

**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 CENTER, VIRGINIA, MN ON THURSDAY, MAY 12, 2022.**

11:22 AM – 1:35 PM

Board of Adjustment members in attendance: Tom Coombe  
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. Town of Crane Lake, S26, T67N, R17W (Crane Lake)
- B. Allan Hanson, S19, T54N, R12W (Pequaywan)
- C. Ben Johnson, S9, T63N, R18W (Beatty)
- D. James Eichholz, S21, T64N, R18W (Beatty)
- E. Ben Delich, S2, T57N, R17W (Fayal)

**OTHER BUSINESS:**

**Motion by McKenzie/Skraba** to approve the minutes of the April 14, 2022 meeting.

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

**Opposed:** None – 0

**Motion carried 7-0**

*Jenny Bourbonais*, Acting Secretary, reminded the Board of Adjustment that action should be taken on the Board of Adjustment bylaws and will schedule the discussion at the June 9, 2022 hearing.

**NEW BUSINESS:**

**Case 6307 – Town of Crane Lake**

The first hearing item was for the Town of Crane Lake, subject property located in S26, T67N, R17W (Crane Lake). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a principal structure at a reduced shoreline setback where a minimum of 100 feet is required and Article IV, Section 4.3 D to allow a principal structure located between the shore impact zone and the required setback to exceed the maximum height where 25 feet is allowed. *Jenny Bourbonais*, St. Louis County Land Use Manager, reviewed the staff report as follows:

- A. Crane Lake Township is requesting to construct a 7,500 square foot visitor center located 50 feet from the shoreline where 100 feet is required and 30 feet in height where 25 feet is allowed.
- B. The exact design of the structure is not finalized; however, the proposed square footage and height are the maximum size and height expected for the visitor center.
- C. It is likely that the structure may be smaller in size and height once finalized.
- D. The Township is seeking variance in the event the height exceeds Ordinance requirements at a reduced shoreline setback and a variance for shoreline setback to maximize visibility from the lake.
- E. The shore impact area has limited vegetative screening. The rest of the property is well-vegetated with multiple cleared areas.
- F. The proposed building will be located on a level area. The property rises to a 16 percent slope away from the lake.

*Jenny Bourbonais* 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. The applicant is requesting 50 feet.
  - 2. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a maximum height of 25 feet for a structure located between the shore impact zone and the required setback. The applicant is requesting 30 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 property consists of 28 acres with suitable area to meet setback requirements.
  - 2. The proposed structure configuration does not lend itself to meeting a greater setback.
- C. Essential Character of the Locality:
  - 1. The area consists of both residential and commercial development. The proposal is associated with a Recreational Vehicle (RV) campground and is anticipated to increase tourism and provide economic benefits to the area.
- D. Other Factor:
  - 1. The proposed request is within CIC Plat # 84 which will need to be dissolved prior to issuance of permits.

*Jenny Bourbonais* noted four items of correspondence in support from Voyageur's National Park, Drake Dill, Voyageur's Conservancy and Deena Congdon. These items were provided to the Board of Adjustment prior to the hearing.

## STAFF RECOMMENDATION

Conditions that may mitigate the variance for a 7,500 square foot principal structure located 50 feet from the shoreline and 30 feet in height 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.
3. 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 no later than one year from the date of permit issuance.
4. The CIC plat designation of the property shall be terminated per Minnesota State Statute requirements and any other relevant regulations.
5. The applicant shall adhere to local sanitary district requirements.
6. All local, county, state, and federal regulations shall be met.

*Dan Hinzmann*, SEH Engineer, 418 West Superior Street, Duluth, stated this is a reasonable request. The 50 foot shoreline setback will not stick out from the remainder of the development in the surrounding corridor. While there are setback requirements in place for good reasons, they will be good environmental stewards with this project. They have both environmental and stormwater engineers involved in this project. The township is invested and they want to do the right thing for this area.

No audience members spoke. One virtual attendee was in the audience and declined to speak.

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked about the condition to enhance vegetation along the shore impact zone. *Jenny Bourbonais* stated that staff is looking for a plan to increase vegetation since almost none currently exists. Staff is not asking for large trees to screen the structure, but any vegetation to enhance the area, help contain stormwater and assist with any erosion control that may occur in that area.
- B. Board member *Skraba* stated that his concern is for the shore impact zone. Board member *Werschay* asked if the Board could limit the vegetation to a certain type. *Jenny Bourbonais* stated staff will work with the applicants to make sure there is vegetation of some sort.

## DECISION:

**Motion by McKenzie/Skraba** to approve a variance for a 7,500 square foot principal structure located 50 feet from the shoreline and 30 feet in height, 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. The applicant is requesting 50 feet.
  2. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a maximum height of 25 feet for a structure located between the shore impact zone and the required setback. The applicant is requesting 30 feet.
  3. The strict interpretation of official controls does not allow the proposed shoreline setback and height design.
  4. To approve the variance would lead to orderly development, compatible and both appropriate and reasonable use of the parcel in question.

5. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The proposed access road and parking area take up a large portion of the planned development area which limits the location of the proposed structure. The size of the parking area does not appear to be unreasonable given likely traffic. The majority of the parking area will be placed behind the structure which appears to be the most appropriate location.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area consists of both residential and commercial development. The proposal is associated with a Recreational Vehicle (RV) campground and is anticipated to increase tourism and provide economic benefits to the area.
2. The Crane Lake area has been long developed of commercial buildings, resorts, and private residences, many of which do not meet modern shoreline setback requirements. The applicant's variance application states the property once contained a resort which was removed in the early 2000s.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The design of the structure has not been finalized and the staff report indicated the structure may be smaller in both size and height.
2. Detailed stormwater prevention plans have been developed for the construction phase and the completion phase of the project.
3. The proposed request is within CIC Plat # 84 which will need to be dissolved prior to issuance of permits.

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.
3. 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 no later than one year from the date of permit issuance.
4. The CIC plat designation of the property shall be terminated per Minnesota State Statute requirements and any other relevant regulations.
5. The applicant shall adhere to local sanitary district requirements.
6. All local, county, state, and federal regulations shall be met.
7. The applicant shall maximize the shoreline setback to the greatest extent possible and reduce the structure height to the greatest extent possible.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6308 – Allan Hanson**

The second hearing item was for Allan Hanson, subject property located in S19, T54N, R12W (Pequaywan). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3, to allow an addition to a nonconforming principal structure located within the shoreline setback that decreases the existing shoreline setback and that exceeds the maximum allowable addition size of 400 square feet. *George Knutson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing two additions to the existing dwelling which is located 91 feet from Smith Lake.
- B. The first addition is proposed on the lakeside of the structure and will decrease the existing shoreline setback to 86.5 feet. This addition size is 22.5 foot by 17.7 foot (327 square feet) with a height of 17 feet.
- C. The other addition is proposed on the backside of the dwelling. The size of this addition is 9.7 foot by 10 foot (97 square feet) with a height of 15 feet.
- D. The total of both proposed additions is 424 square feet. The purpose of the additions is to square off the cabin and add an additional bedroom.
- E. The existing holding tank is located 11 feet from the structure.
- F. The existing dwelling has good screening from the road, adjacent properties, and the lake.
- G. The property is fairly flat from the road to the existing dwelling. There is steep slope to the lake with an average grade of 24 percent on the lakeside of the dwelling.

*George Knutson* reviewed staff facts and findings as follows:

- A. Official Controls:
  - 1. Zoning Ordinance 62, Article IV, Section 4.3, states performance standards for additions to nonconforming principal structures and if the performance standards cannot be met, a variance is required.
    - a. In this case, the proposed addition decreases the existing shoreline setback, and is larger than the 400 square feet allowed.
    - b. The proposed addition total is 424 square feet.
    - c. The existing dwelling is located 91 feet from Smith Lake. The proposed addition would decrease the setback to 86.5 feet.
  - 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
  - 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
  - 4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.
- B. Practical Difficulty:
  - 1. There are alternatives for the proposed dwelling addition that do not require variance.

- a. The existing dwelling qualifies for an addition through the performance standard process if the proposal is 400 square feet or less, the existing shoreline setback is not decreased, and all other standards are met.
  - b. The subject property may be allowed an accessory dwelling that is 700 square feet or less.
  - c. A replacement dwelling could be proposed in a conforming location.
- C. Essential Character of the Locality:
1. The applicant is not proposing a new use to the area. A majority of the parcels on Smith Lake are used for seasonal or year-round residential use.
  2. There have been no similar variances within the immediate area.
- D. Other Factor:
1. The existing dwelling was built in 1950 per Assessor's data.
    - a. The current size of the dwelling is 862 square feet.

*George Knutson* noted one item of correspondence from Pequaywan Township in support of the variance request. This item was provided to the Board of Adjustment prior to the hearing.

#### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a 424 square foot addition to a principal structure located within the shoreline setback and for an addition to decrease the existing shoreline setback to 86.5 feet as proposed include, but are not limited to:

1. In the event that it is determined that the structure is not structurally sound to be added onto, a replacement structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
2. Stormwater from the structure shall not discharge directly onto adjacent properties or into the lake.
3. St. Louis County On-Site Wastewater sewage treatment standards shall be followed.
4. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
5. All other local, county, state, and federal regulations shall be met.
6. No further expansion of the dwelling shall be allowed.

*Margaret Hanson*, 510 Pleasant View Road, Duluth, the applicant, stated the proposed addition is the least impactful to the property. This will square off the existing building and not add any more square footage beyond that. The 260 square foot addition closest to the lake has the decreased shoreline setback because of the angled shoreline. They look forward to raising their grandchildren over the summer. Their intent is to add a bedroom.

*Allan Hanson*, 510 Pleasant View Road, Duluth, the applicant, stated this property has been in his family for years. His parents had the structure built in 1950. He has enjoyed the property for 70 years and looks forward to enjoying this property with his grandchildren.

