

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, JULY 15, 2021.

9:00 AM – 12:42 PM

Board of Adjustment members in attendance: David Anderson, Alternate
Steve Filipovich
James McKenzie
Dave Pollock
Roger Skraba, Vice Chair
Ray Svatos

Board of Adjustment members absent: Diana Werschay

Also present: Thomas Stanley, St. Louis County Attorney's Office,
Matthew Johnson, Director of St. Louis County Planning and Community Development,
Darren Jablonsky, Deputy Director of St. Louis County Planning and Community Development
(Interim Director in 2020)

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

NEW BUSINESS:

- A. Gary Demro, S23, T62N, R16W (Greenwood)
- B. Travis Leinonen, S6, T62N, R16W (Greenwood)
- C. Toivola Fire Department, S18, T54N, R19W (Toivola)
- D. Martin Breaker, S15, T62N, R13W (Morse)

NEW BUSINESS:

Case 6266 – Gary Demro

The first hearing item was for Gary Demro, property located in S23, T62N, R16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.10 B., to allow a boathouse to exceed allowable size and width standards. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to remove an existing 504 square foot boathouse and replace with a boathouse that is 1,030 square feet in size and 35 feet in width facing the lake.
- B. Zoning Ordinance 62 limits boathouses to 520 square feet in size and 20 feet in width facing the lake.
- C. The parcel has good screening from the road and neighboring properties.
- D. The parcel has an approximate elevation change of 18 feet from lake to back of lot.

Stephen Erickson reviewed staff facts and findings as follows:

- A. Official Controls:

1. Zoning Ordinance 62 and State Shoreland Rules limit the size of boathouses and other water oriented accessory structures. Lake Vermilion is over 5,000 acres in size, allowing property owners to have a boathouse of 520 square feet in size.
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 existing boathouse is less than 520 square feet and 20 feet in width.
2. There are alternatives that do not require a variance:
 - a. The existing boathouse could be removed and reconstructed to ordinance requirements.
 - b. The applicant has two platted lots; each lot would be allowed a boathouse that conforms to boathouse requirements.

C. Essential Character of the Locality:

1. Greenwood Township approved a variance for an oversized boathouse (24 foot by 26 foot) on a nearby parcel.

D. Other Factors:

1. The applicant has not met the burden of demonstrating practical difficulty to justify granting a variance.
2. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

Stephen Erickson noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a boathouse 1,030 square feet in size and 35 feet in width to exceed allowable size and width standards 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. Existing shoreline screening shall be maintained.
4. All FEMA and St. Louis County Floodplain Management Ordinance 43 standards shall be met.
5. All SSTS requirements shall be met.

Gary Demro, the applicant, stated he does not want to build two boathouses. It would be obtrusive on the shoreline with extensive excavation. The land on the right side is also lower. With his wife's

ill health, it would be easier to utilize one boathouse to get her down to the pontoon and out on the lake. There would not be any reason to have a boathouse on the right side. The A-frame structure and boathouse have been removed. It would not have been economically feasible to repair the existing boathouse because of the truss system and the floor not being level. The existing boathouse was 45 to 50 feet from the shoreline and built up in the air.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked how far the boathouse would be from the shoreline. *Stephen Erickson* stated 20 to 25 feet.
- B. Board member *Svatos* asked if the applicant could have two boathouses. *Stephen Erickson* stated the applicant could have two boathouses with one on each lot. *Jenny Bourbonais* added that they could not be right next to each other.
- C. Board member *Pollock* asked what the shoreline setback is for a boathouse. *Stephen Erickson* stated 10 feet to 25 feet. *Jenny Bourbonais* stated that beyond 25 feet, it would be an accessory structure and that would need to meet the 75 foot shoreline setback. A water oriented accessory structure is a smaller structure and may be allowed at a shoreline setback between 10 and 25 feet.
- D. Board member *Skraba* added that two boathouses together would equal 1,040 square feet. The applicant is requesting 1,030 square feet.
- E. Board member *McKenzie* asked how the applicant plans to access the boathouse. *Gary Demro* stated that he would need to use a stairwell to get his wife down to a boathouse located on the right side. The left side has a gradual slope to the lake. The right side is more of a hill that drops 10 to 12 feet straight down.
- F. Board member *Pollock* asked if there is a dock in front of the boathouse. *Gary Demro* stated that there is not a dock currently, but there will be. He will be able to get his wife down to the boathouse and onto the dock.
- G. Board member *McKenzie* asked if there is currently a dwelling on the property. *Gary Demro* stated that he has not constructed a dwelling yet but plans to submit for a land use permit and build later. He lives down across from Everett Bay Lodge.
- H. Board member *Filipovich* asked if the boathouse will be measured from the shoreline where it has been cut inward. *Gary Demro* stated that this was done by the person who originally built the boathouse. He has been working to restore the shoreline. *Jenny Bourbonais* stated that this would need to be dealt with by the Department of Natural Resources (DNR).

DECISION

Motion by Svatos/Pollock to approve a variance for a boathouse 1,030 square feet in size and 35 feet in width to exceed allowable size and width standards, 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 has been working to restore the existing shoreline.

2. The applicant will likely make the property look better than it has been in a long time in cleaning up the shoreline.
3. The lots could be combined. No further boathouses would be allowed. The applicant could have two boathouses. The applicant is requesting one large boathouse 35 feet in width facing the lake.

B. Practical Difficulty:

1. The health, welfare, and safety of the applicant should be taken into account for access to the lake.
2. A second boathouse on the other parcel would require extensive excavation.

C. Essential Character of the Locality:

1. The variance will not alter the essential character of the locality.
2. Greenwood Township approved a variance for an oversized boathouse (24 foot by 26 foot) on a nearby parcel.

D. Other Factor:

1. This is a unique situation that stands on its own.

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. Existing shoreline screening shall be maintained.
4. All FEMA and St. Louis County Floodplain Management Ordinance 43 standards shall be met.
5. All SSTS requirements shall be met.
6. The two lots shall be combined and no further boathouses shall be allowed.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Svatos - 6

Opposed: None - 0

Motion carried 6-0

Case 6267 – Travis Leinonen

The second hearing item was for Travis Leinonen, property located in S6, T62N, R16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2 and Section 3.4, to allow a new permanent foundation to be located within a shoreline and property line setback and St. Louis County Zoning Ordinance 62, Article IV, Section 4.3, to allow a second addition to a nonconforming principal structure where one is allowed without variance, and to allow principal structure width facing the water to exceed the maximum allowed on a principal structure located within the shoreline setback.

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

- A. The applicant is proposing to replace the existing pier foundation with a new insulated concrete form foundation. The new foundation is proposed in the same location as the existing structure.

