

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD BOTH VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, MARCH 17, 2022.

9:01 AM – 1:05 PM

Board of Adjustment members in attendance: Tom Coombe
Steve Filipovich
James McKenzie
Dave Pollock (at 9:05 AM)
Roger Skraba, Vice Chair
Ray Svatos

Board of Adjustment members absent: Diana Werschay, Chair

Also present: Thomas Stanley, St. Louis County Attorney's Office

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

NEW BUSINESS:

- A. Adam Leinonen, S27, T63N, R17W (Unorganized)
- B. Douglas and Mary Sue Mertens, S19, T57N, R17W (Fayal)
- C. Jessica Lietz, S10, T62N, R16W (Greenwood)
- D. Daniela Scardaci, S29, T51N, R16W (Grand Lake)
- E. Todd and Laura Rothe, S27, T52N, R15W (Fredenberg)

OTHER BUSINESS:

Motion by McKenzie/Coombe to approve the minutes of the February 10, 2022, meeting.

In Favor: Coombe, Filipovich, McKenzie, Skraba – 4

Opposed: None – 0

Abstained: Svatos - 1

Motion carried 4-0-1

Jenny Bourbonais, Acting Secretary, reminded the Board of Adjustment that action should be taken on the Board of Adjustment bylaws. Board of Adjustment members requested that the discussion be held until the April 14, 2022, hearing when more members are present.

NEW BUSINESS:

Case 6298 – Adam Leinonen

The first hearing item was for Adam Leinonen, subject property located in S27, T63N, R17W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow a commercial development (mini storage) to exceed the maximum lot coverage of 10 percent. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to expand an existing commercial mini storage business that was established in 2007.
- B. The existing lot coverage on the property is estimated at nine percent.
- C. The proposed expansion is estimated at 20 percent where 10 percent is allowed.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.2, allows for a maximum of 10 percent lot coverage on the subject property. The applicant is requesting 20 percent lot coverage to expand a commercial use.
 - 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.
- B. Practical Difficulty:
 - 1. The existing lot size limits the maximum lot coverage of the property to 10 percent.
 - 2. The applicant would need double the acreage to allow for the expanded lot coverage without variance.
- C. Essential Character of the Locality:
 - 1. No similar variance request has been granted in the area.
 - 2. There are five residential properties located within 700 feet of the proposed use, the closest being 300 feet to the south.
- D. Other Factor:
 - 1. Should the variance be approved, a stormwater management plan shall be submitted to ensure that no runoff leaves the site.

Mark Lindhorst noted two items of correspondence from George Bias in opposition, and Mike and Lori Estrin with concerns. These items were provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate a variance to allow up to 20 percent lot coverage as proposed include, but are not limited to:

- 1. A stormwater management plan shall be submitted and approved by the county prior to issuance of a permit.
- 2. Wetland Conservation Act requirements shall be followed.
- 3. The applicant shall comply with all local, county, state, and federal regulations.
- 4. All conditions of the previous conditional use permit approval shall continue to be met.

Eric Burckhardt, 4667 Hitchcock Road, Orr, the applicant's business partner, stated they are trying to fill a need in the area. With this location close to Oak Narrows, there is a lot of traffic that piles up on that road and there are a lot of water access properties. Their driveway is only 65 feet off Oak Narrows Road. They do not have much traffic impact to Timberlore Trail. Those that use the

mini storage business are not there every day. They have enough space to add in buildings before it goes to wetland. They are expanding the size of their buildings so that there is room to store boats. The impervious surface is so that those parking and storing these boats have room to turn around and back them in.

No audience members spoke. There were no virtual attendees in the audience.

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked what staff is looking for with a stormwater management plan. *Mark Lindhorst* stated the applicants are doubling the amount of lot coverage and a plan identifying where is all the stormwater will be directed is necessary. The applicants must be careful, so water does not go into the wetland. There will be a lot of impervious area on this property.
- B. Board member *Svatos* asked if the site is visible from the road. *Mark Lindhorst* stated the property is heavily wooded and not visible from the road.
- C. Board member *Skraba* asked if a NPDES (National Pollutant Discharge Elimination System) permit would be required. *Mark Lindhorst* stated if there is over an acre impacted at any one time, a NPDES permit would be required. The applicants may add one building at a time. Board member *Skraba* added that a pond may be needed to contain stormwater.
- D. Board member *Coombe* asked how much fill is anticipated. *Eric Burckhardt* stated the first building will be on the edge an existing filled area. The second building will be at the end of the filled area and will need more substantial fill in that location.
- E. Board member *McKenzie* asked if the applicant has spoken with either correspondent who are unhappy about the business expansion. One concern was for additional traffic on Timberlore Trail. *Eric Burckhardt* stated that one of the two correspondents has rented from them before. He does not know the other one.
- F. Board member *Skraba* asked if there are any other mini storage businesses between this one and the lake. *Eric Burckhardt* stated there is the Timbuktu Marina, which has a different kind of storage setup. They forklift boats in and out. They are also having expansion issues.
- G. Board member *Skraba* asked if the goal is to get the business expansion going this year. *Eric Burckhardt* stated that they want one new structure this year. Any additional structures may be limited due to cost. These are all metal buildings. They could potentially start dirt work for the second.
- H. Board member *Svatos* asked if the applicant understands the 20 percent lot coverage versus the 10 percent. *Eric Burckhardt* stated he does.
- I. Board member *Skraba* asked if grass planted in the class five would make it a pervious surface instead of an impervious surface. *Mark Lindhorst* stated there could be topsoil added onto the gravel and then seeded. If this is done and the surface is not constantly driven on, that would reduce the amount of impervious surface. *Eric Burckhardt* stated they mow part of their driveway right now. *Jenny Bourbonais*, Acting Secretary, noted that while the driveway has grass that could grow, it is an access point, is driven on, compacted and compounded, and would be considered impervious surface.
- J. Board member *Skraba* asked if the applicant could use more grass. *Mark Lindhorst* stated that the Board could ask the applicant to reduce the amount of impervious surface if they vegetated more areas. Staff presented the amount that the applicant asked for. The applicant