One member of the virtual audience spoke. No other audience members were present.

*Scott Sable*, 2269 Smith Lake Road, stated that he lives two doors down from the applicants. He is in support of the variance request and feels that the additions will look more aesthetically pleasing than its notched look.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* stated this is an unusual area where the lots are very narrow, but they are nearly one-quarter mile in depth. *George Knutson* stated the lots in Government Lot 3 are similar in that they are very narrow lots in the immediate area.
- B. Board member *Filipovich* asked where the septic and the well are located. *Margaret Hanson* stated the septic is next to the dwelling and they currently have a shallow well. *Allan Hanson* added that they intend to have a dug well. The septic lines also run from the tank through the front yard.

## **DECISION**

**Motion by Coombe/Svatos** to approve a variance for a 424 square foot addition to a principal structure located within the shoreline setback and for an addition to decrease the existing shoreline setback to 86.5 feet, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62, Article IV, Section 4.3 states performance standards for additions to nonconforming principal structures and if the performance standards cannot be met, a variance is required.
  - a. In this case, the proposed addition decreases the existing shoreline setback, and is larger than the 400 square feet allowed.
  - b. The proposed addition total is 424 square feet.
  - c. The existing dwelling is located 91 feet from Smith Lake. The proposed addition will decrease the setback to 86.5 feet.
- 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 3. The applicant is asking to square off a structure that has existed since 1950.
- 4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The existing cabin was built in 1950. The shoreline meanders which puts the proposed addition 86.5 feet from the shoreline.
- 2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area. A majority of the parcels on Smith Lake are used for seasonal or year-round residential use.
- 2. The existing cabin was built in 1950. This proposal will just square off the existing structure.
- 3. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The existing dwelling was built in 1950 per Assessor's data.
  - a. The current size of the dwelling is 862 square feet.

The following conditions shall apply:

1. In the event that it is determined that the structure is not structurally sound to be added onto, a replacement structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
2. Stormwater from the structure shall not discharge directly onto adjacent properties or into the lake.
3. St. Louis County On-Site Wastewater sewage treatment standards shall be followed.
4. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
5. All other local, county, state, and federal regulations shall be met.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6309 – Benjamin Johnson**

The third hearing item was for Benjamin Johnson, subject property located in S9, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.2, to allow a second detached principal dwelling where only one is allowed. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to keep the existing 775 square foot dwelling in its current location and construct a second 1,300 square foot principal dwelling.
- B. The existing dwelling is nonconforming as it does not meet the required shoreline setback.
- C. The new dwelling is proposed to be located in a conforming area per the applicant submitted site sketch.
- D. The property has steep slope and elevation change throughout.
- E. The parcel has good screening from lake, road, and neighboring properties.

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

- A. Official Controls:
  1. Zoning Ordinance 62, Article III, Section 3.2, states minimal dimensional standards for each district.
    - a. The subject parcel is zoned Shoreland Multiple Use (SMU)-8, which requires a minimum lot area of one acre and 200 feet of width.
    - b. The subject parcel contains approximately 4.2 acres and 185 feet of width.
  2. Zoning Ordinance 62, Article VI Section 6.2, states that to have multiple principal dwellings on a parcel, there needs to be sufficient lot area per structure to equal the minimum dimensional standard.
    - a. The subject parcel only contains enough acreage and width for one principal dwelling.

- b. In the SMU-8 zone district, two acres and 400 feet in width is required for two principal dwellings.
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.

B. Practical Difficulty:

1. The parcel does not have the required width of 400 feet for a second principal dwelling.
2. The use of the existing dwelling cannot be changed to an accessory dwelling as the existing dwelling is nonconforming to the shoreline setback and larger than the allowed 700 square feet for an accessory dwelling.
3. Alternatives to the variance request would include:
  - a. 400 square foot addition to the existing dwelling.
  - b. Construct up to a 700 square foot accessory dwelling in a conforming location.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area consists of seasonal and year-round dwellings.
2. There have been no similar variance requests in the plat of Hollister Lakeshore Lots.

D. Other Factors:

1. The area was previously zoned Shoreland Multiple Use (SMU)-11, which required 0.5 acres and 100 feet of width.
2. The use of the existing cabin cannot be changed due to structure being nonconforming to the shoreline setback and being larger than the 700 square feet allowed for an accessory dwelling.

*Stephen Erickson* noted no items of correspondence.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a second detached principal dwelling where only one is allowed include, but are not limited to:

1. The shore protection zone shall be preserved in a natural state and screening shall be retained.
2. The proposal shall adhere to all local, state, and federal regulations.
3. All Onsite Wastewater SSTS requirements shall be met.
4. No additional principal dwellings shall be allowed. In the event the 775 square foot dwelling is replaced, it shall be in a conforming location and meet minimum accessory dwelling standards.