- B. The existing principal dwelling is located within the shore impact zone, approximately 44 feet from Lake Vermilion and 10 feet from the east property line.
- C. The applicant has stated the new foundation is to remedy the existing foundation heaving and to alleviate frozen pipe issues.
- D. The 10 foot by 20 foot porch addition is proposed on a portion of the existing deck and results in the structure width facing the water to exceed the 40 percent maximum that is allowed on a principal dwelling located within a shoreline setback.
- E. The proposed addition does not decrease the existing shoreline setback.
- F. The applicant states a max height of 20 feet as a result of the proposed work.

Stephen Erickson reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62, Article III, Section 3.2, states property line setback standards for each zone district. The subject parcel is zoned Residential (RES)-9 which requires a 15-foot property line setback for principal structures.
 - a. The current structure has a 10 foot property line setback.
 - b. The new foundation is proposed to be in same location as the existing structure.
- 2. Zoning Ordinance 62, Article III, Section 3.4, states General Development Lakes have a minimum setback of 75 feet and defines the shore impact zone as the area that is within 50 feet of the lake. Lake Vermilion is classified as a General Development Lake.
 - a. The current principal dwelling is located approximately 44 feet from Lake Vermilion, which is within the shore impact zone.
 - b. The new foundation is proposed to be in the same location as the existing structure.
- 3. Zoning Ordinance 62, Article IV, Section 4.3, states standards for nonconforming structures. This section states criteria for additions including that structure width facing the water shall not exceed 40 percent of the lot width, if the structure is within the shore impact zone.
 - a. The existing principal structure does not meet the criteria for an addition without variance as the structure has previously received an addition and the structure does not meet a property line setback while being located within the shore impact zone.
 - b. The existing principal structure is within the shore impact zone with a 36 percent structure width. The proposed addition adds 10 feet in width to the structure which increases the structure width facing the water to 46 percent of the total lot width.
- 4. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 5. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

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

B. Practical Difficulty:

1. There are no unique physical circumstances of the property.
2. Any proposed addition to the existing principal dwelling would require variance.
 - a. Variance is due to a previous addition to the structure and,
 - b. The structure not meeting a property line setback while within the shore impact zone.
3. The property does contain area that conforms to all setback requirements.
 - a. A new permanent foundation could be placed in a location that meets all setback requirements and be permitted through a land use permit without variance.
 - b. The existing structure, including the proposed addition, may be allowed without variance if the structure was moved to a conforming location.
4. Sufficient information has not been provided at the time of this report to use area for a replacement septic system as practical difficulty.
5. The property has reasonable use as currently developed.

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 are two similar variances within the Fraser Beach Plat that have been approved:
 - a. Lot 10 was approved an addition to a principal dwelling located 31 feet from the lake (1992).
 - b. Lot 6 was approved a new dwelling to be located 64 feet from the lake with a structure width facing the water of 62 percent of the lot width (1999).
 - c. Both above variances were approved when Greenwood Township administered their own zoning.

D. Other Factors:

1. A permit for an addition to the existing dwelling was issued in 2002 by Greenwood Township.
 - a. This permit was issued when Greenwood Township administered their own zoning.
2. If approved, all St. Louis County On-Site Wastewater SSTS standards will need to be met.

Stephen Erickson noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variance as proposed for a new permanent foundation, a second addition, and to exceed 40 percent structure width facing the water, all on a principal dwelling that is located 44 feet from the shoreline of Lake Vermilion and 10 feet from the east property line include, but are not limited to:

1. The structure addition shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
2. The height of the structure shall not exceed 20 feet.
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 within two years from the issuance of a land use permit.
4. Erosion control practices shall be implemented to mitigate potential impacts on lake during the duration of the project.
5. The stormwater runoff from the proposed addition shall not discharge directly into the lake or on adjacent lots.
6. In the event that it is determined that the structure is not structurally sound to be added onto or moved, a new structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
7. St. Louis County On-Site Wastewater SSTS standards shall be followed. Operating permit shall be renewed or a replacement system permit shall be issued prior to a land use permit being issued.

Travis Leinonen, the applicant and contractor, stated there is a proposed garage on the site sketch behind the existing dwelling. Jim Orton, a licensed septic designer, has been out to the site and he looked at areas for a septic. At the time of the application, the information is still forthcoming. A design cannot be released by the system until a design is approved by the County. The septic will go behind the cabin adjacent to the roadway. The septic will need a lift station.

They are also looking to replace the pier foundation with a permanent foundation. This is an older seasonal cabin that the landowner lives in year-round. Only the 10 foot by 20 foot porch would change the footprint of the structure. He discussed moving the structure back to the 75 foot setback, but they determined there would be more damage to the lot to move the three-level cabin back. This is not a three-story house, but there are different levels to step down or step up into. They would lose screening and the feel of the lot would change.

The landowner bought the property after Greenwood had issued a permit for an addition. When talking to staff, they could have done an addition if the original 2002 addition had not been done. This was not the addition that the landowner would have preferred. Whoever had built the addition had not been looking at the long-term value of the home or what was best for the site. There is moisture that comes in along the corner. What they create will last on this property.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked if the permit issued by Greenwood Township was for work that has been done. *Stephen Erickson* stated that the addition was completed.
- B. Board member *Pollock* stated that there is room on the property for the applicant to build what they want at the 75 foot shoreline setback.
- C. Board member *Pollock* asked if the proposed addition would include a basement underneath it.

