are options for shifting the garage around. *Jenny Bourbonais* added that no lot width variance could be approved because the variance request that was noticed did not include that variance. The applicant would need another variance.
- K. Board member *Werschay* asked what the applicant would be allowed to add on to both cabins. *Stephen Erickson* stated that it would depend on the shoreline setback for both structures. At 50 feet, there is 400 square feet allowed. *Jenny Bourbonais* stated it would be for one structure. The other structure would need to be a different type of structure because having one more dwelling complicates things.
- L. *Jenny Bourbonais* clarified that the road right-of-way setback is 15 feet from the edge of the road. This setback could be met with the structure.

- M. Board member *Werschay* asked if the applicants could remove the apron and move the structure further back from the shoreline. If they put their garage doors on the side, they could back out into their yard and not back out onto the road.

## **DECISION**

**Motion by McKenzie/Pollock** to deny a variance for a 2,800 square foot dwelling located at a reduced shoreline setback, as proposed, based on the following facts and findings:

**A. Official Controls:**

1. Long Lake is a Recreational Development lake which requires a 100 foot shoreline setback. The applicant is requesting a 65 foot shoreline setback.
2. Goal LU-3 in the St. Louis County Comprehensive Land Use Plan states: Improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. The variance is partially in harmony with the general purpose and intent of official controls. While the applicant wishes to construct a dwelling which would be a reasonable use of the property, the applicant wishes to construct the dwelling closer to the shoreline.

**B. Practical Difficulty:**

1. There appears to be space on the parcel for a structure to be constructed in a conforming location.
2. At the time of this report significant information has not been provided regarding septic tank location to ensure the required structure setbacks cannot be met.
3. The applicant's proposed structure with the rear attached garage pushes the structure towards the lake, reducing the shoreline setback. This is a self-created practical difficulty.
4. The three lots appear to have enough space to place a dwelling in a compliant configuration.

**C. Essential Character of the Locality:**

1. The plats of Long Lake Estates First and Second Addition were platted in 1949.
2. Most of the lots were platted at less than 50 feet in width.

**D. Other Factors:**

1. The applicant owns three platted lots south of Bay Road West and five lots north of the road.
2. The location of the septic tank should not dictate where the dwelling may be placed as there is no current plan or location for the septic tank.

**In Favor:** Filipovich, McKenzie, Pollock, Skraba, Svatos - 5

**Opposed:** Werschay - 1

**Motion carried 5-1**



### **Case 6256 – John Taylor**

The third hearing item was for John Taylor, property located in S21, T63N, R12W (Morse). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.7, to allow an accessory structure to be located at a reduced road centerline setback, where a minimum 85 foot setback is required. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 24 foot by 16 foot garage to be located 50 feet from the centerline of County Road 88 where an 85 foot centerline setback is required.
- B. There is currently a dwelling, accessory structure, well, and holding tank on the parcel.
- C. An existing shed is being removed.
- D. The parcel has good screening from the lake, road, and neighboring parcels.
- E. There is bluff on the property. The proposed accessory structure will not be located on a bluff.

*Stephen Erickson* reviewed staff facts and findings as follows:

- A. Official Controls:
  - 1. Zoning Ordinance 62, states that the required road centerline setback for a collector road is 85 feet from centerline. The applicant is requesting a 50 foot setback from centerline.
  - 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.
- B. Practical Difficulty:
  - 1. There are numerous structures along the stretch of County Road 88 that do not meet centerline setbacks.
  - 2. The applicant has met the burden of demonstrating practical difficulty. The existing holding tank location, bluff, and 85 foot road centerline setback limit development locations on the parcel.
- C. Essential Character of the Locality:
  - 1. In March 2021, a variance was approved two parcels to the east for two structures to be constructed at a reduced center line setback of 50 feet, similar to this request.
  - 2. The plat of Hegfors lots was created in 1955.
- D. Other Factor:
  - 1. The 85 foot centerline setback may not make sense for this section of County Road 88. The proposed structure would conform to the local road classification setback of 48 feet.

*Stephen Erickson* noted one items of correspondence from the Town of Morse with no issue to the proposal. This correspondence was provided to the Board of Adjustment prior to the hearing.

## STAFF RECOMMENDATION

A condition that may mitigate the variance for a 24 foot by 16 foot accessory structure to be located at a reduced road centerline setback, as proposed, include but is not limited to:

1. The centerline setback shall be maximized to the greatest extent possible.

*John Taylor*, the applicant, stated he had nothing to add.

No audience members spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

Board member *Skraba* stated to make a condition that if the road is relocated in the future, the variance shall not impede the location of the road. *Jenny Bourbonais* told him that condition has not been used before and would not be recommended.

## DECISION

**Motion by Skraba/McKenzie** to approve a variance for a 24 foot by 16 foot accessory structure to be located at a reduced road centerline setback, based on the following facts and findings:

### A. Official Controls:

1. Zoning Ordinance 62, states that the required road centerline setback for a collector road is 85 feet from centerline. The applicant is requesting a 50 foot setback from centerline.
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. The variance request is in harmony with the general purpose and intent of official controls. There are physical limitations of the property and there are no alternatives.

