

**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, AUGUST 12, 2021.**

11:45 AM – 1:40 PM

Board of Adjustment members in attendance: Tom Coombe  
Steve Filipovich  
James McKenzie  
Dave Pollock  
Roger Skraba  
Ray Svatos (until 12:45 PM)  
Diana Werschay, Chair

Board of Adjustment members absent: None - 0

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

**NEW BUSINESS:**

- A. Richard Shaffer, S27, T69N, R21W (Kabetogama)
- B. Nick Farley, S33, T62N, R12W (Morse)
- C. Jennifer Willoughby, S18, T51N, R15W (Canosia)
- D. Donald King, S19, T54N, R12W (Pequaywan)

**OTHER BUSINESS:**

**Motion by McKenzie/Skraba** to approve the minutes of the July 8, 2021, meeting.

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

**Opposed:** None – 0

**Abstained:** Coombe - 1

**Motion carried 6-0-1**

**Motion by McKenzie/Skraba** to approve the minutes of the July 15, 2021, meeting.

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

**Opposed:** None – 0

**Abstained:** Coombe, Werschay - 2

**Motion carried 5-0-2**

*Jenny Bourbonais*, Acting Secretary, stated if the September caseload is large enough, there might be two Board of Adjustment hearing dates.

## **NEW BUSINESS:**

### **Case 6270 – Richard Shaffer**

The first hearing item was for Richard Shaffer, property located in S27, T69N, R21W (Kabetogama). 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 dwelling that is located between zero and 25 feet from the shoreline where no additions are allowed. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing an 8 foot by 12 foot (96 square feet) dwelling addition. The dwelling is located approximately 20 feet from the shoreline of Lake Kabetogama.
- B. The proposed addition is located to the side/rear of the existing dwelling. The shoreline wraps around the property.
- C. The proposed addition will not decrease the shoreline setback of the structure.
- D. The proposed addition is to add additional space to one of the bedrooms.
- E. Development on the property includes the main principal dwelling, a guest cabin, small storage building, small garage, an over the water boathouse and a septic tank.
- F. The existing dwelling was built on bedrock.
- G. The property is well vegetated with decent screening from the lake. The applicant did indicate they would retain the existing screening.
- H. The property is steep with an average slope of around 26 percent. It is slightly steeper near the shoreline where the dwelling is located. There is also bedrock throughout the property.
- I. Structure height is not a concern. The existing structure is 29 feet in height. The proposed addition would not increase the structure height and would tie into the existing roofline.

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

- A. Official Controls:
  1. St. Louis County Zoning Ordinance 62 states that if a structure is located between zero and 25 feet from the shoreline, no additions are allowed; the applicant is proposing a 96 square foot addition to the dwelling that is located 20 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. Since the structure is located within 25 feet of the shoreline, there are no alternatives other than not to build the addition or move the structure back to the required shoreline setback.

- a. The steep slopes on the property would make it difficult to move the structure back to the required shoreline setback. Rebuilding at the required shoreline setback is really the only alternative.
  - 2. With the steep slopes on the property, the development potential on the property could be considered limited.
    - a. The landowner may already have reasonable use of the property.
    - b. The dwelling is currently 976 square feet in ground floor area.
    - c. The addition would bring it up to 1,072 square feet in size.
- C. Essential Character of the Locality:
- 1. This general area has a high development density with residential dwellings, resorts, and RV parks.
    - a. Access to the subject property is through the Pines of Kabetogama RV park.
  - 2. Many of the structures are located at reduced shoreline setbacks. Some are located outside of the shore impact zone, but several are located within the shore impact zone.
  - 3. There have not been any similar variance requests in this plat.
    - a. The only approved variance was for a dwelling to be built on a lot with less than 100 feet in width.
  - 4. The proposed addition is a very small addition that would have limited impact on the surrounding area.
  - 5. As long as the vegetative screening is kept in place, the visibility from the lake and adjacent properties would be very limited.
- D. Other Factors:
- 1. The development around Lake Kabetogama is somewhat unique because of the National Park.
    - a. There are a few limited areas for private development on this lake.
    - b. Those areas tend to have high development density.

*Jared Ecklund* noted no items of correspondence.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for an addition to a nonconforming dwelling that is located between zero and 25 feet from the shoreline where no additions are allowed as proposed include, but are not limited to:

- 1. The color of the structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
- 2. The stormwater runoff from the structure shall not discharge directly into the lake or onto adjacent lots.
- 3. The existing vegetative screening within the shore impact zone shall be maintained.
- 4. All St. Louis County SSTS Ordinance 61 requirements shall be met.

*Richard Shaffer*, the applicant, 8726 Beaudry Street, Duluth, MN, stated he had nothing to add.