*Ben Johnson*, 8395 235<sup>th</sup> Street North, Forest Lake, the applicant, stated part of the practical difficulty is that the existing dwelling is made from cinder block. That would make it difficult to modify the structure size. It also makes it difficult to move the structure. The structure is also built into a cliff. He would be unable to add onto the structure at the rear and would need to add on to the side which involves a lot more impact to the shore impact zone. They would need to remove a

number of white pine trees to add an addition in that location. It is more practical to construct a new dwelling behind the existing dwelling. It would cause less issues in the shore impact zone. Their new dwelling would be 1,300 square feet in size with a 300 square foot three-season screen porch to the side.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* asked why the zone district changed. *Jenny Bourbonais*, Acting Secretary, stated that the change may have been due to the Lake Vermilion Plan, which is no longer active. There may have been a resort at some point in this area which is why the zone district is different in this location than the Residential (RES)-8 outside of the plat.
- B. Board member *Skraba* asked if the RES-8 zone district would make a difference. *Jenny Bourbonais* stated no.
- C. Board member *McKenzie* asked if the structure would be allowed if the size of the existing dwelling was reduced and its use changed. *Stephen Erickson* stated the existing use cannot be changed since it is at a nonconforming shoreline setback.
- D. Board member *Pollock* asked if the existing dwelling was reduced in size to 700 square feet if it would be allowed as an accessory dwelling. *Stephen Erickson* stated the structure still would not meet the shoreline setback and would still be a nonconforming structure. *Jenny Bourbonais* stated if the existing dwelling met the shoreline setback and were reduced in size to 700 square feet, it would be an allowed use. Because the dwelling is at a nonconforming shoreline setback, it is considered a first principal dwelling.
- E. Board member *Skraba* asked about the minimum requirements for having two principal structures on this property. *Stephen Erickson* stated the property has the acreage required but does not have 400 feet of lot width. *Jenny Bourbonais* added that each principal structure would need to meet the minimum acreage and minimum lot width standards required for each principal use.
- F. Board member *McKenzie* asked if the applicant could reduce the size of the existing dwelling and have a variance to call that structure an accessory structure. *Stephen Erickson* stated the applicant can have an accessory dwelling as long as it meets all standards. The existing dwelling could also have a 400 square foot addition through the performance standard permit process. *Jenny Bourbonais* added there is no way to convert this existing dwelling into an accessory dwelling; it is located too close to the shoreline. It could be converted into a water oriented accessory structure if it met the requirements for that type of structure. The Zoning Ordinance is clear on changing the principal use to an accessory dwelling is not allowed unless it would meet all standards for an accessory dwelling. There are also no use variances allowed.
- G. Board member *Skraba* clarified the applicant could get approval for a dwelling addition and be able to have an accessory dwelling on this property. *Stephen Erickson* stated the applicant would be allowed a 400 square foot addition on this existing dwelling with a performance standard permit. The applicant would be allowed a 700 square foot accessory dwelling if it met all standards.
- H. Board member *Coombe* asked if the proposed dwelling size was noticed out to adjoining property owners. *Jenny Bourbonais* stated no. The language in the notices was for a second detached principal dwelling where one is allowed.

- I. Board member *Skraba* asked why the applicant cannot build behind the existing dwelling. *Ben Johnson* stated that there is a hill behind the existing dwelling that would require excavation in order to add onto the rear of the structure. The cabin is backed up into a steep slope.
- J. Board member *Skraba* asked if the new dwelling would be located on top of the hill. *Ben Johnson* stated yes. The new structure will be behind and to the east of the new structure.
- K. Board member *Coombe* asked in the event of a variance approval that no short term rental would be allowed in the existing cabin. *Ben Johnson* stated that he agreed with that.
- L. Board member *Pollock* asked why the applicant cannot build to the side of the existing dwelling. *Ben Johnson* stated his septic is to the west of the existing dwelling. He cannot build to the west side. He could build to the east but that would infringe more into the shore impact zone. The structure would be closer to the lake. He would prefer to have the primary dwelling out of the shore impact zone and not have a larger and more intrusive primary structure located within the shore impact zone.
- M. Board member *Pollock* stated he would be more comfortable granting a variance to expand the existing dwelling than to allow a second principal dwelling on the property.
- N. Board member *McKenzie* stated he does not see practical difficulty demonstrated to allow a second dwelling. Board member *Pollock* agreed.
- O. Board member *Skraba* stated the applicant would be allowed 1,100 square feet with a 400 square foot addition to the existing dwelling and for a 700 square foot accessory dwelling located behind the existing dwelling. The applicant was asking for 1,300 square feet and now 1,600 square feet with the screen porch. This is a want more than a need.
- P. *Stephen Erickson* noted the existing dwelling is not located in the shore impact zone. The structure is located between the shore impact zone and the shoreline setback. The applicant would be allowed a 25 foot height in its present location.
- Q. Board member *Coombe* stated it does not make sense for the applicant to tear down this structure just to build a new structure further back. In its current location, it is difficult to see from the lake. Board member *Skraba* stated the applicant has four acres, twice as much as what is needed. However, the applicant does not have 400 feet of lot width. He would leave the existing structure there and not rip up the land down by the lake.
- R. Board member *Werschay* asked how old these platted lots are. *Jenny Bourbonais* stated this plat was platted in 1950.
- S. Board member *Filipovich* stated there are twelve lots within this area with the SMU-8 zone district. Four of these lots are 200 feet in lot width and others are around 100 to 150 feet in lot width.