### B. Practical Difficulty:

1. There are numerous structures along the stretch of County Road 88 that do not meet centerline setbacks.
2. The applicant has met the burden of demonstrating practical difficulty. The existing holding tank location, bluff, and 85 foot road centerline setback limit development locations on the parcel.

### C. Essential Character of the Locality:

1. In March 2021, a variance was approved two parcels to the east for two structures to be constructed at a reduced center line setback of 50 feet, similar to this request.
2. The plat of Hegfors lots was created in 1955.
3. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The 85 foot centerline setback may not make sense for this section of County Road 88. The proposed structure would conform to the local road classification setback of 48 feet.

The following condition shall apply:

1. The centerline setback shall be maximized to the greatest extent possible.

**In Favor:** Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay - 6

**Opposed:** None - 0

**Motion carried 6-0**

**Case 6257 – Margaret McCaffery**

The fourth hearing item was for Margaret McCaffery, property located in S15, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., to allow an addition to a nonconforming principal structure that will decrease the shoreline setback and Article III, Section 3.4 to allow the setback of a principal structure located on a general development lake to be less than 75 feet. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing a 360 square foot addition to a dwelling that would reduce the shoreline setback of a nonconforming dwelling.
- B. The requested addition is a roof overhang to cover an existing deck.
- C. The current shoreline setback of the structure is approximately 70 feet.
- D. The proposed addition would reduce the shoreline setback to 66 to 67 feet.
- E. A performance standard permit was issued for an addition to the dwelling in February 2021. This permit was approved for the roof overhang because the contractor confirmed that it would not reduce the shoreline setback.
- F. The applicant's contractor applied for another performance standard permit approximately one month later for the roof to extend 3 to 4 feet towards the shoreline.
- G. When staff reviewed the request, it was determined that a variance would be required because the shoreline setback would be reduced by the addition. There are posts and a roof overhang that move the structure 3 to 4 feet towards the shoreline.
- H. A site visit was conducted on this property on May 14, 2021. During the site visit, it was discovered that posts and rafters for the proposed addition had already been constructed.
- I. Employees of the contractor that were on the site indicated that construction had been done approximately one month ago.
- J. They also stated that work on the roof overhang had stopped when staff had notified the contractor and homeowner that the proposal would require a variance.

*Jared Ecklund* reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62 states that the required shoreline setback on a General Development Lake is 75 feet; the applicant's dwelling is located approximately 70 feet from the shoreline of Lake Vermilion and the proposed addition would reduce the setback to 66-67 feet.

2. Zoning Ordinance 62 states that a nonconforming principal structure may be expanded once if the addition does not decrease the existing shoreline setback; the proposed addition would reduce the shoreline setback by 3-4 feet.
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 applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

**B. Practical Difficulty:**

1. The applicant is allowed an addition (roof overhang) of up to 400 square feet with a performance standard permit if the roof overhang does not extend closer to the shoreline than the closest wall of the structure.
  - a. A performance standard permit was issued for a roof overhang in this location and the contractor submitted a signed statement that the roof would not extend closer to the shoreline than the existing structure.
  - b. The contractor later applied for a permit to extend the roof overhang closer to the shoreline. It was then determined that a variance would be required.
2. During the site visit it was determined that construction on the roof overhang and support posts has already begun and was close to completed.
  - a. The posts are located 42 inches closer to the shoreline than the wall of the structure with the roof overhang extending beyond the 42 inches of the support posts.
3. The size of the proposed roof overhang can be allowed, but it is not allowed to extend beyond the closest wall of the structure.
4. The support posts and roof overhang could be cut back so it does not encroach on the shoreline setback more than the existing structure.
  - a. The contractor's employees on site indicated that it could be cut back, if necessary (pending result of this variance request).
5. An alternative would be to cut the roof overhang back so that it does not extend more than three feet towards the shoreline from the closest wall of the structure.
6. The applicant has not provided sufficient evidence as to why the roof overhang cannot meet the current shoreline setback of the structure. As stated in the St. Louis County Comprehensive Land Use Plan, nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statutes.

**C. Essential Character of the Locality:**

1. The applicant owns several parcels in this area. The total amount of land owned by the applicant in this area appears to be 12 or more acres.
2. This area is highly developed.
3. Many of the structures in this area are located at a conforming setback, but there are also several that are nonconforming.
4. There have been several variances in the area, but none of them appeared to be for an addition to reduce the shoreline setback of an existing nonconforming dwelling.

D. Other Factors:

1. Construction on the roof overhang that extends closer to the shoreline began before a permit was issued.
  - a. A permit cannot be issued without prior variance approval.
  - b. The contractor was aware that the overhang could not extend closer to the shoreline than the closest wall of the structure.
2. Zoning Ordinance 62 states that when an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per Minnesota Statutes, Section 394.27, Subdivision 7, and all acts amendatory thereof.
3. The applicant has stated that the need for the overhang to extend closest towards the shoreline is mainly for aesthetic reasons.

*Jared Ecklund* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance for an addition to a nonconforming principal structure that will decrease the shoreline setback, as proposed, include but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the structure shall not directly discharge into the lake or on adjacent lots.
3. The proposed roof overhang shall not be enclosed unless it does not reduce the shoreline setback of the structure.
4. The shore protection zone shall be preserved in a natural state and screening shall be retained.