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.

## **DECISION**

**Motion by McKenzie/Pollock** to approve a variance for an addition to a nonconforming dwelling that is located between zero and 25 feet from the shoreline where no additions are allowed, based on the following facts and findings:

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

1. St. Louis County Zoning Ordinance 62 states that if a structure is located between zero and 25 feet from the shoreline, no additions are allowed; the applicant is proposing a 96 square foot addition to the dwelling that is located 20 feet from the shoreline.
2. The variance request is in harmony with the general purpose and intent of official controls. Official controls exist to manage growth and minimize nonconformities although not eliminating them entirely. As a result, variances are allowed for valid reasons. The effect of an addition will be minimized while affording reasonable use of the property.

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

1. The shape of the parcel in question is a primary practical difficulty. The topography is a second practical difficulty. The parcel is shaped like a finger reaching out to the water. The dwelling is located on a narrow lot with shoreline setback issues along the length of the property.
2. Relocating the structure to the shoreline setback would be difficult because of the topography and it would likely destroy the character of the lot.

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

1. The variance will not alter the essential character of the locality.
2. This general area has a high development density with residential dwellings, resorts, and RV parks.
  - a. Access to the subject property is through the Pines of Kabetogama RV park.
3. Many of the structures are located at reduced shoreline setbacks. Some are located outside of the shore impact zone, but several are located within the shore impact zone.
4. There have not been any similar variance requests in this plat.
  - a. The only approved variance was for a dwelling to be built on a lot with less than 100 feet in width.
5. The proposed addition is a very small addition that would have limited impact on the surrounding area.
6. As long as the vegetative screening is kept in place, the visibility from the lake and adjacent properties would be very limited.
7. The area was developed long before St. Louis County adopted shoreline setback standards.

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

1. The development around Lake Kabetogama is somewhat unique because of the National Park.
  - a. There are a few limited areas for private development on this lake.
  - b. Those areas tend to have high development density.

2. The applicant's proposal is reasonable given the circumstances described as his desire to work remotely and increase workspace while not decreasing the shoreline setback.

The following conditions shall apply:

1. The color of the structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
2. The stormwater runoff from the structure shall not discharge directly into the lake or onto adjacent lots.
3. The existing vegetative screening within the shore impact zone shall be maintained.
4. All St. Louis County SSTS Ordinance 61 requirements shall be met.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6271 – Nick Farley**

The second hearing item was for Nick Farley, property located in S33, T62N, R12W (Morse). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a new permanent foundation to be located within the shoreline setback and St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to a nonconforming principal dwelling located at a reduced shoreline setback to exceed square footage allowed. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 16 foot by 20 foot (320 square foot) addition to the rear of a nonconforming dwelling.
- B. The dwelling is located within the shore impact zone.
- C. The applicant is also proposing to replace the existing post foundation with a new, permanent insulated concrete form foundation at a setback of approximately 40 feet from the shoreline.
- D. The property has good screening from the road and from neighboring properties.

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

- A. Official Controls:
  1. St. Louis County Zoning Ordinance 62 allows up to a 200 square foot addition for nonconforming structures located in the shore impact zone. The applicant is requesting a 320 square foot addition.
  2. St. Louis County Zoning Ordinance 62 states Recreational Development Lakes have a minimum setback of 100 feet and defines the shore impact zone as the area that is within 50 feet of the lake. One Pine Lake is classified as a Recreational Development Lake.
    - a. The principal dwelling is located within the shore impact zone at a setback of 40 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 dwelling would be allowed up to a 200 square foot addition through a performance standard permit.
2. There are no unique physical circumstances such as bluff or wetlands on the parcel.
3. There is room on the parcel for the structure to be moved or reconstructed in a conforming location.

C. Essential Character of the Locality:

1. A similar variance request was approved on a neighboring parcel to allow an addition that exceeded maximum size allowed to a structure located 65 feet from the shoreline.

D. Other Factors:

1. Construction on the new permanent foundation work has begun without prior authorization.
2. A permit to construct for a holding tank has been issued behind the existing dwelling. It is possible the proposed tank location could be moved to allow for the existing dwelling to be moved to a conforming setback.

*Stephen Erickson* noted one item from Donald and Yvonne Stridger in support of the variance. This correspondence was provided to the Board of Adjustment prior to the hearing.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a new permanent foundation to be located within the shoreline setback and an addition to a nonconforming principal structure located at a reduced shoreline setback to exceed square footage allowed 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. In the event that it is determined that the structure is not structurally sound to be added onto, a new structure would be allowed at a 100 foot setback from shoreline, meeting all other Ordinance requirements.