## **FIRST MOTION**

**Motion by Pollock/Svatos** to deny a variance for a second detached principal dwelling where only one is allowed, based on the following facts and findings:

- A. Official Controls:
  1. Zoning Ordinance 62, Article III, Section 3.2, states minimal dimensional standards for each district.
    - a. The subject parcel is zoned Shoreland Multiple Use (SMU)-8, which requires a minimum lot area of one acre and 200 feet of width.
    - b. The subject parcel contains approximately 4.2 acres and 185 feet of width.

2. Zoning Ordinance 62, Article VI Section 6.2, states that to have multiple principal dwellings on a parcel, there needs to be sufficient lot area per structure to equal the minimum dimensional standard.
  - a. The subject parcel only contains enough acreage and width for one principal dwelling.
  - b. In the SMU-8 zone district, two acres and 400 feet in width is required for two principal dwellings.
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. The variance request is not in harmony with the general purpose and intent of official controls.

**B. Practical Difficulty:**

1. The parcel does not have the required width of 400 feet for a second principal dwelling.
2. The use of the existing dwelling cannot be changed to an accessory dwelling as the existing dwelling is nonconforming to the shoreline setback and larger than the allowed 700 square feet for an accessory dwelling.
3. Alternatives to the variance request would include:
  - a. 400 square foot addition to the existing dwelling.
  - b. Construct up to a 700 square foot accessory dwelling in a conforming location.
4. Practical difficulty has not been demonstrated in complying with the official controls.

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

1. The applicant is not proposing a new use to the area. The area consists of seasonal and year-round dwellings.
2. There have been no similar variance requests in the plat of Hollister Lakeshore Lots.
3. The variance request will alter the essential character of the locality.

**D. Other Factors:**

1. The area was previously zoned SMU-11, which required 0.5 acres and 100 feet of width.
2. The use of the existing cabin cannot be changed due to structure being nonconforming to the shoreline setback and being larger than the 700 square feet allowed for an accessory dwelling.

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

**Opposed:** Coombe, Filipovich, Skraba, Werschay - 4

**Motion fails 3-4**

**DISCUSSION AFTER FIRST MOTION**

- A. Board member *McKenzie* stated the Board needs to consider future uses of this property, especially with consideration of saying no short term rentals are allowed. *Jenny Bourbonais* stated that short term rentals are allowed with nonconforming structures.

- B. Board member *Skraba* stated that the applicant meets the acreage requirements to have two principal structures. The applicant is just short on the lot width for two principal structures. The existing dwelling is well-screened with trees and there is topography where the existing dwelling is nestled in.
- C. Board member *Coombe* added the Board does not set precedent and that each case stands on its own.

## **DECISION**

**Motion by *Skraba/Coombe*** to approve a variance for a second detached principal dwelling where only one is allowed, based on the following facts and findings:

### A. Official Controls:

1. The Zoning Ordinance 62, Article III, Section 3.2, states minimal dimensional standards for each district.
  - a. The subject parcel is zoned Shoreland Multiple Use (SMU)-8, which requires a minimum lot area of one acre and 200 feet of width.
  - b. The subject parcel contains approximately 4.2 acres and 185 feet of width.
2. Zoning Ordinance 62, Article VI Section 6.2 states that to have multiple principal dwellings on a parcel, there needs to be sufficient lot area per structure to equal the minimum dimensional standard.
  - a. The subject parcel only contains enough acreage and width for one principal dwelling.
  - b. In the SMU-8 zone district, two acres and 400 feet in width is required for two principal dwellings.
3. The applicant has four acres of property where two acres are needed for two principal dwellings.
4. The variance request is in harmony with the general purpose and intent of official controls.

### B. Practical Difficulty:

1. The parcel does not have the required width of 400 feet for a second principal dwelling.
2. The applicant is limited where the existing structure can be added onto. To add onto the back of the structure, the applicant will need to cut into the hill. To add on to the side of the structure, they will add to the nonconforming shoreline setback.
3. Practical difficulty has been demonstrated in complying with the official controls.

### C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area consists of seasonal and year-round dwellings.
2. The proposed 1,600 square foot dwelling will be located away from the lake.
3. The variance request will not alter the essential character of the locality.

### D. Other Factors:

1. The area was previously zoned Shoreland Multiple Use (SMU)-11, which required 0.5 acres and 100 feet of width.

2. The property is an old property with topography. To use one of staff's alternatives would cause more disruption to the property and is only 500 square feet less than what the applicant is requesting with a new principal dwelling located far enough back that there would be no disruption to the property.