*Margaret McCaffery*, the applicant, stated nothing intentional or nefarious went on here. They applied for the performance standard permit during the pandemic. All they did was replace an old deck. They did not expand the footprint. The purpose of the overhang is that it is a west-facing cabin and the interior dining room gets hot without the cover. There are two other decks that are not being covered at all. The posts could be removed.

One audience member spoke. There were no virtual attendees at this time.

*Marit Melvin*, 3109 Little Sweden Road, stated her family first visited, then rented and became landowners on Lake Vermilion. They are stewards of Lake Vermilion and the applicant would not do anything to not follow regulations. Their history on this lake means the world.

The Board of Adjustment discussed the following:

- A. Board member *Skraba* asked if this was an existing structure and the applicant just wanted the covered porch addition? *Jared Ecklund* stated the structure was existing. The other permits on file were originally issued to replace the decks and to add a smaller roof over one of the decks. That roof overhang was not going to extend towards the shoreline. The

posts and roof overhang addition that extend towards the shoreline are what require the variance.

- B. Board member *Skraba* asked if the applicant or their contractor turned themselves in. *Jared Ecklund* stated that the addition was not discovered until the site visit. While no enforcement calls were made, it is not known why the applicant or their contractor chose to apply for a second performance standard permit.
- C. Board member *Pollock* asked how the structure ended up at 70 feet from the shoreline. *Margaret McCaffery* stated it is an old cabin that was grandfathered in.
- D. Board member *McKenzie* asked how the shoreline distance is measured. *Jared Ecklund* stated it is measured from the closest point of the structure to the closest point of the shoreline.
- E. Board member *McKenzie* asked why the application noted shoreline averaging. *Jared Ecklund* stated shoreline averaging is useful when there are multiple nonconforming lots next to each other. That does not apply here. The applicant was speaking more to the uneven shoreline.
- F. Board member *Werschay* asked if the applicant could enclose the deck and add additional square footage to the home. *Jared Ecklund* stated once a roof is extended beyond three feet, there is no ordinance regulation that says the deck cannot be enclosed.
- G. Board member *Skraba* asked what the total distance is closer to the lake. *Margaret McCaffery* stated about six inches, because three feet comes from the post and six inches would make the end of roof flush with the post. According to the contractor, they need a minimum six inch overhang to protect the deck.
- H. Board member *Werschay* asked why this is not an after-the-fact variance? *Jared Ecklund* stated it is more of a during-the-fact variance. *Margaret McCaffery* stated they stopped construction once they found out a variance was required.
- I. Board member *McKenzie* asked if the overhang is necessary to protect the deck? *Margaret McCaffery* stated yes. The overhang would also provide shade inside. The deck and steps were already there. She does not want to enclose this area and make it a part of the cabin. While they would have 36 inches, they would not have the overhang.
- J. Board member *McKenzie* asked staff to clarify the 36 inches. *Jared Ecklund* stated ordinance allows a roof overhang to extend beyond the wall of the structure up to 36 inches. The 42 inches is from the edge of the wall to the far edge of the post. The top of the overhang might extend further by 12 inches beyond the edge of the post. This is beyond the 36 inches allowed by ordinance. In conversation with the applicant, it was indicated those extra inches may be cut back, which was why there is no after-the-fact variance. *Margaret McCaffery* stated they would only need 6 inches beyond the 36 inches allowed and have cut it back. *Jared Ecklund* stated anything beyond 36 inches would require variance approval.
- K. Board member *McKenzie* stated this is a self-created practical difficulty.

## **FIRST MOTION**

**Motion by *Skraba/Pollock*** to approve a variance for a 6-inch addition beyond the 36 inch overhang allowed by ordinance to a nonconforming principal structure that will decrease the shoreline setback, based on the following facts and findings:

A. Official Controls:

1. The variance request is partially in harmony with the general purpose and intent of official controls. The applicant is allowed a 36 inch overhang and the applicant is asking for 6 inches more. It is not worth going back and redoing everything.

B. Practical Difficulty:

1. The applicant has indicated why they want to cover the deck. There is no use in going back and redoing this.

C. Essential Character of the Locality:

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

D. Other Factors:

1. This is an additional 6 inches on top of the 36 inches already allowed. This is just the width of the post.
2. The contractor came forward with the change in plans.

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 structure shall not directly discharge into the lake or on adjacent lots.
3. The proposed roof overhang shall not be enclosed unless it does not reduce the shoreline setback of the structure.
4. The shore protection zone shall be preserved in a natural state and screening shall be retained.

**In Favor:** Pollock, Skraba, Svatos - 3

**Opposed:** Filipovich, McKenzie, Werschay - 3

**Motion failed 3-3**

**DISCUSSION ON SECOND MOTION**

*Jenny Bourbonais* stated that the case will be denied if two variance motions tie and fail.

**SECOND MOTION**

**Motion by McKenzie/Filipovich** to deny a variance for a 6-inch addition to a nonconforming principal structure that will decrease the shoreline setback, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 states that the required shoreline setback on a General Development Lake is 75 feet; the applicant's dwelling is located approximately 70 feet from the shoreline of Lake Vermilion and the proposed addition would reduce the setback to 66-67 feet.
2. Zoning Ordinance 62 states that a nonconforming principal structure may be expanded once if the addition does not decrease the existing shoreline setback; the proposed addition would reduce the shoreline setback by 3-4 feet.