*Nick Farley*, the applicant, 6038 Chestnut Road, Mound, MN, stated they purchased this property in February 2021. They started going through the process by applying for a land use permit in February. He was told in June that he needed a variance and he applied for that. They are just trying to clean up the property and use it for their family. They have cleaned up trash from their property, trash that had been dumped on their neighbor's property and trash that had been dumped into the lake.

*Kim Farley*, the applicant, 6038 Chestnut Road, Mound, MN, was also present.

No members of the audience 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 *McKenzie* asked why this is not an after-the-fact variance. *Stephen Erickson* stated once the applicant applied for an addition, staff found out about the foundation work. *Jenny Bourbonais*, Acting Secretary, stated the foundation work was discovered during the site visit.
- B. Board member *Pollock* asked how much foundation work has been done. *Stephen Erickson* stated the dwelling had been raised and there had been digging for the permanent foundation. At the time of the site visit, no concrete work had been done.
- C. Board member *Coombe* asked why this foundation work is different than the Ordinance definition of repair. *Jenny Bourbonais* stated this does not fall under the definition of repair because it is not a like-for-like foundation being replaced. This would be going from a non-permanent foundation to a permanent foundation. The applicant is not replacing their foundation with an identical foundation.
- D. Board member *Filipovich* asked if there is a reason why the applicant would not want to move the structure back to a conforming setback. *Nick Farley* stated that when he purchased the property, he had to put money in for a septic. He had a septic evaluation done and a site was chosen. He was under the impression that since this is a small lot, this was where it had to go. Since then, Jeff Schultz has installed the tank. The woods start right behind the holding tank. To move the structure back, they would need to remove a lot of trees. The trees currently screen this property from his neighbors.
- E. Board member *Filipovich* asked if there was a well on the property. *Nick Farley* stated there is a well up the hill from the house by the road. This is a sand point well and will need to be abandoned. A new well will need to be dug.
- F. Board member *Skraba* stated if the holding tank has been installed and lake water is used, a meter will need to be used. It would be harder to move the structure back if the holding tank is already hooked into the structure. *Nick Farley* stated the tank is not hooked up and there is no pipe yet.
- G. Board member *Pollock* asked about the terrain behind the current cabin and holding tank. *Nick Farley* stated the terrain starts moving uphill behind the holding tank where the trees start. The holding tank is up against the edge of the woods.
- H. Board member *Skraba* asked if the applicant could build another story on the existing structure. *Jenny Bourbonais* responded no as the structure is too close to the lake.

## **DECISION**

**Motion by Coombe/Skraba** to approve a variance for a new permanent foundation to be located within the shoreline setback and an addition to a nonconforming principal structure located at a reduced shoreline setback to exceed square footage allowed, based on the following facts and findings:

- A. Official Controls:
  - 1. St. Louis County Zoning Ordinance 62 allows up to a 200 square foot addition for nonconforming structures located in the shore impact zone. The applicant is requesting a 320 square foot addition.

2. The applicant is replacing a post foundation to a permanent, insulated concrete form foundation at a setback of approximately 40 feet from the shoreline.
3. The variance request is in harmony with the general purpose and intent of official controls. The applicant is trying to have the best reasonable use of their property without the destruction of the greater area, including the removal of trees and screening.

B. Practical Difficulty:

1. The dwelling would be allowed up to a 200 square foot addition through a performance standard permit.
2. The applicant has a permit for a holding tank, which has been installed in the ground. It would not be feasible to remove the holding tank and move it somewhere else on the property.

C. Essential Character of the Locality:

1. A similar variance request was approved on a neighboring parcel to allow an addition that exceeded maximum size allowed to a structure located 65 feet from the shoreline.
2. The variance requests will not alter the essential character of the locality.
3. The addition is going to the rear of the structure.
4. The applicant is asking for 320 square feet, which is slightly larger than what is allowed with a performance standard permit, which is 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. In the event that it is determined that the structure is not structurally sound to be added onto, a new structure would be allowed at a 100 foot setback from shoreline, meeting all other Ordinance requirements.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6272 – Jennifer Willoughby**

The third hearing item was for Jennifer Willoughby, property located in S18, T51N, R15W (Canosia). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2 and Section 3.4 to allow a replacement principal dwelling at a reduced property line setback and reduced shoreline setback, and Article IV, Section 4.3 D. (3) to allow a structure width facing the water to exceed 40 percent of the lot width if located within the shoreline setback.

*Donald Rigney*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 30 foot by 70 foot (total of 1,656 square feet) dwelling.
- B. The proposed dwelling will have a property line setback of 10 feet where 15 feet is required.