The following conditions shall apply:

1. The shore protection zone shall be preserved in a natural state and screening shall be retained.
2. The proposal shall adhere to all local, state, and federal regulations.
3. All Onsite Wastewater SSTS requirements shall be met.
4. No additional principal dwellings shall be allowed. In the event the 775 square foot dwelling is replaced, it shall be in a conforming location and meet minimum accessory dwelling standards.
5. No short term rental use shall be allowed on this property.

**In Favor:** Coombe, Filipovich, Skraba, Werschay – 4

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

**Motion carried 4-3**

**Case 6310 – James Eichholz**

The fourth hearing item was for James Eichholz, subject property located in S21, T64N, R18W (Beatty). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a principal structure to be located at a reduced shoreline setback where a minimum of 100 feet is required. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing a 16 foot by 46 foot principal dwelling to be located at a shoreline setback of 98 feet where 100 feet is required.
- B. The proposed structure would be located on a peninsula of approximately 2.2 acres in size.
- C. The shoreline nearly surrounds this portion of the property, and the shoreline setback is essentially measured in all directions.
- D. The property appears to be well vegetated with good screening of the proposed building site.
- E. The slope on the subject portion of the property is approximately 20 percent. Portions of the mainland portion of the property are much less steep.

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

- A. Official Controls:
  1. Zoning Ordinance 62 states that the require shoreline setback on a recreational development lake is 100 feet; the applicant is requesting approval for a dwelling to be located 98 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.

4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

B. Practical Difficulty:

1. The property is somewhat unique because of the “island” portion of the property.
  - a. This unique feature does not prevent the property from being developed in a conforming manner.
2. The total acreage of the property is 22.75 acres. The subject portion of the property is approximately 2.2 acres.
  - a. Although the peninsula is a unique feature of the property, there is not enough area to meet all required setbacks with the proposed structure. There is also approximately 20.5 acres on the main portion of the property where there is adequate space to meet all required setbacks.
3. The applicant has multiple alternatives that would not require variance:
  - a. A (much larger) dwelling could be built on the main portion of the property that meets all setback and structure requirements.
    - i. The property is large enough where multiple principal structures could be allowed that meet all setbacks and other development requirements.
  - b. The peninsula portion of the property could still potentially be used as a camp site.
  - c. A smaller dwelling could be built on the peninsula portion of the property that meets all setbacks.
  - d. The second two alternatives may allow use of that unique feature of the property while meeting all ordinance requirements.
  - e. A water oriented accessory structure such as a gazebo or sauna would be allowed on the peninsula.
4. The applicant has been made aware of all potential alternatives that exist that would not require variance.

C. Essential Character of the Locality:

1. This is a large parcel in a lake that does not have a significant amount of development.
2. The majority of the developed lots around this lake are smaller than the applicant’s property.
3. The applicant also owns the adjacent parcel to the west.
  - a. This parcel is 16.5 acres.
  - b. Although this parcel was not included in the application, it would allow even greater area for development to meet all requirements.

D. Other Factors:

1. The applicant has not met the burden of demonstrating practical difficulty.
2. Building on the main portion of the property allows for reasonable use of the property.

- a. As mentioned in the practical difficulty section of this report, reasonable use of the peninsula portion of the property may be available, but not as proposed.

*Jared Ecklund* noted no items of correspondence.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a principal structure to be located at a reduced shoreline setback where 100 feet is required as proposed include, but are not limited to:

1. The structure shall be earth-toned colors, including siding, trim and roof.
2. The vegetative screening within the shore impact zone shall be retained.
3. The minimum land alteration standards shall be met during construction and after project completion.
4. All Onsite Wastewater SSTS standards shall be met.
5. No further development on the peninsula portion of the property shall be allowed.

*James Eichholz*, 725 4<sup>th</sup> Street South, Virginia, the applicant, stated there are three members of the LLC he is representing. While it was stated that the mainland could be developed, it is very shallow and rocky and not accessible to get to that lot via boat. It is easier to access the peninsula. There is also a wetland full of cedar trees that has not been cut. This property has been privately owned since the 1930s. They are trying to keep this as natural and rustic looking. The area to build on the mainland is very limited because of the existing topography. It will be difficult to bring in supplies, their gear and water. It would be easier to build on the point (peninsula) because the bluff is not as extreme and there is gradual rise from the dock which would allow them to access the property easier. He was uncertain what to put for structure height because he did not know at what level to measure from and there will be a grade difference. They were hoping for a two story dwelling. They do not know what they will do with the second lot right now; they are considering selling it. They are asking for a 16 foot by 46 foot dwelling. They did have a survey done and they have staked off the building area and the 100 foot shoreline setback. The size would allow for a 12 foot wide structure. A 12 foot wide building with 2 by 6 boards would be a little too compact inside the structure.

Two virtual audience members (Tim Eichholz and Walter Eichholz) were present but declined to speak. One virtual audience member spoke. Two in person audience members spoke.