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 applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
5. The variance request is not in harmony with the general purpose and intent of official controls. Both ordinance and comprehensive land use plan maintain standards by establishing rules to minimize nonconformities. The contractor and landowner violated the ordinance by proceeding with work they knew was not allowed.

B. Practical Difficulty:

1. The applicant is allowed an addition (roof overhang) of up to 400 square feet with a performance standard permit if the roof overhang does not extend closer to the shoreline than the closest wall of the structure.
  - a. A performance standard permit was issued for a roof overhang in this location and the contractor submitted a signed statement that the roof would not extend closer to the shoreline than the existing structure.
  - b. The contractor later applied for a permit to extend the roof overhang closer to the shoreline. It was then determined that a variance would be required.
2. During the site visit it was determined that construction on the roof overhang and support posts has already begun and was close to completed.
  - a. The posts are located 42 inches closer to the shoreline than the wall of the structure with the roof overhang extending beyond the 42 inches of the support posts.
3. The size of the proposed roof overhang can be allowed, but it is not allowed to extend beyond the closest wall of the structure.
4. The support posts and roof overhang could be cut back so it does not encroach on the shoreline setback more than the existing structure.
  - a. The contractor's employees on site indicated that it could be cut back, if necessary (pending result of this variance request).
5. An alternative would be to cut the roof overhang back so that it does not extend more than three feet towards the shoreline from the closest wall of the structure.
6. The applicant has not provided sufficient evidence as to why the roof overhang cannot meet the current shoreline setback of the structure. As stated in the St. Louis County Comprehensive Land Use Plan, nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statutes.
7. When the applicant seeks a variance, a practical difficulty is necessary. The landowner had already commenced or completed alterations to a structure. The landowner can no longer claim a practical difficulty because it could be presumed the plight of the landowner is self-created.

C. Essential Character of the Locality:

1. The applicant owns several parcels in this area. The total amount of land owned by the applicant in this area appears to be 12 or more acres.



2. This area is highly developed.
3. Many of the structures in this area are located at a conforming setback, but there are also several that are nonconforming.
4. There have been several variances in the area, but none of them appeared to be for an addition to reduce the shoreline setback of an existing nonconforming dwelling.

**D. Other Factors:**

1. Construction on the roof overhang that extends closer to the shoreline began before a permit was issued.
  - a. A permit cannot be issued without prior variance approval.
  - b. The contractor was aware that the overhang could not extend closer to the shoreline than the closest wall of the structure.
2. Zoning Ordinance 62 states that when an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per Minnesota Statutes, Section 394.27, Subdivision 7, and all acts amendatory thereof.
3. The applicant has stated that the need for the overhang to extend closest towards the shoreline is mainly for aesthetic reasons.

**In Favor:** Filipovich, McKenzie, Werschay - 3

**Opposed:** Pollock, Skraba, Svatos - 3

**Motion failed 3-3**  
**variance denied**

**Case 6258 – John Almeida**

The fifth hearing item was for John Almeida, property located in S5, T62N, R16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, to allow a replacement principal structure at a reduced shoreline setback, where a minimum 75 foot shoreline setback is required. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing a replacement dwelling at a reduced shoreline setback where 75 feet is required. The applicant is also proposing the height of the structure to be 25 feet where 20 feet is allowed.
- B. The current structure is approximately 36 feet from the shoreline, as measured by staff.
- C. The applicant indicated that the proposed structure would be at the same shoreline setback.
- D. The existing structure is 647 square feet and 20 feet in height.
- E. The proposed, new structure would be 1,536 square feet and 25 feet in height.
- F. There is an existing dwelling, septic tank, well and several dilapidated accessory structures; two boathouses, three bunkhouses, shed, sauna and carport.
- G. The orientation of the proposed structure could be changed in order to maximize the shoreline setback.

*Jared Ecklund* reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62 states that the required shoreline setback on a general development lake is 75 feet; the applicant is requesting approval to replace a dwelling located approximately 30 to 40 feet from the shoreline.
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.

B. Practical Difficulty:

1. There is limited area between the shoreline and the rear property line. This makes it difficult for a dwelling to meet both setbacks.
  - a. There is approximately 105 feet between the shoreline and the rear property line. This leaves an area that is approximately 15 feet in width where both setbacks could be met.
2. The proposed new structure is significantly larger than the existing dwelling.
3. There are alternatives to the variance request.
  - a. The structure could be replaced with a performance standard permit if the shoreline setback is maximized to the greatest extent possible and the size of the structure is not increased.
  - b. Even with a significant increase in size, the proposed structure could meet a greater shoreline setback than what is being requested.
  - c. Maximizing or meeting the shoreline setback may require some tree removal behind the existing dwelling.
  - d. Replacing the structure at a shoreline setback of 50 feet (outside of the shore impact zone), the proposed height of the structure would not require variance.
4. The applicant has not provided sufficient evidence as to why a greater setback could not be achieved. As stated in the St. Louis County Comprehensive Land Use Plan, nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statutes.

C. Essential Character of the Locality:

1. This property is located in a highly developed area on Lake Vermilion.
2. There are several nonconforming structures in this general area.
3. There were many variances for new SSTS systems on lots that did not meet the minimum area and/or width requirements.
4. There was a dwelling replacement at a reduced shoreline setback that was allowed by Greenwood Township on the adjacent parcel to the east.