- C. The proposed dwelling will be located 55 feet from the shoreline where a shoreline setback of 75 feet is required.
- D. The proposed dwelling will replace a 24 foot by 20 foot (480 square foot) nonconforming dwelling.
- E. The proposed dwelling will have a structure width facing the lake of 60 percent where 40 percent is allowed.
- F. The structure will have a height of 24 feet where 25 feet is allowed.
- G. There is good vegetative screening from Shady Lane. There is little to no screening from neighboring properties and from Caribou Lake.
- H. There is very little elevation change throughout the property.
- I. A wetland delineation was done and a majority of the parcel is designated as wetlands.

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

A. Official Controls:

- 1. Caribou Lake is a General Development Lake which requires a shoreline setback of 75 feet; the proposed principal structure will be located at a shoreline setback of 55 feet.
- 2. The principal structure width facing the water will be 60 percent of the lot width where a maximum of 40 percent is allowed.
- 3. The required principal structure setback from property lines is 15 feet; the applicant's proposed principal structure will be 10 feet from property lines.
- 4. The parcel is a platted lot and a legal lot of record for permitting purposes.
- 5. The parcel is located in the Lakeshore Development Area on the Future Land Use Map found in the St. Louis County Comprehensive Land Use Plan. This area is intended for rural development and redevelopment adjacent to lakes. This includes single family residential uses in size, scale and intensity consistent with the county's developed lake shore area.
- 6. 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.
- 7. 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.
- 8. 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 applicant's lot is 50 feet in width.
- 2. The applicants parcel as well as all the parcels in the plat of Kehtel Tracts do not conform to current zoning requirements.
- 3. The plat of Kehtel Tracts was recorded in 1953 prior to the first zoning ordinance in St. Louis County.
- 4. The landowner has not clearly demonstrated why the variance is the only available option as there are alternatives.

5. Alternative: Reduce the structure width facing the lake to 24 feet which is the width of the existing dwelling. If the proposed dwelling were 24 feet in width and centered on the lot, then an 880 square foot replacement dwelling may be allowed with a performance standard permit.

C. Essential Character of the Locality:

1. The applicant is proposing to use the property as a year-round home. This area consists of year-round and seasonal residences.
2. This area consists of many long and narrow lots with principal structures that do not conform to the required property line setback.

D. Other Factors:

1. The proposed property line setback for the dwelling is consistent with the accessory structure property line setback for the Shoreland Multiple Use (SMU)-11 zone district.
2. The proposed property line setbacks are consistent with Zoning District 12.
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.

*Donald Rigney* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance as proposed for a principal dwelling at a reduced property line setback, reduced shoreline setback and to exceed the allowed structure width facing the lake include, but are not limited to:

1. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
2. The property line setback for the proposed principal dwelling shall be maximized to the greatest extent possible and shall be no less than 10 feet.
3. All St. Louis County On-Site Wastewater SSTS standards shall be followed.
4. The Wetland Conservation Act shall be followed.
5. 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.

*Jennifer Willoughby*, the applicant, 3998 Lavaque Road, Hermantown, stated they purchased this property in 2009. It was their dream to build a home on this property. After her husband died, she decided to move forward with the plan to live at the lake. While she would love a two-car attached garage, she could have a one car attached garage.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if the wetlands limit how far from the shoreline a structure could be built. Board member *Skraba* added that the structure could not be moved back because of the location of a holding tank.
- B. Board member *McKenzie* asked about a detached 24 foot by 40 foot recreational vehicle (RV) garage in the application. *Jennifer Willoughby* stated that this was an original plan before the wetland delineation was done.
- C. Board member *Coombe* asked if a condition could be added for the removal of the existing structure. *Donald Rigney* stated a condition could be added.
- D. Board member *Pollock* asked about staff's alternative to shorten the width of the structure to 24 feet instead of 30 feet to make it more conforming. *Jennifer Willoughby* stated having a 24 foot by 44 foot house would be harder to do. She wants to have room for her three sons. The shorter width is doable, but she would prefer to have a 30 foot wide structure.

## DECISION

**Motion by McKenzie/Skraba** to approve a variance for a replacement principal dwelling at a reduced property line setback, reduced shoreline setback and to exceed the allowed structure width facing the lake, based on the following facts and findings:

### A. Official Controls:

- 1. Caribou Lake is a General Development Lake which requires a shoreline setback of 75 feet; the proposed principal structure will be located at a shoreline setback of 55 feet.
- 2. The principal structure width facing the water will be 60 percent of the lot width where a maximum of 40 percent is allowed.
- 3. The required principal structure setback from property lines is 15 feet; the applicant's proposed principal structure will be 10 feet from property lines.
- 4. The parcel is a platted lot and a legal lot of record for permitting purposes.
- 5. The variance request is in harmony with the general purpose and intent of official controls. The official controls not only dictate standards such as shoreline setback, but also allow for growth, development and reasonable use of property which the applicant proposes when practical difficulty is cited.