- D. Board member *McKenzie* asked if the septic system factors into this. *Jenny Bourbonais* stated there is a holding tank on the property. There has been no information provided on this holding tank yet. The internal record review with On-Site Wastewater Division staff stated that the operating permit expired in 2007 and an inspection of the system is required.
- E. Board member *Skraba* asked if the new septic would be located where the proposed garage would be located. *Travis Leinonen* stated it would be located in the corner of the property behind the attached garage. There was ledgerrock at the location of the holding tank and the system would need to be moved back. *Jenny Bourbonais* stated the septic would need to be out of the road right-of-way, but it could be located in the lower right part of the property.
- F. Board member *Pollock* asked if there would be a foundation underneath the porch. *Travis Leinonen* stated that the porch is currently on piers. However, the piers do not meet the building code as they do not go below the frost line. He would propose sonotube that would go below the frost line, but he would not add a basement under there.
- G. Board member *Skraba* asked what the grade is as far as topography goes. Board member *McKenzie* stated he drove past this house and there is a 20 foot elevation drop. *Travis Leinonen* stated he talked to a Duluth contractor who would be lifting the structure to place the new foundation that if they were to move the dwelling, it would be significant. They would need to take down the trees around and behind the house. There would be a large area of impact to move the house than to just lift it up.
- H. Board member *McKenzie* asked how ledgerrock would affect this project. *Travis Leinonen* stated that ledgerrock makes it straightforward to get a footing that would meet code as it could be pinned down to ledgerrock. There is ledgerrock and there are boulders that were found.
- I. Board member *McKenzie* asked if this is intended to be a full basement or just footings on the ledgerrock. *Travis Leinonen* stated they requested to have footings on ledgerrock. They do not intend to put a basement. They want to keep the impact to the site as minimal as possible. They need a foundation that is up to code to prevent heaving and the structure moving.
- J. Board member *Svatos* asked if the shoreline has been altered. *Edward Sparks* stated the shoreline was altered before he purchased the property in 2005. It might have been an area that was cleared out for kids to play in but is otherwise rock.
- K. Board member *Skraba* asked if the neighborhood is all up on this hill. *Edward Sparks* stated yes. The neighbors are all on this hill are on a sheer drop-off. There are areas along here that are more level but it is unknown if there was excavation to get down to that level.
- L. Board member *Skraba* stated that the road right-of-way takes away usable land.
- M. Board member *Skraba* asked what the existing height of the structure is. *Travis Leinonen* stated the structure at the highest point is about 18.5 feet and it the peak of the gabled roof on the right side.
- N. Board member *McKenzie* asked if the question of pressurized water was answered no in the application because there was no septic. *Travis Leinonen* stated there is pressurized water in the cabin, but the addition would not have any pressurized water. The addition will just be a porch.
- O. Board member *McKenzie* stated that looking at the County Land Explorer, several structures here do not meet setback standards. Board member *Skraba* stated the hill is an impediment. Board member *Pollock* stated that the landowners could have wanted to

expand, and they may have had to bring their properties into compliance and build to meet setbacks. If there is the ability to move the structure to meet the setbacks, the landowner should do it. Board member *Skraba* added the contractor had said moving the structure would be difficult. The applicant's request is not unreasonable. Board member *Pollock* said the alternative is to build a new structure.

- P. Board member *Pollock* stated he could support a foundation replacement because of the health and safety factor. He cannot support a variance for a new addition.

DECISION

Motion by McKenzie/Svatos to approve a variance for a new permanent foundation, a second addition, and to exceed 40 percent structure width facing the water, all on a principal dwelling that is located 44 feet from the shoreline of Lake Vermilion and 10 feet from the east property line, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.2, states property line setback standards for each zone district. The subject parcel is zoned Residential (RES)-9 which requires a 15-foot property line setback for principal structures.
 - a. The current structure has a 10-foot property line setback.
 - b. The new foundation is proposed to be in same location as the existing structure.
2. Zoning Ordinance 62, Article III, Section 3.4, states General Development Lakes have a minimum setback of 75 feet and defines the shore impact zone as the area that is within 50 feet of the lake. Lake Vermilion is classified as a General Development Lake.
 - a. The current principal dwelling is located approximately 44 feet from Lake Vermilion, which is within the shore impact zone.
 - b. The new foundation is proposed to be in the same location as the existing structure.
3. Zoning Ordinance 62, Article IV, Section 4.3, states standards for nonconforming structures. This section states criteria for additions including that structure width facing the water shall not exceed 40 percent of the lot width, if the structure is within the shore impact zone.
 - a. The existing principal structure does not meet the criteria for an addition without variance as the structure has previously received an addition and the structure does not meet a property line setback while being located within the shore impact zone.
 - b. The existing principal structure is within the shore impact zone with a 36 percent structure width. The proposed addition adds 10 feet in width to the structure which increases the structure width facing the water to 46 percent of the total lot width.
4. The variance request is in harmony with the general purpose and intent of official controls. The applicant is seeking appropriate and reasonable use of the landowner's property.

B. Practical Difficulty:

1. The SSTS may not be a factor in this case with its likely location not limiting where a structure may be placed.

2. There is a steep incline and topography located on the property. If the structure were moved back, it could cause the destruction of the lot.

C. Essential Character of the Locality:

1. The variance will not alter the essential character of the locality. There are other cabins in the neighborhood that have a reduced shoreline setback including 30 feet or less.
2. The applicant is not proposing a new use to the area. Area around the subject parcel contains both seasonal and year-round residential use.
3. There are two similar variances within the Fraser Beach Plat that have been approved:
 - a. Lot 10 was approved an addition to a principal dwelling located 31 feet from the lake (1992).
 - b. Lot 6 was approved a new dwelling to be located 64 feet from the lake with a structure width facing the water of 62 percent of the lot width (1999).
 - c. Both above variances were approved when Greenwood Township administered their own zoning.

D. Other Factors:

1. A permit for an addition to the existing dwelling was issued in 2002 by Greenwood Township.
 - a. This permit was issued when Greenwood Township administered their own zoning.
2. If approved, all St. Louis County On-Site Wastewater SSTS standards will need to be met.
3. The permit approved by Greenwood Township created a structure that had a 10-foot property line setback where a 15-foot property line setback is required.
4. The addition over the deck would be squarely in the middle of the lot and not create a setback violation.

The following conditions shall apply:

1. The structure addition shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
2. The height of the structure shall not exceed 20 feet.
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 within two years from the issuance of a land use permit.
4. Erosion control practices shall be implemented to mitigate potential impacts on lake during the duration of the project.
5. The stormwater runoff from the proposed addition shall not discharge directly into the lake or on adjacent lots.
6. In the event that it is determined that the structure is not structurally sound to be added onto or moved, a new structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
7. St. Louis County On-Site Wastewater SSTS standards shall be followed. Operating permit shall be renewed, or a replacement system permit shall be issued prior to a land use permit being issued.

In Favor: Anderson, Filipovich, McKenzie, Skraba, Svatos - 5

Opposed: Pollock - 1

Motion carried 5-1

Case 6268 – Toivola Fire Department

The third hearing item was for the Toivola Fire Department, property located in S18, T54N, R19W (Toivola). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2 and Section 3.7, to allow a principal structure at a reduced property line setback, where a minimum 50 feet is required, to exceed max lot coverage where 10 percent is allowed, to allow a principal structure at a reduced road centerline setback where a minimum 85 feet is required and a reduced road right-of-way setback where a minimum 35 feet is required. *Donald Rigney*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a new fire hall located 20 feet from a property line where 50 feet is required.
- B. The new fire hall will be located 70 feet from the centerline of Highway 5 where 85 feet is required and located approximately 20 feet from the right-of-way of Highway 5 where 35 feet is required.
- C. The proposed impervious surface on the lot will be approximately 30 percent where 10 percent is allowed.
- D. The existing fire hall will either be removed after completion of the new fire hall or will remain as an accessory structure.