D. Other Factors:

1. The shoreline setback of the existing structure was measured by staff to be 36 feet.
  - a. The applicant indicated that the setback is 30 feet.

- b. Based on staff's measurement, placing the new structure at 30 feet would be reducing the shoreline setback.
2. The applicant has been in contact with Planning Department staff over the last several months and is aware of the alternatives to the request.
3. The structures that are labeled as bunk houses on the applicant's sketch are not classified by the assessor's office as bunk houses. One of them could be considered a screen house, but the others are dilapidated storage structures.
4. If shoreline averaging applied to this proposal, the setback allowed with the shoreline averaging formula would be approximately 55 feet.

*Jared Ecklund* noted no items of correspondence.

### **STAFF RECOMMENDATION**

Conditions that may mitigate a variance for a 1,536 square foot replacement dwelling 25 feet in height located at a 36 foot shoreline setback, as proposed, include but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
2. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
3. The setback for the proposed structure shall be maximized to the greatest extent possible.
4. Waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.
5. St. Louis County On-Site Wastewater SSTS standards shall be followed.
6. The shore protection zone shall be preserved in a natural state and screening shall be retained.
7. The applicant shall have the property surveyed and an as-built certificate shall be provided to document that all minimum allowed setbacks have been met.

*John Almeida*, the applicant, stated the shoreline setback was done by the person who did the elevation survey. He is considering using existing footings. They want to keep the shoreline setback as it to preserve the trees between this property and the neighboring property. He will tilt the structure whichever way possible to meet the septic and well setbacks. He talked with staff about a performance standard permit for an addition. The house will be removed because there is lead paint and other issues. They would not be able to do an addition. There really is no other place to put a structure. The cabin is barely above the base floodplain elevation and they want to use piers.

No audience members spoke. There were no virtual attendees at this time.

*Jenny Bourbonais*, Acting Secretary, stated that there had been audience members to speak for this case. Due to the length of previous cases, they were unable to stay. Bob and Kathy Pohlman, 3602 Fectos Road, added written commentary in support.

The Board of Adjustment discussed the following:

- A. Board member *Filipovich* asked about the south property line setback. *Jared Ecklund* stated that the property line setback is closer than the shoreline setback. The structure would meet the shoreline setback to the south.

- B. Board member *Pollock* stated the 36 foot shoreline setback changes if the proposed dwelling moves parallel to the shoreline. *John Almeida* stated it could but he does not want to build closer to the lake than 36 feet.
- C. Board member *Pollock* stated that there needs to be a compromise because the proposed structure is much larger than what currently exists and the 25 foot height is not allowed.
- D. Board member *McKenzie* asked if the applicant was going to use existing footings. *John Almeida* stated they want to use the existing footings and integrate them into the new structure. Even if they did not, they would leave them there to show where the original structure was. Because of the rock, they are unable to build a walk-out basement.
- E. Board member *McKenzie* asked about the 25 foot height; without a schematic, it is difficult to see where the height requirement is coming from. *John Almeida* stated that with using piers, it would be nice to allow the 25 foot height. It would be difficult to have a 20 foot high structure and squeeze everything in.
- F. Board member *Werschay* asked what square footage they could have with a performance standard permit. *Jared Ecklund* stated at this location the applicant would be allowed 200 square feet. The applicant is asking for 640 additional square feet.

## **DECISION**

**Motion by Skraba/McKenzie** to approve a variance for a 1,536 square foot replacement dwelling 25 feet in height located at a 36 foot shoreline setback, 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. The lot can accommodate the project without altering the whole lot layout, including removing trees or dirt.
- B. Practical Difficulty:
  - 1. The location of trees, topography, and the size of the lot limit where a structure can be built. There is also a well and septic setback.
- C. Essential Character of the Locality:
  - 1. The variance request will not alter the essential character of the locality.
- D. Other Factor:
  - 1. The applicant lives on this property. While they can add 200 square feet with a performance standard permit, safety, health and welfare is important enough to go beyond 200 square feet.

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. The setback for the proposed structure shall be maximized to the greatest extent possible but will be no closer than 36 feet.
- 4. Waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.
- 5. St. Louis County On-Site Wastewater SSTS standards shall be followed.

6. The shore protection zone shall be preserved in a natural state and screening shall be retained.
7. The applicant shall have the property surveyed and an as-built certificate shall be provided to document that all minimum allowed setbacks have been met.

**In Favor:** Filipovich, McKenzie, Skraba, Svatos, Werschay - 5

**Opposed:** Pollock - 1

**Motion carried 5-1**

**Case 6259 – David Carisch**

The sixth hearing item was for David Carisch, property located in S21, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.10 C, to allow a sauna as a water-oriented structure at a reduced shoreline setback, where a minimum of 30 feet is allowed. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a sauna 10 feet from the shoreline where a 30 foot shoreline setback is allowed.
- B. The property contains a cabin and permitted septic system.
- C. There is limited screening at the proposed location. If placed at the required setback, the structure would be well-screened from public view.
- D. There are locations on the property to place a sauna at the conforming 30 foot setback located out of the steep slope.