### B. Practical Difficulty:

- 1. The applicant's lot is 50 feet in width.
- 2. The applicants parcel as well as all the parcels in the plat of Kehtel Tracts do not conform to current zoning requirements.
- 3. The plat of Kehtel Tracts was recorded in 1953 prior to the first zoning ordinance in St. Louis County.
- 4. The applicant proposes reduced property line setbacks and a reduced shoreline setback. To comply with property line setbacks the structure would be 20 feet in width. The applicant seeks to build a structure 30 feet in width, which is a more reasonable dimension.
- 5. The applicant's parcel has the most buildable part near the shoreline where the applicant's current structure now stands. Much of the parcel is otherwise wetlands. To move the structure to the required shoreline setback would place the rear of the structure in the wetland area.

C. Essential Character of the Locality:

1. The variance request will not alter the essential character of the locality.
2. Most of the lots near the applicant's lot are 50 feet in width and many are nonconforming.
3. The applicant is proposing to use the property as a year-round home. This area consists of year-round and seasonal residences.
4. This area consists of many long and narrow lots with principal structures that do not conform to the required property line setback.

D. Other Factors:

1. The east side of Caribou Lake near the applicant's property have more than 100 50-foot lots that were created in 1953, long before the creation of land use controls in St. Louis County. The result is there are many nonconforming structures on those lots.
2. There are two other lots near the applicant's property that appear to have 70 percent structure width facing the lake.

The following conditions shall apply:

1. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
2. The property line setback for the proposed principal dwelling shall be maximized to the greatest extent possible and shall be no less than 10 feet.
3. All St. Louis County On-Site Wastewater SSTS standards shall be followed.
4. The Wetland Conservation Act shall be followed.
5. 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.
6. Waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6273 – Donald King**

The fourth hearing item was for Donald King, property located in S19, T54N, R12W (Pequaywan). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.2, to allow two detached residential principal dwellings where one is allowed. *Donald Rigney*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to keep an existing 576 square foot principal dwelling in its current location and to construct a second 2,400 square foot principal dwelling.
- B. The existing principal dwelling is nonconforming due to both shoreline and bluff setbacks.
- C. The new dwelling is proposed in a conforming area per the applicant's site sketch.
- D. While the existing dwelling meets accessory dwelling standards in terms of size, a change in use of the existing dwelling to an accessory dwelling cannot be processed due to its nonconforming location.

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

A. Official Controls:

1. St. Louis County Zoning Ordinance 62, Article III, Section 3.2, states minimal dimensional standards for each district.
  - a. The subject parcel is zoned Residential (RES)-7. District 7 requires a minimum lot area of one acre and a minimum lot width of 150 feet per principal use or structure.
  - b. The subject parcel contains approximately 1.65 acres and 320 feet in lot width.
2. St. Louis County Zoning Ordinance 62, Article VI, Section 6.2, states that to have multiple principal dwellings on a single lot, there needs to be sufficient lot area per structure to equal the minimum dimensional standard required in Article III and St. Louis County sewage treatment standards are met, and the structures are placed so the property can be divided at a later date into conforming lots, without variance.
  - a. The subject parcel only contains enough acreage and width for one principal dwelling.
  - b. In the RES-7 zone district, two acres and 300 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. 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. 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 that would not require variance.
  - a. A land use permit can be submitted to move the existing dwelling to a conforming location, change the use of the structure to an accessory dwelling, and to permit after-the-fact structure alterations. This would allow the new, proposed dwelling to be reviewed and permitted as the only principal dwelling on the property assuming all other standards are met.
  - b. The applicants have been made aware of the alternative by staff.
2. While the property does contain bluff, there is approximately 0.67 acres of buildable area.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. Area around the subject parcel contains both seasonal and year-round residential use.
2. There have been no similar variances within the Cummings Beach Plat.

D. Other Factors:

1. Work on the existing dwelling has been completed without the benefit of permit.
  - a. A roof alteration, an 8 foot by 12 foot covered deck, and a 12 foot by 24 foot addition have been completed.
  - b. If the variance request is approved, the nonpermitted work may be resolved through an after-the-fact performance standard permit.
  - c. If the variance is denied, all current compliance issues can be resolved by applying for a land use permit to move the existing dwelling to a conforming location, changing its use to an accessory dwelling, and permit the after-the-fact structure alterations.
  - d. The after-the-fact structure alterations are not a part of the variance request.
2. This property had a previous after-the-fact land alteration compliance issue that was resolved in 2017.
3. All St. Louis County On-Site Wastewater SSTS standards will need to be met whether the variance is approved or denied.