*Brent Bacon*, 3151 Highway 332, International Falls, stated they owned this property for 75 years. They own neighboring property near the applicant's property. He wanted the applicant to build a larger house on the mainland and not on the point. He asked that the applicant downsize and build a smaller structure, so they do not have to look at a large structure on top of the point.

*Elizabeth Maki-Bacon*, 3151 Highway 332, International Falls, stated this property was originally owned by her father and grandfather for 80 years. When her father passed away, she and her sister inherited the property and they split it. Her sister sold this part of the property to the Eichholz's. The peninsula was special to her family and was always meant to be a point where they could picnic or swim. She is not sure when the parcels were first platted. She asked about the septic and any greywater. They paid for the survey before the land was split in 2011. This was always meant to be by itself. She is opposed to the variance request.

*Jared Ecklund* stated that a privy was approved by the On-Site Wastewater Division at the 100 foot shoreline setback on the point. The privy does not allow there to be any pressurized water or plumbing. If there were pressurized water or plumbing, the system would need a holding tank or a full septic system.

*Patricia Birkland*, 5616 County Road 11, Independence, stated she owns the property next door to the Eichholz's. This is a beautiful lake and area. The orientation of their cabin looks over the point. They have enjoyed that beautiful view. It is hard for her to visualize what a two story dwelling may look like. She asked if this must be decided on today.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* stated it appears in the aerial photography that the bay is all vegetative cover. *Jared Ecklund* stated it may appear that way in some aerial photographs, but others do not show this, and the vegetation may be seasonal. Staff was unable to do a site visit on this property because of the time of year.
- B. Board member *Pollock* asked what could be done with the rest of the property if a variance were allowed on this peninsula. *Jared Ecklund* stated anything could be developed on the mainland property. There is enough room for two principal uses.
- C. Board member *Skraba* asked if there are any floodplain issues. *Jared Ecklund* stated there is not an established base flood elevation on Elbow Lake and it is not known if there are any floodplain issues.
- D. Board member *McKenzie* stated the application had the structure height of 34 feet. *Jared Ecklund* stated structure height was not a part of the variance request and they would be allowed a 25 foot structure height.
- E. Board member *McKenzie* stated that if the structure does not meet the 100 foot shoreline setback, the applicant would only be allowed a structure height of 25 feet. *Jared Ecklund* stated a conforming structure would be allowed 35 feet in height. *James Eichholz* stated that a 25 foot structure height could work with their plans. Board member *Pollock* stated that a height variance could be given and asked if this request was noticed. *Jared Ecklund* stated that a height variance could not be approved because it was not legally noticed.
- F. Board member *Skraba* asked if the point is well-vegetated and is not open. *Brent Bacon* stated that the high point is quite high, and the timber is deteriorating on the point.
- G. Board member *Werschay* stated this does have to be decided upon today. Board member *Coombe* stated they have the 60-day rule to consider for a variance application. Staff and the Board of Adjustment has 60 days to act on any variance application (without notification before the 60-day clock expires and additional time is granted). After 60 days of no action, the variance application could be approved.
- H. Board member *Coombe* stated they are discussing a reduced shoreline setback by two feet. He asked what type of permit would be needed if the Board of Adjustment had not acted on this and the applicant had requested this proposal. *Jared Ecklund* stated that if the applicant met all setbacks a land use permit would have been the only permit required.
- I. Board member *Pollock* stated this would be a reasonable use of the property and the applicant is willing to reduce the proposed structure height to 25 feet.

- J. Board member *Coombe* asked to remove the condition: No further development on the peninsula portion of the property shall be allowed. The applicant would be allowed to have a water oriented accessory structure on this property. Board member *Pollock* agreed.
- K. Board member *Pollock* asked if the applicant could split the point (peninsula) away from the mainland property. *Jared Ecklund* stated that the point is 2.2 acres and could be subdivided; however, this would require platting. Platting would require any parcel to have conforming building area and suitable septic area. This point may not meet those requirements in order to be platted. While there is conforming area on this parcel, the setbacks may be an issue for both conforming building and septic area.

## **DECISION**

**Motion by McKenzie/Coombe** to approve a variance for a 16 foot by 46 foot principal structure to be located at a reduced shoreline setback of 98 feet where 100 feet is required, based on the following facts and findings:

### **A. Official Controls:**

- 1. Zoning Ordinance 62 states that they require shoreline setback on a recreational development lake is 100 feet; the applicant is requesting approval for a dwelling to be located 98 feet from the shoreline.
- 2. The official controls not only restrict certain uses but also permit reasonable uses when appropriate. The applicant's request to place a structure on an unusual parcel is, according to the applicant, the least likely of the variance alternatives to be damaging to the rest of the parcel in question. The plan, with alternatives discussed, appears to be in harmony with the official controls.
- 3. The variance request is in harmony with the general purpose and intent of official controls.