Donald Rigney reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62 states that the required setback from a property line for a principal structure in a Forest and Agriculture Management (FAM)-3 district is 50 feet; the applicant is requesting a reduced property line setback of 20 feet.
 2. Zoning Ordinance 62 states that the max lot coverage in a FAM-3 district is 10 percent; the applicant is requesting to exceed 10 percent lot coverage.
 3. Zoning Ordinance 62 states that the required setback from the centerline of a collector road is 85 feet; the applicant is requesting a reduced centerline setback of 70 feet.
 4. Zoning Ordinance 62 states that the required right-of-way setback of a collector road is 35 feet; the applicant is requesting a reduced right-of-way setback of approximately 20 feet.
 5. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 6. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.
 7. Goal PS-1 of the St. Louis County Comprehensive Land Use Plan is to have land use, transportation, utilities, and emergency services planning promote the highest level of safety for St. Louis County residents.

8. Objective PS-1.1 of the St. Louis County Comprehensive Land Use Plan is to ensure that the new development and redevelopment maintains or improves upon the planning area's emergency response capabilities.

B. Practical Difficulty:

1. There are no unique circumstances of the property that the owner did not create.
2. The subject parcels are in a FAM-3 zone district which requires a minimum of 9 acres. The two parcels combined are 1.58 acres.
3. The nonconforming lot size, shape of the parcel and required setbacks of the zone district, complicates development at a conforming location.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The parcel has historically been utilized as the location of the Toivola Volunteer Fire Department.

D. Other Factors:

1. Toivola Volunteer Fire Department has been established in this location since 1971.
2. There has not been sufficient information provided by the applicant to accurately determine the total proposed impervious surface.
 - a. Existing impervious surface is estimated at approximately 25 percent, which already exceeds max impervious surface allowed.
 - b. Based on information provided, it is estimated that the proposed impervious surface may be approximately 30 percent.
3. Applicant has not indicated whether the existing structure will remain or be removed upon the completion of the new structure.
 - a. Applicant indicated that the existing septic system will be used for the new structure.
 - b. All SSTS standards shall be met whether one or both structures are serviced by the existing septic system.
4. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
5. 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 for a principal structure at a reduced property line setback, where a minimum 50 feet is required, to exceed max lot coverage where 10 percent is allowed, to allow a principal structure at a reduced road centerline setback where 85 feet is required and a reduced road right-of-way setback where 35 feet is required, as proposed include, but are not limited to:

1. A stormwater runoff plan shall be developed to ensure snow and rain runoff does not discharge directly into the stream or wetlands and shall be submitted and approved by the county prior to the issuance of a land use permit.
2. Land alteration and stormwater standards shall be met.
3. All FEMA and St. Louis County Floodplain Management Ordinance 43 standards shall be met.
4. St. Louis County On-Site Wastewater SSTS standards shall be followed.
5. All other local, county, state and federal regulations shall be followed.

Christopher Villella, the applicant, stated there is a stop sign on Arkola Road to get onto Highway 5. They have confirmation that the piece of land between the two parcels owned by a private party will be given to the Toivola Volunteer Fire Department. They will not require a property line setback, but they will still need road setback variances. The fire department was built in 1971 and it has been outgrown. The fire trucks barely fit inside the fire station. They were able to obtain grant money through Iron Range Resources and Rehabilitation (IRRR) to build a new fire station. They are looking to advance their fire department and utilize it for their township. They are proposing their entrance doors will face Arkola Road so fire trucks and tenders will enter from Arkola Road. There will be an access to get to the rear of the building from Highway 5.

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

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked how large the proposed fire hall will be. *Donald Rigney* stated it will be 65 feet by 65 feet.
- B. Board member *McKenzie* asked about storage for contaminated gear and if space would be required for it. *Christopher Villella* stated he did not believe so.
- C. Board member *Filipovich* asked about the well located five feet from the proposed structure. *Jenny Bourbonais* clarified that a well needs to be three feet from the eaves of a structure.
- D. Board member *Skraba* asked about the existing structure and what the plan would be for the septic. *Christopher Villella* stated they were advised the well and septic were good for the new building and they will keep those in place. The current fire hall is going to stay for now as an auxiliary building to be kept for storage and training. The garage doors are only 11 feet and the trucks are within one to two inches getting in and out of the door.
- E. Board member *Skraba* asked if 65 feet would be long enough. *Christopher Villella* said they have done many different plans, and this is the plan that best meets their needs.
- F. Board member *McKenzie* stated it makes sense where the proposed building would go. They really cannot move it anywhere else.
- G. Board member *McKenzie* stated the increase in impervious surface can be justified. Fire trucks are heavy and they need a solid surface to drive on and, during the winter months, would need to be plowed clear.
- H. Board member *Skraba* asked if a stormwater retention pond would be needed for this project. *Jenny Bourbonais* stated that it would depend on their proposal and is not the only option. Board member *Skraba* stated that stormwater runoff could still be a concern with Sand Creek.

DECISION

Motion by McKenzie/Svatos to approve a variance for a principal structure at a reduced property line setback, where a minimum 50 feet is required, to exceed max lot coverage where 10 percent is allowed, to allow a principal structure at a reduced road centerline setback where 85 feet is required and a reduced road right-of-way setback where 35 feet is required, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 states that the required setback from a property line for a principal structure in a Forest and Agriculture Management (FAM)-3 district is 50 feet; the applicant is requesting a reduced property line setback of 20 feet.
2. Zoning Ordinance 62 states that the max lot coverage in a FAM-3 district is 10 percent; the applicant is requesting to exceed 10 percent lot coverage.
3. Zoning Ordinance 62 states that the required setback from the centerline of a collector road is 85 feet; the applicant is requesting a reduced centerline setback of 70 feet.
4. Zoning Ordinance 62 states that the required right-of-way setback of a collector road is 35 feet; the applicant is requesting a reduced right-of-way setback of approximately 20 feet.
5. The variance request is in harmony with the general purpose and intent of official controls. One of the goals of official controls is to promote the health, safety, and general welfare of inhabitants of St. Louis County. The fire department's request is a public safety request that will accomplish those goals.

B. Practical Difficulty:

1. The subject parcels are in a FAM-3 zone district which requires a minimum of 9 acres. The two parcels combined are 1.58 acres.
2. The nonconforming lot size, shape of the parcel and required setbacks of the zone district, complicates development at a conforming location.
3. The Toivola Volunteer Fire Department has limited space while trying to maximize setbacks.
4. With regards to impervious surface, a heavy base is needed for their heavy trucks and equipment. Access both in and out are also needed.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The parcel has historically been utilized as the location of the Toivola Volunteer Fire Department. This is a very rural area.