*Mark Lindhorst* reviewed staff facts and findings as follows:

- A. Official Controls:
  1. Zoning Ordinance 62 states that water oriented accessory structures shall be no closer than 30 feet to the shoreline. The applicant is requesting 10 feet.
  2. 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.
  3. Objective LU-3.3 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 applicant has multiple suitable areas for development that meets all setback requirements eliminating the need for a variance.
  2. The property has steep slope of up to 30 percent near the shoreline. Building at the minimum setback would move the structure out of the steep slope.
- C. Essential Character of the Locality:
  1. The neighborhood consists of seasonal island cabins. No similar variance requests have been approved in the area.

D. Other Factors:

1. The property has multiple building areas to meet minimum setbacks allowed by ordinance. Building within a steep slope has potential to cause erosion and increased runoff to the lake. A conforming structure would not be in the steep slope minimizing potential impacts to the lake.
2. The applicant has not met the burden of demonstrating practical difficulty to justify granting a variance when suitable area exists for a structure to meet ordinance requirements. Per St. Louis County Zoning Ordinance, Article VIII, Section 8.6 B. 4. (b.) iv, absent a showing of practical difficulty as provided in Minnesota Statutes and Ordinance 62, the Board of Adjustment shall not approve any variance.
3. Allowing a structure at a reduced setback when an applicant has not demonstrated a practical difficulty may set a precedent on future building requests.

*Mark Lindhorst* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate a variance for a 120 square foot sauna located 10 feet from the shoreline, as proposed, include but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
2. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.

*David Carisch*, the applicant, stated the reason he proposed the variance is because this is a flatter piece of land closer to the shoreline. If they moved the sauna back, it would require a number of steps to reach the shoreline from the sauna. They wanted to use the sauna and it would be both easier and safer for it to be closer to the lake as they get older. He had originally proposed they would forego a boathouse if they were allowed to have a sauna. However, staff indicated they would not be able to track this.

No audience members spoke. There were no virtual attendees at this time.

The Board of Adjustment discussed the following:

- A. Board member *Werschay* asked what would happen to the water from a sauna. *Mark Lindhorst* stated this is discussed with the On-Site Wastewater Division. A “dry” sauna would require no pressurized water. A sauna with pressurized water would need to be tied into the septic system.
- B. Board member *Svatos* asked if this would be a “dry” sauna. *David Carisch* stated that it would be a “dry” sauna as it is impractical to run a line up to their septic system.
- C. Board member *Pollock* asked if it were discussed with the applicant that if the sauna were allowed in this location, there would be no boathouse allowed. *Jenny Bourbonais* clarified that the applicant offered to forego the boathouse is not a decision to be made by staff, but the Board of Adjustment could add a condition that no other water oriented accessory structures, including boathouses, could be allowed. However, other water oriented accessory structures have a 30 foot shoreline setback, except for boathouses which have a

10 foot setback. *Mark Lindhorst* stated the applicant does not have enough property to subdivide and only one water oriented accessory structure would be allowed.

- D. Board member *McKenzie* asked if there are any other similar structures on this island. *David Carisch* stated there are a few boathouses on the island on properties with different shorelines. Board member *McKenzie* stated that utilizing pictometry he was unable to see any similar structures along the shoreline.
- E. Board member *Skraba* asked if there is a docking system to access the property. *David Carisch* stated there is a docking system. There are no stairs up to the cabin as there is a gentle slope from the docking area. The cabin is on piers and there are stairs to get back down to ground level.
- F. Board member *Pollock* stated that a sauna could be put up on slight stilts. The applicant would still be able to have a boathouse.

## DECISION

**Motion by Svatos/Pollock** to deny a variance for a 120 square foot sauna located 10 feet from the shoreline, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62 states that water oriented accessory structures shall be no closer than 30 feet to the shoreline. The applicant is requesting 10 feet.
- 2. 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.
- 3. Objective LU-3.3 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 applicant has multiple suitable areas for development that meets all setback requirements eliminating the need for a variance.
- 2. The property has steep slope of up to 30 percent near the shoreline. Building at the minimum setback would move the structure out of the steep slope.

C. Essential Character of the Locality:

- 1. The neighborhood consists of seasonal island cabins. No similar variance requests have been approved in the area.

D. Other Factors:

- 1. The property has multiple building areas to meet minimum setbacks allowed by ordinance. Building within a steep slope has potential to cause erosion and increased runoff to the lake. A conforming structure would not be in the steep slope minimizing potential impacts to the lake.
- 2. The applicant has not met the burden of demonstrating practical difficulty to justify granting a variance when suitable area exists for a structure to meet ordinance requirements. Per St. Louis County Zoning Ordinance, Article VIII, Section 8.6 B. 4.

- (b.) iv, absent a showing of practical difficulty as provided in Minnesota Statutes and Ordinance 62, the Board of Adjustment shall not approve any variance.
3. Allowing a structure at a reduced setback when an applicant has not demonstrated a practical difficulty may set a precedent on future building requests.