### **B. Practical Difficulty:**

- 1. The applicant has laid out the reasons for building on the "island" (peninsula) is preferable to building elsewhere on the mainland, the property is steepest away from the lakeshore, the possibility of disturbing wetland and cedar swamp, and the resulting greater difficulty in construction appear to establish a practical difficulty.
- 2. Practical difficulty has been demonstrated in complying with the official controls.

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

- 1. This is a large parcel in a lake that does not have a significant amount of development.
- 2. The structure permitted in the location as requested will not alter the essential character of the locality based on compliance with zoning regulations at the time the area was developed.
- 3. Any structure placed on the property in question would be visible from the lake, especially if the applicant were to build a structure 34 feet in height.
- 4. The variance request will not alter the essential character of the locality.

### **D. Other Factors:**

- 1. It appears the applicant is making an effort to minimize disturbance of the parcel and to minimize the effects this plan may have on the neighbor.

2. The applicant has planned to maximize the shoreline setback to the greatest extent.

The following conditions shall apply:

1. The structure shall be earth-toned colors, including siding, trim and roof.
2. The vegetative screening within the shore impact zone shall be retained.
3. The minimum land alteration standards shall be met during construction and after project completion.
4. All Onsite Wastewater SSTS standards shall be met.
5. The structure height shall be limited to 25 feet.

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

**Opposed:** None - 0

**Motion carried 7-0**

### **Case 6311 – Ben Delich**

The fifth hearing item was for Ben Delich, subject property located in S2, T57N, R17W (Fayal). 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 where a minimum of 75 feet is required. Board members *Coombe*, *Svatos*, and *Werschay* disclosed they know the applicant. The Board of Adjustment did not ask they recuse themselves from the hearing or discussion. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to replace a 774 square foot conforming garage with a 2,400 square foot garage located 69 feet from the shoreline where 75 feet is required.
- B. One corner of the garage will be located 69 feet from the shoreline. The other corner will be located 73 feet from the shoreline.
- C. The property contains a house, garage and two car port structures, and is connected to the Fayal sanitary sewer system.
- D. There is good shoreline screening between the structure and the lake. The proposed building site is open with limited tree cover.
- E. The proposed building will be located on a level site. The property has a steep slope towards the shoreline.

*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, the applicant is requesting 69 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 proposed garage could be shifted 6 feet to meet the minimum shoreline setback. Based on the location of the garage doors, this would leave approximately 24 feet to back out and turn around on the applicant's property.
2. A smaller garage could be constructed to meet setback requirements.
3. Moving the structure to the south would cross the existing sewer line to the house.

C. Essential Character of the Locality:

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

D. Other Factor:

1. The proposed structure will be well-screened from the shoreline.

*Mark Lindhorst* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a 2,400 square foot garage located 69 feet from the shoreline 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 onto adjacent lots.
3. The shore protection zone shall be preserved in a natural state and screening shall be retained.

*Ben Delich*, 7239 Ely Lake Drive, the applicant, stated he wants to remove the existing garage and replace it with a new structure. The existing building is beyond disrepair. The slab is cracked and the electricity is dangerous. This land was surveyed last year and the lines are different than on the County Land Explorer. They have larger family vehicles and they do not want to back onto the neighbor's property. If the garage was moved further back from the shoreline, part of the garage would be on the neighbor's property. There are natural gas and sewer utility lines that need to be considered if he had to move the garage to a different location. They will use earth-tone colors and they will not eliminate any trees because the closer trees are on the neighbor's property.

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

*Gary Fox*, 7245 Ely Lake Drive, stated he lives next door to the Delich's. He is the resident most impacted by the location of this garage. This new structure will not adversely affect the aesthetic at all.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if the existing garage is a three-stall garage. *Mark Lindhorst* stated that the garage has two doors and there is a second story loft and open storage.
- B. Board member *McKenzie* asked where the Fayal sewer line is located. *Mark Lindhorst* stated the line comes up and goes behind the existing structures. The applicant has proposed the garage in such a way they will not back out onto the line.

**DECISION**

**Motion by Coombe/Skraba** to approve a variance for a 2,400 square foot garage located 69 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 75 foot shoreline setback, the applicant is requesting 69 feet.
2. The applicant is replacing an existing garage with a larger structure at approximately the same building site.
3. The structure will be well-screened from the lake.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. Moving the structure to the south would cross the existing sewer line to the house.
2. While the applicant could shift the proposed garage six feet to meet the shoreline setback, the applicant would use the additional six feet to back out of the garage onto their own property without encroaching on the neighbor's property.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area consists of developed lakeshore lots with conforming accessory structures.
2. This is well-suited for this site as the applicant is using their existing building site. This location will not negatively affect the neighbors. The location will also not impact any utility lines.
3. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The proposed structure will be well-screened from the shoreline.

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 onto adjacent lots.
3. The shore protection zone shall be preserved in a natural state and screening shall be retained.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Motion to adjourn by Skraba. The meeting was adjourned at 1:35 p.m.**