*Donald Rigney* noted three items of correspondence: one from the applicant further explaining their project and one from Pequaywan Township in support of the variance. This correspondence was provided to the Board of Adjustment prior to the hearing. A third item was received from *Stephanie Teek* neither for nor against the variance request after the deadline and was handed out for the Board of Adjustment to review. The Board of Adjustment accepted the correspondence into the record.

**STAFF RECOMMENDATION**

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

1. The existing 24 foot by 24 foot dwelling shall not be expanded. Any replacement of the existing 24 foot by 24 foot dwelling shall require the replacement structure to be permitted as an accessory dwelling and meet all applicable standards, including being placed in a conforming location.
2. An application shall be submitted to bring property into compliance prior to the land use permit being issued for the second principal dwelling.
3. St. Louis County On-Site Wastewater SSTS standards shall be followed.
4. All other county, local, state and federal regulations shall be met.

*Michael Van Kessel*, 4114 Meadow Parkway, Hermantown, MN, was present in person on behalf of the applicants. *Laurie King* was also present virtually.

*Laurie King*, the applicant, 8896 West Branch Road, Duluth, MN, stated that they were confused by the second point of staff's facts and findings. Staff had determined their property was 1.65 acres in size. She had included correspondence from Arrowhead Abstract title received when they purchased the property that show they have 425 feet of lakeshore, not 415 feet as stated by staff. The calculations also show 1.88 acres of property, not 1.65 acres as stated by staff. They were told when they purchased the property and by the abstract that they had 2.0 acres.

Their current structure has been there at least 50 years. It is hardly visible from the lake. There is no septic or water in the building. To move the structure would be an expensive hardship and it could damage the top of the hill as well as several large, established trees would have to be removed. They purchased this property in 2012 and they currently live on the lake across from this property. They are selling their current home now as there are 27 stairs from the house to the garage and they both have health issues. Building on this property, they can drive right to the door. There are no stairs. If they were to move the existing structure back, they would lose the driveway to their proposed dwelling, which would defeat the purpose for their health reasons.

She questioned the point in the staff report that Cummings Beach Plat not having any variances. As many of their neighbors have bunkhouses or accessory dwellings around their property, she was not sure how they were put in without a variance. Neighbors have told them that they have variances.

They did remove a 1954 40-foot trailer off the back of the existing structure. The existing cabin was a 12 foot by 24 foot structure on the lake side with a 40-foot trailer on the back and an 8 foot by 8 foot structure addition. This was called a bathroom, although there was no water and only had a old bioilet toilet. The roofs were all leaking and rotting, the floors were rotting, rodents and other animals had taken up residency. Since they were not doing an actual build and they had left the entire front of the structure as is, they did not think they needed permits to do the work. This was their mistake. They did roof alterations because the roofs were leaking so badly and they enclosed the back of the 12 foot by 24 foot structure. They downsized the size of the cabin from 752 square feet to 576 square feet. The existing cabin will be used as a bunkhouse for their grandkids and as a workshop and hobby room. They will only have one bedroom in the new dwelling and they will use the existing dwelling for additional workspace.

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

The Board of Adjustment discussed the following:

- A. Board member *Pollock* asked about the after-the-fact land alteration resolved in 2017. *Donald Rigney* stated there was an access path that staff worked with the applicant to bring into compliance.
- B. Board member *Skraba* stated the applicant has been forthwith about the use of the existing structure. There will be instances where a cabin should be moved back. However, this structure can hardly be seen from the lake.
- C. Board member *Werschay* stated she believed the applicants in that they did not realize a permit was needed for their structure alterations and the after-the-fact building was unintentional.
- D. Board member *McKenzie* stated he is troubled by the fact that there was a 2017 after-the-fact land alteration and the applicants did not consider that what they were doing now needed a land use permit.
- E. Board member *McKenzie* asked how this existing structure is classified as a dwelling. *Donald Rigney* stated this structure started out as a dwelling. Ordinance 62 states that the use of a structure can be changed, but to change the structure use must meet all ordinance standards. Although this structure may meet the definition of an accessory dwelling by size, it does not conform to the required setbacks and the use of the structure cannot change.

The structure would need to be moved to a conforming setback and then a change in use would be allowed.