**In Favor:** Filipovich, McKenzie, Pollock, Svatos, Werschay - 5

**Opposed:** Skraba - 1

**Motion carried 5-1**

**Case 6260 – David Sorensen**

The seventh hearing item was for David Sorensen, property located in S19, T60N, R21W (French). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.4, to allow the construction of an accessory structure that will exceed the 15 percent building footprint of lot area and Article III, Section 3.7, to allow an accessory structure at a reduced right-of-way setback where a minimum of 10 feet is required. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to replace an existing 685 square foot garage with an 896 square foot garage.
- B. The proposed increase in size will result in a corner of the garage being placed 8 feet from the right-of-way of a private road where 10 feet is required.
- C. The proposed garage size will also increase the overall building footprint of the lot to 19 percent where 15 percent is allowed.
- D. The property contains a home, garage, septic and well.
- E. The proposed garage will move 4 to 5 feet closer to the road.
- F. The garage will be well-screened from the lake by existing vegetation and the house.
- G. The applicant is willing to remove part of the impervious surface to reduce the amount on his lot.

*Mark Lindhorst* reviewed staff facts and findings as follows:

- A. Official Controls:
  - 1. Zoning Ordinance 62 states that riparian lots that do not conform to the minimum area standards are allowed a maximum building footprint of 15 percent of lot area. The applicant is requesting 19 percent.
  - 2. Zoning Ordinance 62 states the required setback from a right-of-way is 10 feet. The applicant is requesting 8 feet.
  - 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 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 nonconforming parcel is part of a plat that was approved in the 1920's. The entire plat consists of nonconforming parcels that do not meet dimensional district standards.
2. The size of the lot and existing structures limits building area on the property. However, the applicant has reasonable use of the property with the existing structures without applying for a variance. The ordinance language for building footprint was approved by the Planning Commission to limit over-development of small parcels.

C. Essential Character of the Locality:

1. The neighborhood consists of small lakeshore parcels that are developed with seasonal and year-round homes.

D. Other Factors:

1. The applicant is proposing to remove approximately 700 square feet of impervious area as part of the request to increase the size of the garage by 200 square feet.
2. The property has previously been utilized as seasonal which may be a reasonable use of a small lot.

*Mark Lindhorst* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance, as proposed, include but are not limited to:

1. The total impervious area shall be reduced by 693 square feet as proposed by the applicant.
2. Stormwater runoff from the proposed structure shall not directly discharge on adjacent lots.

*David Sorensen*, the applicant, stated they purchased the property in 2016. They did remove a small garage when they moved in. They wanted a larger garage for all their cars and equipment to not sit outside. They have cleaned up the property. They removed patio pavers behind the existing garage and are still deciding on the sidewalk. They are adding more green area to make the property look better.

No audience members spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

The Board of Adjustment discussed the following:

- A. Board member *Filipovich* asked what the building lot coverage percentages are. *Mark Lindhorst* stated that the percentages are based on building coverage on a nonconforming lot. Board member *Filipovich* asked if it includes impervious surface. *Mark Lindhorst* stated it just includes the building footprint for this calculation.
- B. Board member *McKenzie* asked if the additional percentage of square footage that amounts to. *Mark Lindhorst* stated it was calculating the existing building area to what the applicant is proposing. The applicant is currently over the percentage of building lot coverage allowed, but when square footage is added it is not allowed.

- C. Board member *Skraba* asked if removing the impervious surface matters. *Mark Lindhorst* stated that the applicant would be building over the existing impervious surface. There is no additional impervious surface.
- D. Board member *Skraba* asked if the applicant can build up. *Mark Lindhorst* stated the structure is at a conforming setback and can have a 35 foot height. The applicant is proposing a two-story garage for additional storage.
- E. Board member *McKenzie* stated he is familiar with this road. This is a densely populated neighborhood.

## **DECISION**

**Motion by McKenzie/Skraba** to approve a variance for an accessory structure that will exceed the 15 percent building footprint of lot area and located at a reduced right-of-way setback where a minimum of 10 feet is required, based on the following facts and findings:

A. Official Controls:

- 1. The variance request is partially in harmony with the general purpose and intent of official controls. The garage would be a reasonable use and it adds value to the property.

B. Practical Difficulty:

- 1. The irregular shape of the property and the size of the lot limits landowner options.

C. Essential Character of the Locality:

- 1. The variance request will not alter the essential character of the locality.
- 2. The neighborhood consists of small lakeshore parcels that are developed with seasonal and year-round homes.

D. Other Factors:

- 1. The applicant proposed to remove 693 square feet of impervious surface to get a variance.
- 2. The irregular shape of the property and the location of the dwelling limit development to meet the road and property line setback requirements.
- 3. The percentage of building lot coverage may not be fair on smaller, nonconforming lots.

The following conditions shall apply:

- 1. The total impervious area shall be reduced by 693 square feet as proposed by the applicant.
- 2. Stormwater runoff from the proposed structure shall not directly discharge on adjacent lots.

**In Favor:** Filipovich, McKenzie, Pollock, Skraba, Svatosh, Werschay - 6

**Opposed:** None - 0

**Motion carried 6-0**

## **Case 6261 – Tom Hren**

The eighth hearing item was for Tom Hren, property located in S22, T60N, R21W (French). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a replacement principal structure at a reduced shoreline setback, where a minimum 100

foot shoreline setback is required. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a basement and add a 96 square foot addition to a nonconforming cabin in the same location.
- B. The applicant is proposing a 58 foot shoreline setback where a minimum of 100 feet is required.
- C. The applicant's structure details indicate the structure will be increased in size by 192 square feet.
- D. St. Louis County calculates structure size based on the ground floor area and the applicant's proposed addition size is 96 square feet.
- E. The applicant could construct a basement at a conforming location and move the existing dwelling onto it.
- F. The applicant has begun removing trees behind the structure. There should be no issue with clearing the property where the structure would go.