D. Other Factors:

1. Toivola Volunteer Fire Department cannot replace the existing structure with a new structure because they need to use the existing structure for their heavy equipment and fire trucks.
2. Objective PS-1.1 of the St. Louis County Comprehensive Land Use Plan is to ensure that the new development and redevelopment maintains or improves upon the planning area's emergency response capabilities.

3. The Toivola Volunteer Fire Department should be located in a central location to service their community with a paved access.

The following condition shall apply:

1. A stormwater runoff plan shall be developed to ensure snow and rain runoff does not discharge directly into the stream or wetlands and shall be submitted and approved by the county prior to the issuance of a land use permit.
2. Land alteration and stormwater standards shall be met.
3. All FEMA and St. Louis County Floodplain Management Ordinance 43 standards shall be met.
4. St. Louis County On-Site Wastewater SSTS standards shall be followed.
5. All other local, county, state and federal regulations shall be followed.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Svatos - 6

Opposed: None - 0

Motion carried 6-0

Case 6269 – Martin Breaker

The fourth hearing item was for Martin Breaker, property located in S15, T62N, R13W (Morse). The applicant is requesting an administrative appeal per St. Louis County Zoning Ordinance 62, Article 8.6, of a denial for a new variance hearing after a previous variance request denial by the Board of Adjustment in 2012. Board member *Skraba* and *Svatos* both disclosed they know the applicant but have no financial interest in the case. The Board did not ask Board member *Skraba* or *Svatos* to recuse themselves from the hearing. *Jenny Bourbonais*, St. Louis County Land Use Manager, reviewed the staff report as follows:

- A. The property owner applied as Marty Breaker Enterprises, Inc., in 2012 for both septic and land use variances to develop the subject island/peninsula property.
- B. The Board of Adjustment denied all 2012 variance requests; Mr. Breaker appealed those decisions to the district court (69VI-CV-12-942), but eventually dismissed his claims.
- C. Since 2012, Mr. Breaker has requested multiple times—and been repeatedly denied—the opportunity to seek variances to develop the property.
- D. Both the St. Louis County Planning and Community Development Director and Interim Director, in consultation with the County Attorney’s Office, determined there was no basis for a re-hearing or new variances.
- E. Correspondence between the Department and Mr. Breaker and timeline of events from 2012-2021 were furnished to the Board of Adjustment prior to the administrative appeal hearing.
- F. The timeline of events is as follows:
 - a. September 18, 2012: Septic and land use variances heard. Requests were for:
 - i. Relief from St. Louis County Individual Sewage Treatment Systems (ISTS) Ordinance 55, Section 17.04, Table 1, to allow the installation of an onsite sewage treatment unit to serve a three-bedroom cabin at a reduced shoreline setback (approximately 78 feet from the ordinary high water level (OHWL) where 150 feet is required).

- ii. Relief from St. Louis County Zoning Ordinance 46, Article III, Section 4, to allow the construction of an 864 square foot dwelling 60.56 ft from the shore where 150 foot shoreline setback is required. All 2012 variance requests were denied by the St. Louis County Board of Adjustment.
- b. October 11, 2012: Marty Breaker Enterprises, LLC. appeals the Board of Adjustment decision to District Court.
- c. February 5, 2013: Order against the Board of Adjustment filed with District Court. Judgement entered dismissing the action.
- d. July 5, 2014: Marty Breaker requests the St. Louis County Board of Commissioners to ask the Minnesota Department of Natural Resources to re-classify Twin Lakes (69-016300) from Natural Environment (150 shoreline setback required) to a Recreational Development (100 for shoreline setback requirement) lake classification.
- e. January 2019-March 2021: Mr. Breaker submits letters and requests for variance to the Interim Director Darren Jablonsky, Director Matthew Johnson and other staff. Decisions and responses of each letter indicate that per St. Louis County Zoning Ordinance 62, Article VIII, no variance requests will be accepted by the Planning and Community Development Department for the subject property.

Jenny Bourbonais reviewed staff facts and findings as follows:

- A. Zoning Ordinance 62, Article VIII, Section 8.10 provides the criteria for allowing a new request for a variance when a previous request has been denied by the Board of Adjustment.
- B. Section 8.10 New Application after Denial states:
Basis for a New Application: The Director may permit a new application for a project previously acted upon by the Board of Adjustment or Planning Commission based on at least one of the following criteria:
 - 1. The new application is determined by the Director to be significantly different from the earlier application.
 - 2. The intent of the standards for rehearing listed in Section 8.9 above are met.
 - 3. New state, federal, or local regulations are in effect which would alter the review of the application by the decision-making body.
 - 4. Development pattern of the area has changed in a manner which would alter the findings made by the decision-making body.
 - 5. The decision-making body in its original decision stated terms for reapplication.
- C. The standards referenced in Section 8.9 include:
 - 1. An irregularity in the proceedings of either body whereby the Director determines that the person requesting the rehearing was deprived of a fair hearing, and that if the irregularity had not taken place, the decision-making body would have likely made a different decision.
 - 2. Misconduct of a member of the decision-making body.
 - 3. Material evidence newly discovered which, with reasonable diligence, could not have been found and produced at the hearing and that would have likely resulted in a change in the final outcome of the decision.
 - 4. Errors of law occurring at the hearing and objected to at the time of the hearing.
 - 5. Conditions have changed requiring a re-examination of the original conditions of a permit.

- D. Authority for determining whether a new application for variance may be allowed when a previous application has been denied rests with the Director of Planning and Community Development Department.
- E. However, an aggrieved individual may appeal the Director's decision to the Board of Adjustment pursuant to Section 8.6.A.1, provided such appeal is received within 45 days of notification of the Director's decision (Section 8.6.A.3).
- F. Mr. Breaker's requests to once again apply for a variance for a residential structure were denied on the following dates: January 6, 2020, January 23, 2020, June 2, 2020, and March 12, 2021. This appeal was received with applicable fee on May 24, 2021.
- G. The Board of Adjustment should determine first whether the appeal of the Director's decision is timely. If it is not, the appeal should be denied. If it is timely, the Board should determine whether the Director's decision to not accept a new variance request was made in error.

Jenny Bourbonais noted nine items of correspondence, all in opposition. These were from a Town of Morse resolution, John Skolte, Stacy and Kevin Casper, Matt Pierce, Carl Levinson, Garrett Drake, Kevin Casper, Dan McLaughlin and Kail Katzenmeier. This correspondence was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the Director's decision to not allow for a new variance hearing after a previous variance request denial by the Board of Adjustment stands, no further variance requests shall be accepted for the subject property.

In the event that the Board of Adjustment determines the Director's decision to not allow for a new variance hearing after a previous variance request denial by the Board of Adjustment should be overturned, the applicant may submit a variance request proposal.