could revegetate areas that are not driving surfaces. There are ways to reduce the amount of impervious surface. *Jenny Bourbonais* added the Board has added conditions to 'maximize to the greatest extent possible' on variance decisions before and for impervious surface to go no more than a certain percent. That leaves it open for staff to work with the applicants to reduce the amount of impervious surface.

- K. Board member *Filipovich* agreed to maximize the amount of vegetation to the greatest extent possible but noted that this area is zoned for a mini storage business to support the surrounding lakeshore lots. This use also fits within the St. Louis County Comprehensive Land Use Plan because there is a demand and need for this business. The zoning in this area is Multiple Use which allows a mini storage business in this area.
- L. Board member *Skraba* stated there is demand here. If this variance is denied, there could be another mini storage business opened elsewhere in this area. Instead of the business being concentrated in one area, it could be spread out more.
- M. Board member *Pollock* stated he is familiar with Timbuktu Marina as he stores his own pontoon boat outside at that location. That marina offers in/out where they pull the boats out, store them outside over the winter and then put them back out onto the water.

MOTION:

Motion by Coombe/Filipovich to approve a variance to allow up to 20 percent lot coverage, as proposed, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62, Article III, Section 3.2, allows for a maximum of 10 percent lot coverage on the subject property. The applicant is requesting 20 percent lot coverage to expand a commercial use.
- 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. The existing mini storage business is well shielded from the road and from adjoining properties.
- 4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The existing lot size limits the maximum lot coverage of the property to 10 percent.
- 2. The applicant has nine acres of property.
- 3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

- 1. No similar variance request has been granted in the area.
- 2. There are five residential properties located within 700 feet of the proposed use, the closest being 300 feet to the south.
- 3. The existing mini storage business has been on this property for years.
- 4. The variance request will not alter the essential character of the locality.

DISCUSSION ON MOTION:

- A. Board member *Pollock* stated there is nothing to justify granting a variance for the additional impervious surface.
- B. Board member *Coombe* stated justification would be that the applicant would follow a stormwater management plan, the Wetland Conservation Act, and complying with all local, county, state, and federal regulations. These conditions would protect the land and surrounding area if done properly.
- C. Board member *Skraba* stated that staff will have an ability to work with the stormwater management plan. *Jenny Bourbonais* stated it is up to the Board to determine if that is enough to justify granting a variance. Board member *Filipovich* had stated during the discussion that this business fits within the St. Louis County Comprehensive Land Use Plan, and there could be a need for this business in the area to justify a variance beyond the 10 percent impervious surface allowed. *Mark Lindhorst* added that this was stated in the staff report for the conditional use permit to justify the need for an expanded mini storage business.
- D. Board member *Pollock* agreed on the point Board member *Filipovich* made. He offered a friendly amendment to add further discussion points to provide justification for variance approval.
- E. Board member *Filipovich* stated there is a Department of Natural Resources (DNR) parking lot in the area that is 70 percent impervious surface. Timbuktu Marina also has a large percentage of impervious surface. Board member *Skraba* noted the DNR parking lot is always full.
- F. Board member *McKenzie* stated there is a lot of impervious area required for surface needed to travel around these buildings. Board member *Skraba* noted maybe not all this needs to be gravel.

Motion by Coombe/Filipovich to accept the friendly amendment for the variance motion to include the Plans and Official Controls language from the conditional use permit hearing and to include: The applicant shall work with staff to maximize vegetation cover to the greatest extent possible, into Other Factors.