- F. Board member *Pollock* stated that while this existing structure is defined as a dwelling, what can be done to make it an accessory dwelling so that a variance for a second principal dwelling is not required. *Jenny Bourbonais* stated the structure needs to be moved to a conforming setback at which point it could be considered as an accessory dwelling with a change in use permit. The applicants could still build their new principal dwelling at a conforming location. The location of the existing dwelling is the reason why this structure cannot become an accessory dwelling.
- G. Board member *Pollock* stated he could not support two principal residences on this property. He also does not feel a variance should be necessary when work was already done on the existing structure without permits. Board member *Werschay* explained that the applicants removed a trailer from the existing residence and then added back in the square footage they had lost when the trailer was removed. The structure is smaller now than it would have been because the mobile home/trailer was removed. *Jenny Bourbonais* stated that this work was done without permits. No work has been done on the new principal dwelling.
- H. Board member *Skraba* stated that the 24 foot by 24 foot structure has no running water or septic inside of it. He asked if there is even a bedroom inside of the structure.
- I. Board member *Werschay* asked if the Board of Adjustment could add a condition that no water or septic can go in the existing structure. *Jenny Bourbonais* responded that the Board could add this as a condition.
- J. Board member *Skraba* asked if the applicant could have two principal dwellings if their property was 2 acres in size. *Jenny Bourbonais* stated the existing structure is nonconforming and the proposed dwelling will be in a conforming location.
- K. Board member *Filipovich* stated that according to current Assessor's records, this is a 456 square foot hunting shack. *Jenny Bourbonais* stated that a hunting shack is classified as a dwelling.
- L. Board member *McKenzie* asked if the applicants would need an after-the-fact permit for additions and alterations made to the existing structure. *Jenny Bourbonais* stated that the applicants would need an after-the-fact performance standard permit for the work that has been done. No variance would be required for the work. This variance is to allow two principal dwellings.
- M. Board member *Coombe* asked how many accessory structures would be allowed on this property. *Jenny Bourbonais* stated that there would be no set number limit of accessory structures allowed as long as they met all setback requirements.
- N. Board member *Coombe* asked staff's proposed condition one: if the 24 foot by 24 foot structure would need to be built at a conforming setback only if it is destroyed. *Jenny Bourbonais* stated this condition would be in effect if the 24 foot by 24 foot structure is replaced at all.
- O. Board member *Coombe* stated he is concerned about the existing structure being used as a short term rental unit. *Jenny Bourbonais* stated the whole property would need to get a permit for a short term rental. The existing cabin cannot be utilized as a standalone rental unit. St. Louis County has no regulations for a long-term rental.



- P. Board member *McKenzie* asked if the applicants would be able to proceed with their new second dwelling regardless of this variance hearing. *Jenny Bourbonais* stated they could not because there is already a nonconforming dwelling on the property.
- Q. Board member *Skraba* clarified that if this variance gets approved, the applicants will still need an after-the-fact performance standard permit for the addition and alteration work done on the existing cabin. *Jenny Bourbonais* stated that if a variance is not approved, they would still need to bring the property into compliance. They would need to move the existing cabin if they wanted their proposed second dwelling.

## **FIRST MOTION**

**Motion by Coombe/Skraba** to approve a variance for a second principal dwelling where one is allowed, 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 applicant is asking for a variance for a second principal dwelling. This is a large lot with very good screening.

B. Practical Difficulty:

- 1. There are alternatives that would not require variance.
  - a. A land use permit can be submitted to move the existing dwelling to a conforming location, change the use of the structure to an accessory dwelling, and to permit after-the-fact structure alterations. This would allow the new proposed dwelling to be reviewed and permitted as the only principal dwelling on the property assuming all other standards are met.
  - b. The applicants have been made aware of the alternative by staff.
- 2. While the property does contain bluff, there is approximately 0.67 acres of buildable area.
- 3. The applicant wants to keep and use an existing 24 foot by 24 foot structure.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area. Area around the subject parcel contains both seasonal and year-round residential use.
- 2. The variance will not alter the essential character of the locality.

The following conditions shall apply:

- 1. The existing 24 foot by 24 foot dwelling shall not be expanded. Any replacement of the existing 24 foot by 24 foot dwelling shall require the replacement structure to be permitted as an accessory dwelling and meet all applicable standards, including being placed in a conforming location.
- 2. An application shall be submitted to bring property into compliance prior to the land use permit being issued for the second principal dwelling.
- 3. St. Louis County On-Site Wastewater SSTS standards shall be followed.
- 4. All other county, local, state and federal regulations shall be met.