Martin Breaker, the applicant, had two presentations. He stated that under Minnesota law, when the owner of land is a corporation, court rules require the corporation to be represented in court by an attorney. The appeal of the 2012 variance denial was timely filed in district court. Although he is an attorney, he was not licensed to practice law in Minnesota at this time and therefore could not represent the corporation. He spoke with the St. Louis County Attorney's office, who told him that he had no attorney and by then it was too late to file the case again. He was out of luck timewise to file for an appeal. That was why the case was withdrawn from district court.

The first thing to determine is if he had filed the administrative appeal on time. This is an appeal from the Director of Planning and Community Development decision not to allow a new variance hearing that includes variances for setback on property located on Twin Lake. The new variance request would be for a new proposal that had not been heard before.

There are three specific reasons for the appeal under Ordinance 62:

1. The intent of the standards for re-hearings listed under Section 8.9 are being met. There were irregularities in the 2012 proceedings that deprived the requestor of a fair hearing, and that if the irregularities had not taken place, the decision-making body would have likely made a different decision (Section 8.9, criteria 2).

- a. An irregularity in the proceedings of either body whereby the Director determines that the person requesting the hearing was deprived of a fair hearing, and that if the irregularity had not taken place, the decision-making body would have likely made a different decision.
- b. There was the use of old laws and regulations basing decisions on a hardship standard and use of the old *Stadsvold* criteria. These had been superseded by the time his hearing was held. It would not have been fair to use old laws that had been replaced.
- c. Incorrectly stating the law about zoning on a Natural Environment lake.
- d. Staff had stated that, "There is a reason lakes like this are zoned Natural Environment and the idea is that people will develop their property in a way that has a minimal impact visually and aesthetically and without noise and lighting and so forth as possible and still have them be able to use the lake as a lake."
- e. There is no zoning regulation for a Natural Environment lake. Lakes are not zoned that way, only classified. As the Minnesota Department of Natural Resources (MN DNR) states, "the classification is used to determine lot size, setbacks and, to a certain degree, land uses on the adjacent land." A Natural Environment lake does not have its own zoning regulation.
- f. The Board did not articulate its reasons for denying the variance.
- g. The Board did not "articulate the reasons for its ultimate decision, with specific reference to relevant provisions of its zoning ordinance" as required by the Minnesota Supreme Court in *Earthburners, Inc. v. County of Carlton*, 513 N.W.2d 460, 463 (Minnesota 1994).
 - i. The Board only voted to accept the staff recommendations and conclusions to deny the variance.
 - ii. Staff recommendations were very vague and did not articulate the reasons for denying the variances with specific reference to relevant provisions of its zoning ordinances.
 - a. For the ISTS: Recommended not approving "to maintain consistency with Ordinance 55 and Minnesota DNR setback requirements."
 - b. For the dwelling: The Findings of Fact inaccurately states that the staff recommended it not be approved.
 - iii. By not providing specific reasons for denying the variance, the Board was arbitrary and unfair in that sense for not saying exactly what they wanted. All they did was take the staff recommendations and conclusions.
- h. Definition and use of the term "different proposal."
- i. The term "proposal" or "different proposal" is not defined in any ordinance.
- j. When a term is not defined, it is to be given its "plain and ordinary meaning."
- k. The staff, however, used the term "different proposal" without defining it peculiar to Planning and Development.
- l. After the hearing and in correspondence with the Director and Interim Director, he was told that the term means that no new variance request involving a setback can ever again be made for this property. The variance denials were a denial of setbacks, not of the building or septic systems. He would not be able to bring in anything that requires a new setback variance.
- m. However, at the hearing, the term was actually used more in relation to the building and site plan. Staff used the term "different proposal" to mean there could be a re-

- hearing if a different building and site plan were proposed, that is not the special meaning it carries with the Planning and Community Development as defined by the Director and Interim Director. Had the Board known that the term “different proposal” likely meant he could not reapply with a different dwelling and septic proposal, it is likely they would have made a different decision.
2. New state, federal, or local regulations are in effect which would alter the review of the application by the decision-making body (Section 8.9, criteria 3).
 - a. The 2012 hearing used:
 1. The hardship standards of the pre-2011 Minnesota statute 394.27.
 2. The six *Stadsvold* criteria for “practical difficulties.”
 3. St. Louis County Ordinances 46 and 55.
 - b. All these laws and regulations have been replaced or superseded since the 2012 hearing.
 - c. Minnesota statute 394.27, subd. 7, prior to 2011, stated: *“Hardship” as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.*
 - d. In the 2012 hearing transcript, a staff member stated: “did the applicant create their own hardship, and in a way he did.”
 - e. In the 2012 hearing transcript, a staff member stated: “So, from that perspective, I mean, we are looking at the fact that there was a hardship here.”
 - f. In the 2012 hearing transcript, a staff member, paraphrasing: The committee feels the request does not meet the definition of a hardship and therefore recommends denial.
 - g. In the *Stadsvold* case, the Minnesota Supreme Court in 2008 stated:
 - i. Counties cannot use the hardship standard in the old Minnesota statute 394.27.
 - ii. Counties must use a “practical difficulties” criteria.
 1. How substantial the variance is in relation to the requirement.
 2. The effect the variance would have on government services.
 3. Whether the variance will effect a substantial change of the neighborhood or will be a substantial detriment to neighboring properties
 4. Whether the practical difficulty can be alleviated by a feasible method other than a variance.
 5. How the practical difficulty occurred, including whether the landowner created the need for the variance.
 6. Whether, in light of all the above factors, allowing the variance will serve the interests of justice.
 - iii. The new Minnesota Statute 394.27, subd. 7, was effective May 6, 2011. It superseded the *Stadsvold* six criteria were no longer valid. *Mutsch v. County of Hubbard*, Minn. App., April 30, 2012.
 - iv. The new statute in relevant part reads: *“Practical difficulties,” as used in connection with the granting of a variance, means that the property owner proposed to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property*

not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.