*Mark Lindhorst* reviewed staff facts and findings as follows:

- A. Official Controls:
  - 1. Zoning Ordinance 62, Article III, Section 3.4, requires a 100-foot shoreline setback on a DNR classified Recreational Development lakes. The applicant is proposing 58 feet.
  - 2. 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.
  - 3. Objective LU-3.3 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 applicant has suitable area for development that meets all setback requirements eliminating the need for a variance.
  - 2. There is suitable area for the proposed cabin to be placed that would meet the required shoreline setback and not interfere with the underground power line. The applicant has already removed trees where a conforming structure can be placed.
- C. Essential Character of the Locality:
  - 1. The neighborhood consists of lakeshore parcels that are developed with seasonal and year-round homes. No similar request for variance has been approved in the neighborhood. Most of the structures in the area meet shoreline setback eliminating the use of shoreland averaging.
- D. Other Factors:
  - 1. The applicant has not met the burden of demonstrating practical difficulty to justify granting a variance when suitable area exists for a structure to meet ordinance requirements. Per St. Louis County Zoning Ordinance, Article VIII, Section 8.6 B. 4.

- (b.) iv, absent a showing of practical difficulty as provided in Minnesota Statutes and Ordinance 62, the Board of Adjustment shall not approve any variance.
2. Allowing a permanent foundation to a structure at a reduced shoreline setback when an applicant has not demonstrated a practical difficulty may set a precedent on future building requests.

*Mark Lindhorst* noted no items of correspondence.

### **STAFF RECOMMENDATION**

Conditions that may mitigate a variance for a dwelling 58 feet from the shoreline, as proposed, include but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
2. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
3. St. Louis County On-Site Wastewater SSTS standards shall be followed.
4. The shore protection zone shall be preserved in a natural state and screening shall be retained.

*Tom Hren*, the applicant, stated tree removal was done last autumn because they had diseased and decaying birch and pine trees. This was done before they had a plan to add a basement. The screen porch will be 8 foot by 22 foot. They would be okay to move the structure back to 100 feet, add a basement and some steps. He had wanted to keep the structure where his father built it.

No audience members spoke. There were no virtual attendees at this time.

The Board of Adjustment discussed the following:

- A. Board member *McKenzie* asked why the power line is not a factor. *Mark Lindhorst* stated there is 55 feet between where the structure is located and where the underground power line is. There is space to move the cabin back and not impact the power line.
- B. Board member *Skraba* asked if the trees were cleared to make room for the addition. *Mark Lindhorst* stated the addition would be a small screen porch on the side of the structure. The big construction would be a basement. The structure would be lifted up, a basement would be placed beneath it and then the structure would be placed back on top.
- C. *Mark Lindhorst* stated that square footage is being added on each floor of the structure, including the basement.
- D. Board member *Skraba* stated with the applicant agreeing to build at a conforming setback, they could have a larger deck. Board member *McKenzie* stated the practical difficulty would be financial, which cannot be the only practical difficulty. Board member *Werschay* stated it would be easier to build the foundation and roll the dwelling back onto it.

### **DECISION**

**Motion by McKenzie/Skraba** to deny a variance for a dwelling 58 feet from the shoreline, based on the following facts and findings:

- A. Official Controls:
  1. Zoning Ordinance 62, Article III, Section 3.4 requires a 100-foot shoreline setback on a DNR classified Recreational Development lakes. The applicant is proposing 58 feet.

2. 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.
3. Objective LU-3.3 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.
4. The variance request is not in harmony with the general purpose and intent of official controls. The building can be moved to the 100 foot shoreline setback. The applicant proposed to use the property in a reasonable manner.

**B. Practical Difficulty:**

1. The applicant has suitable area for development that meets all setback requirements eliminating the need for a variance.
2. There is suitable area for the proposed cabin to be placed that would meet the required shoreline setback and not interfere with the underground power line. The applicant has already removed trees where a conforming structure can be placed.
3. There does not appear to be a practical difficulty or exceptional circumstance involved.

**C. Essential Character of the Locality:**

1. The neighborhood consists of lakeshore parcels that are developed with seasonal and year-round homes. No similar request for variance has been approved in the neighborhood. Most of the structures in the area meet shoreline setback eliminating the use of shoreland averaging.
2. The variance would not alter the essential character of the locality. The Perch Lake and Side Lake area are developed areas.

**D. Other Factors:**

1. The applicant has not met the burden of demonstrating practical difficulty to justify granting a variance when suitable area exists for a structure to meet ordinance requirements. Per St. Louis County Zoning Ordinance, Article VIII, Section 8.6 B. 4. (b.) iv, absent a showing of practical difficulty as provided in Minnesota Statutes and Ordinance 62, the Board of Adjustment shall not approve any variance.
2. Allowing a permanent foundation to a structure at a reduced shoreline setback when an applicant has not demonstrated a practical difficulty may set a precedent on future building requests.

**In Favor:** Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay - 6

**Opposed:** None - 0

**Motion carried 6-0**

**Motion to adjourn by Skraba. The meeting was adjourned at 5:06 p.m.**