**In Favor:** Coombe, Skraba, Werschay - 3

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

**DISCUSSION ON FIRST MOTION**

The Board of Adjustment discussed the following:

- A. Board member *Skraba* stated this is unique because the property is on a point. What they do with the building only affects the applicants because the structure is screened from neighboring properties and from the lake. The applicants are only impeding their own view.
- B. Board member *Pollock* stated that if the motion was made saying the existing cabin would be an accessory structure, he would accept that. However, because this is a second residence, he could not allow this. Two residences should not be allowed on this one property. *Jenny Bourbonais* asked that if the existing dwelling should be allowed to remain as an accessory structure, would it not be allowed living quarters and would be considered a garage. Board member *Pollock* stated that this structure should not have living quarters. It could be an office or a workspace.
- C. Board member *Coombe* stated he will keep the motion as is, to allow two principal structures on this property.
- D. Board member *Pollock* asked if a bunkhouse is considered an accessory structure. *Jenny Bourbonais* stated a bunkhouse is considered an accessory dwelling. The existing dwelling has been a dwelling as this is its current and historical use. An accessory dwelling is not allowed to be in the location where the existing dwelling is. This made the existing dwelling a nonconforming principal structure, as it was the only principal structure on the property. The applicants are now applying for a new principal structure. There is no way the Board of Adjustment can change the use of the existing structure from a dwelling to an accessory structure based on definition. The existing structure must be considered a principal dwelling in its present location.
- E. *Jenny Bourbonais* defined an accessory dwelling as a dwelling that is an accessory to the principal structure. The definition is: a structure used as a dwelling unit that may contain sleeping spaces, kitchen facilities and/or bathroom facilities, in addition to those provided in the principal structure. This structure is limited to a certain size and must meet certain requirements like location on the property. The Board cannot change the use of one type of structure to another type of structure if the structure is already nonconforming. At a conforming location, there would be no variance required. They would be allowed an accessory dwelling and a principal dwelling.
- F. Board member *Pollock* asked why the Board cannot change the use of the existing structure from a principal dwelling to an accessory dwelling. *Jenny Bourbonais* stated that there is language in the ordinance that prevents this from happening. The existing, principal dwelling is nonconforming and a change in use to an accessory dwelling is not allowed at its current location.
- G. Board member *Pollock* asked if denying the variance would allow for an accessory dwelling. *Jenny Bourbonais* stated the only way this existing structure can be allowed as an accessory dwelling is to move the structure to a conforming setback. The other alternative is the structure could be entirely removed.

**SECOND MOTION**

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

**A. Official Controls:**

1. St. Louis County Zoning Ordinance 62, Article III, Section 3.2, states minimal dimensional standards for each district.
  - a. The subject parcel is zoned Residential (RES)-7. District 7 requires a minimum lot area of one acre and a minimum lot width of 150 feet per principal use or structure.
  - b. The subject parcel contains approximately 1.65 acres and 320 feet in lot width.
2. St. Louis County Zoning Ordinance 62, Article VI, Section 6.2, states that to have multiple principal dwellings on a single lot, there needs to be sufficient lot area per structure to equal the minimum dimensional standard required in Article III and St. Louis County sewage treatment standards are met, and the structures are placed so the property can be divided at a later date into conforming lots, without variance.
  - a. The subject parcel only contains enough acreage and width for one principal dwelling.
  - b. In the RES-7 zone district, two acres and 300 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. 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. 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.
6. The variance request is not in harmony with the general purpose and intent of official controls.

**B. Practical Difficulty:**

1. There are alternatives that would not require variance.
  - a. A land use permit can be submitted to move the existing dwelling to a conforming location, change the use of the structure to an accessory dwelling, and to permit after-the-fact structure alterations. This would allow the new proposed dwelling to be reviewed and permitted as the only principal dwelling on the property assuming all other standards are met.
  - b. The applicants have been made aware of the alternative by staff.
2. While the property does contain bluff, there is approximately 0.67 acres of buildable area.
3. Practical difficulty has not been demonstrated in complying with the official controls. The existing structure can be moved and brought into compliance with official controls.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. Area around the subject parcel contains both seasonal and year-round residential use.
2. There have been no similar variances within the Cummings Beach Plat.
3. The variance could alter the essential character of the locality.

D. Other Factors:

1. Work on the existing dwelling has been completed without the benefit of permit.
  - a. A roof alteration, an 8 foot by 12 foot covered deck, and a 12 foot by 24 foot addition have been completed.
  - b. If the variance request is approved, the nonpermitted work may be resolved through an after-the-fact performance standard permit.
  - c. If the variance is denied, all current compliance issues can be resolved by applying for a land use permit to move the existing dwelling to a conforming location, changing its use to an accessory dwelling, and permit the after-the-fact structure alterations.
  - d. The after-the-fact structure alterations are not a part of the variance request.
2. This property had a previous after-the-fact land alteration compliance issue that was resolved in 2017.
3. All St. Louis County On-Site Wastewater SSTS standards will need to be met whether the variance is approved or denied.
4. There are alternatives available to the applicant that would bring the property into compliance and allow a new principal dwelling to be built.

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

**Opposed:** Coombe, Skraba, Werschay - 3

**Motion failed 3-3**  
**Variance is denied**

**Motion to adjourn by Skraba. The meeting was adjourned at 1:40 p.m.**