- h. St. Louis County Zoning Ordinance 46 and St. Louis County Individual Sewage Treatment Systems Ordinance 55 were in effect at the time of the original hearing in 2012.
 - i. They allowed for use of hardship (same criteria as the old Minnesota statute), or practical difficulty criteria but not the same ones as the six *Stadsvold* criteria.
 - j. Ordinance 61, Subsurface Sewage Treatment System, was adopted in 2014. It has new and different criteria from Ordinance 55 and *Stadsvold*. It requires a showing of practical difficulties and states new criteria in determining if they exist different from Ordinance 62.
 - k. Ordinance 62, Zoning, was adopted in 2015, amended in 2016. It has new and different criteria than Ordinance 46 and *Stadsvold*. It requires a showing of practical difficulties and states new criteria used in determining if they exist.
 - l. The Board should grant his appeal to have a new variance hearing because there are new laws and ordinances that have different criteria than were used at the original hearing.
3. The decision-making body in its original decision stated terms for reapplication (Section 8.9, criteria 5).
- a. Did the decision-making body in its original decision state terms for reapplication? It was clear in discussions that a reapplication with a different proposal was possible and expected.
4. The Board should grant an appeal to allow a new variance hearing because:
- a. There are new laws and ordinances that have different criteria than were used at the original hearing, which will likely result in a different decision.
 - b. There were irregularities in the original hearing. Had these irregularities not occurred, it likely would have resulted in a different decision.
 - i. Old and superseded criteria were used that were not even in the then-current laws or ordinances.
 - ii. Opinion on Natural Environment lakes was given as zoning law.
 - iii. The Board did not articulate its reasons for denying the original variances, which would likely have resulted in a different decision or at least clarified if they were denying the setback or they were not happy with the building and septic.
 - iv. There was an irregularity in the use and definition of the term “different proposal” which caused confusion and misunderstanding.
 - c. It was very clear that the Board expected a new variance request that addressed their concerns over the dwelling and septic system.

Section 8.6 Variances and Other Appeals states:

A. General

- 1. Applications for variances from the terms of this ordinance, or appeals from any order, requirement, decision or determination made by the Director shall be made to the Board of Adjustment.

2. Such appeals may be taken by any person aggrieved, or by any officer, department, board or bureau of a town, municipality, county or state.
3. Such appeals shall be taken to the Board of Adjustment within the earlier of 45 days of: receipt of notice from the Director of any order, requirement, decision or determination made by the Director; or the date of the order, requirement, decision, or determination, as noted in the minutes of the Board of Adjustment, is recorded.
4. An appeal stays all proceedings in furtherance of the action appeals from unless the Board of Adjustment certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property.

Applications, Hearings, Decisions, and Criteria states:

A. Applications

1. An application for a variance shall be filed with the Director on a proper form provided for that purpose. Other appeals shall be filed in a manner prescribed by the Director.
2. Appeals applications shall be filed in a timely manner in advance of a scheduled hearing date as the Board of Adjustment may provide in its own rules of procedure.
3. Application forms shall be complete, and shall clearly specify the grounds of the appeal. Where required by the nature of the appeal, the application shall be accompanied by detailed plans, drawn to scale, showing all details of the land area and the nature of the circumstances surrounding the appeal.
4. The application shall be accompanied by the required fee.
5. The Director shall reject, and refuse to refer to the Board of Adjustment any application not accompanied by the required fee or by other materials and information as required by this ordinance.

It would make sense for the appeal to be made and to get a hearing date before sending in the application and fee. He was timely in making the appeal and the application and fee were submitted before the hearing date. He is not saying staff is wrong. He asked the Board to understand where he is coming from. There is no information on the website about appeals. There is nothing on the website that states the application and fee need to be submitted within 45 days.

Mr. Breaker believes the county created this parcel and it should have been 7 acres in size. However, he did not know it was only a 2 acre parcel until after he purchased the property. This was not created as a nonconforming lot. He was trying to make something of this lot as he thought it was a buildable lot.

The Director stated he cannot use the property for a tent, a privy or any other kind of structure. *Jenny Bourbonais* added that a water oriented accessory structure is not allowed on a Natural Environment lake.

Thomas Stanley, St. Louis County Attorney's office, stated that the applicant could have appealed the original decision from 2012 but the applicant withdrew the appeal. Since 2012, there have been some staffing changes such as the Director retiring. A new variance request had come in while the Interim Director was in place and there were two variance requests submitted and returned in 2020. Another variance request was submitted when the new Director was appointed. The staff reports and presentations in 2012 included the use of the term practical difficulties, as is indicated in the

2012 minutes. When the law changed in 2011, staff discussed how to balance the new language with the existing ordinance as the terms hardship and practical difficulty were both used prior to ordinance amendments. However, the burden has always been placed on the applicant to prove a need for a variance. There have been no other changes as far as criteria go.

In 2020, it was determined that a variance request could not be submitted which should have closed out this entire process. Once an application and fee are submitted, a hearing date would be scheduled. The Board needs to decide if the administrative appeal submission is timely and if the Director's decision stands. If so, no more variances will be accepted for a principal residence.

Four audience members spoke, one in person and three virtual.

Dave Sherman, 1316 Quinlan Court South, Lake St. Croix Beach, MN, stated as soon as a decision is made here, this gives the applicant an opportunity to go back to court again. He wants a variance for his lake lot. This is not realistic because even if this was a Recreational Development lake, the applicant would still need a variance for setbacks. There should be a stop because it makes no sense and he does not know what could happen to give the applicant another variance. There is not anywhere on that lot to build at the 150 foot setback.

Matthew Pierce, 2721 Glenhurst Avenue, St. Louis Park, stated that timeliness is an issue and the applicant should have appealed within the 45 days allowed. Laws have not changed substantially. The language has changed slightly, but the intent has always stayed the same. This is not sufficient enough to make the decision-making body rethink its decision at the 2012 hearing.

Daniel McLaughlin, 5345 London Road, Duluth, agreed with Mr. Pierce. He wanted to address what the applicant had said about the lot being created as a buildable lot. He does not think this is true. There are certain uses that could be done on this property without building a structure: put up a tent, have a picnic, park a boat. It should not be implied that just because it is a lot, it is considered buildable.

Molly Tillotson, 6629 McQuade Road, Duluth, stated there is a faulty base to the applicant's entire argument. The applicant thinks there needs to be a strong reason why a variance should not be given to a standing ordinance. There should be very clear reason to give a variance.

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 *Skraba* stated they are not working on this case as an application for a variance. This is a deliberating body to determine an applicant's administrative appeal.
- B. Board member *Pollock* asked if when a variance is granted or not granted, an appeal is made to District Court is part of the process. Either the applicant could, or any member of the public could make an appeal. *Jenny Bourbonais* stated the applicant had asked the Director for a determination to have a new hearing. The administrative appeal is regarding the Director's denial of the request.

- C. Board member *Svatos* stated that the cases were in 2012 and it has been almost ten years in between. He asked about the length of time between those cases and now. *Martin Breaker* stated he has been trying for years to get a new variance rehearing and has been repeatedly turned down. In addition, there have been big life events for him as well.
- D. Board member *Skraba* asked what the concern of the timing is. *Jenny Bourbonais* stated this could have been determined first if the Board had made the determination that the appeal was not timely, they would have been able to deny the administrative appeal without hearing from the applicant. The Board had seemed like they wanted to hear what the applicant had to say.
- E. Board member *Pollock* asked what the legality is if something does not meet the requirement. *Thomas Stanley* stated that timeliness is an issue because the Ordinance defines appeals. There is some flexibility to appeal after a decision is made and recorded and minutes from the variance hearings are approved. In this case the time started after the Director's March 12, 2021, decision. When an appeal is received a fee must be submitted with the application for administrative appeal. The appeal was officially received on May 24, 2021. The applicant had 45 days from the date of the Director's decision to submit a fee and application for this appeal. The Director's decision was that the 2012 variance was denied for a setback variance and no new variance for setbacks would be allowed. The applicant had gone to the County Board to petition to change the classification of Twin Lake from Natural Environment to Recreational Development in order to alter the setback requirements. The petition to the County Board never moved forward.
- F. Board member *Pollock* asked if they have to deal with the timeliness first. This is not different than going to District Court 30 days after the decision or appealing the Director's decision after 45 days. Board member *Skraba* added that the applicant has said the law has changed. This would be an opportunity for the applicant to come back for a new variance. The applicant is saying the laws have changed enough to come back for another variance. Staff is saying that the applicant was denied a setback variance and cannot come back for another setback proposal. The applicant is saying that it is not a setback proposal, but a new proposal. If the issue is wrong and the timeliness plays a part in fixing the issue, the timeliness should not matter.
- G. Board member *Pollock* stated there is a difference between what the department is saying and what the applicant is saying. The Board can just acknowledge the issue. They do not need to take action on the timeliness. They do need to take action on whether or not the decision to allow a new variance application is allowed.
- H. Board member *Pollock* asked if this is classified as property that is non-buildable and non-permit-able. *Jenny Bourbonais* clarified this is better defined as a nonconforming lot of record. This lot is not an improperly-created lot; however, it is insufficient for lot width. This is not a standard lot from a subdivision plat.
- I. Board member *McKenzie* asked if District Court is an open option to the applicant. *Thomas Stanley* stated that District Court would not have jurisdiction on the 2012 decision. The timeframe to appeal the 2012 decision to district court has passed. Today's decision could be taken to District Court.
- J. Board member *McKenzie* stated that the Director's decision was made on March 12, 2021. The applicant didn't submit a complete appeal until May 24, 2021. To support the Director's decision would be to deny the appeal. Board member *Pollock* stated this is one factor they could use to affirm the Director's decision.

- K. Board member *Skraba* stated he is reluctant to discuss the options of what they can do. The Director said that this is not appealable. *Thomas Stanley* responded that the Director stated that the applicant could not apply for another variance.
- L. Board member *Skraba* stated this lot is a unique lot. Could it be developed? The landowner might not be able to do anything with it. At some point, this cycle has to stop. Someone might find a way somewhere to do something with this lot. Board member *McKenzie* added this could be denied based on the timeliness, but that is the short answer. Board member *Pollock* stated it is the burden of the applicant to figure out how to put in a new variance on his own that would be allowable. Board member *Svatos* stated this not a buildable lot. Even with a reclassification of the lake, this might still not be a buildable lot. This is one of these situations where it might never be a buildable lot.
- M. *Thomas Stanley* stated that what the Board is deciding on is the Director's decision to not allow a new variance hearing. The Director had determined there were no changes in laws that would justify a new variance. There was no irregularity in proceedings. If the Board affirms the Director's decision, they would agree with the Director that nothing has changed at this time to allow for a new variance proposal.
- N. Board member *Skraba* stated that if the Board does not affirm the Director's decision, the applicant can bring forward a new variance application and get denied and then it would be done. Board member *Pollock* stated it would not be done because the applicant could appeal that decision. Board member *Skraba* stated there would be no ambiguity in the facts and findings. Even if a judge returned the case to the Board, the findings would not change. There might be no way to solve this lot. If we go through the process of affirming the Director's decision, this may come before the Board again or it may not. There is enough information here to make the decision.

DECISION

Motion by Anderson/McKenzie to affirm the Director's decision to not allow for a new variance hearing after a previous variance request denial by the Board of Adjustment; no further variance requests shall be accepted for the subject property. This is based on the following findings of fact:

- A. The applicant, Mr. Breaker, appealed the Director's decision to deny the request for a new variance. The appeal was not timely as required by St. Louis County Zoning Ordinance 62, Section 8.6 A.3., within the 45 day time period. The administrative appeal and fee were received 73 days after the Director's decision in a letter to the applicant dated March 12, 2021. Mr. Breaker has represented himself as having knowledge of St. Louis County Zoning Ordinance 62 and should have known or understood the 45 day requirement.
- B. There was a 30 day appeal period to the District Court following the 2012 variance denial that was dismissed by the applicant.
- C. Zoning Ordinance 62, Article VIII, Section 8.10 provides the criteria for allowing a new request for a variance when a previous request has been denied by the Board of Adjustment.
- D. Section 8.10 New Application after Denial states:
Basis for a New Application: The Director may permit a new application for a project previously acted upon by the Board of Adjustment or Planning Commission based on at least one of the following criteria:
 - 1. The new application is determined by the Director to be significantly different from the earlier application.
 - 2. The intent of the standards for rehearing listed in Section 8.9 above are met.

3. New state, federal, or local regulations are in effect which would alter the review of the application by the decision-making body.
 4. Development pattern of the area has changed in a manner which would alter the findings made by the decision-making body.
 5. The decision-making body in its original decision stated terms for reapplication.
- E. The standards referenced in Section 8.9 include:
1. An irregularity in the proceedings of either body whereby the Director determines that the person requesting the rehearing was deprived of a fair hearing, and that if the irregularity had not taken place, the decision-making body would have likely made a different decision.
 2. Misconduct of a member of the decision-making body.
 3. Material evidence newly discovered which, with reasonable diligence, could not have been found and produced at the hearing and that would have likely resulted in a change in the final outcome of the decision.
 4. Errors of law occurring at the hearing and objected to at the time of the hearing.
 5. Conditions have changed requiring a re-examination of the original conditions of a permit.
- F. Authority for determining whether a new application for variance may be allowed when a previous application has been denied rests with the Director of Planning and Community Development Department.
- G. However, an aggrieved individual may appeal the Director's decision to the Board of Adjustment pursuant to Section 8.6.A.1, provided such appeal is received within 45 days of notification of the Director's decision (Section 8.6.A.3).
- H. Mr. Breaker's requests to once again apply for a variance for a residential structure were denied on the following dates: January 6, 2020, January 23, 2020, June 2, 2020, and March 12, 2021. This appeal was received with applicable fee on May 24, 2021.

In Favor: Anderson, Filipovich, McKenzie, Pollock, Skraba, Svatos - 6

Opposed: None - 0

Motion carried 6-0

Motion to adjourn by Svatos. The meeting was adjourned at 12:42 p.m.