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

Opposed: Svatos - 1

Motion carried 5-1

DECISION:

The motion as stated to approve a variance request to allow up to 20 percent lot coverage, as proposed, based on the following facts and findings:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.2, allows for a maximum of 10 percent lot coverage on the subject property. The applicant is requesting 20 percent lot coverage to expand a commercial use.
 - 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. The proposed commercial expansion is located within the Lakeshore Development Area (LDA) of the St. Louis County Comprehensive Land Use Plan and is intended for rural development adjacent to lakes including in fill, new development, or redevelopment of existing residential and commercial uses. The proposal is an expansion of an existing commercial use.
 - a. Goal LU-4 of the St. Louis County Comprehensive Land Use Plan states that development shall proceed in an orderly, efficient, and fiscally responsible manner. When development opportunities arise in isolated areas, such development should be self-supporting. No request for public services is being requested.
 - b. Goal LU 7 of the St. Louis County Comprehensive Land Use Plan is to provide sufficient opportunities for commercial development to serve local and regional markets throughout the county.
 - c. Objective LU 7.1 of the St. Louis County Comprehensive Land Use Plan is to encourage expansion of regional commercial opportunities in existing corridors along collector or arterial routes and at nodes where infrastructure and traffic volumes can support economic growth.
4. The existing mini storage business is well shielded from the road and from adjoining properties.
5. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The existing lot size limits the maximum lot coverage of the property to 10 percent.
2. The applicant has nine acres of property.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. No similar variance request has been granted in the area.
2. There are five residential properties located within 700 feet of the proposed use, the closest being 300 feet to the south.
3. The existing mini storage business has been on this property for years.
4. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The applicant shall work with staff to maximize vegetation cover to the greatest extent possible.

The following conditions shall apply:

1. A stormwater management plan shall be submitted and approved by the county prior to issuance of a permit.
2. Wetland Conservation Act requirements shall be followed.
3. The applicant shall comply with all local, county, state, and federal regulations.
4. All conditions of the previous conditional use permit approval shall continue to be met.

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

Opposed: None - 0

Motion carried 6-0

Case 6299 – Douglas and Mary Sue Mertens

The second hearing item was for Douglas and Mary Sue Mertens, subject property located in S19, T57N, R17W (Fayal). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to a nonconforming principal structure that is located between 25 feet and the shore impact zone to exceed 200 square feet. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval to add a 400 square foot addition to a nonconforming dwelling that is located approximately 45 feet from the shoreline.
- B. Since a portion of the structure is located within the shore impact zone, the maximum size addition allowed is 200 square feet.
- C. The proposed addition is to the rear of the existing structure. The addition would double the size of the existing structure.
- D. Development on the property includes the dwelling, a new 36 foot by 60 foot accessory structure (workshop), a well, and is served by Fayal sanitary district infrastructure.
- E. The parcel slopes from the road towards the lake with a relatively level area between 50 and 200 feet from the shoreline. The area between the dwelling and the shoreline is steep with a slope of approximately 21 percent. The slope between the level area and the road is approximately 17 percent.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62 states that the maximum size addition allowed to a principal structure located between 25 feet from the shoreline and the shore impact zone is 200 square feet; the applicant is requesting approval for a 400 square foot addition.
 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.
- B. Practical Difficulty:
 1. The applicant recently built a large accessory structure in a conforming location on the property.
 - a. This area could have been utilized as a location for a replacement dwelling or location to move the existing dwelling to.
 - b. Had this new structure been a dwelling, the existing dwelling would have needed to be removed.

2. One alternative is to replace the existing dwelling with a dwelling at a conforming location.
3. A second alternative is to move the structure to a conforming location and expand the structure.
 - a. If the structure were located at a conforming location, the size and height of the structure would be less restricted.
4. A third alternative is to remove the existing dwelling and add living space to the recently constructed accessory structure (workshop).
5. A fourth alternative is to reduce the size of the addition to 200 square feet.
 - a. An addition of 200 square feet would be allowed with a performance standard permit.

C. Essential Character of the Locality:

1. This is a highly developed area on Long Lake.
2. There are a few principal structures that do not meet the required shoreline setbacks, but many of the dwellings in the area do meet the setbacks.
3. There have not been any similar variances within this plat.
 - a. The variances on file include property line and road setback requests.
4. There is a variety of seasonal and year-round residences in this area.
 - a. The property is currently not used as the primary residence by the applicants.

D. Other Factor:

1. Land Use Division staff have been working with the applicant for some time and had several discussions on the different alternatives that would not require variance.
 - a. The applicant is aware of the alternatives that would not require variance.

Jared Ecklund noted one item of correspondence received after the deadline from Dan and Gail Anderson in support of the variance. This item was provided to the Board of Adjustment the day of the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance to allow a 400 square foot addition to a nonconforming principal structure that is located between 25 feet and the shore impact zone as proposed include, but are not limited to:

1. The structure shall be unobtrusive earth-toned colors, including siding trim and roof.
2. The stormwater from the structure shall not discharge directly into the lake or onto adjacent lots.
3. If it is determined that the structure is not structurally sound for an addition and needs to be replaced, a replacement dwelling shall meet all ordinance requirements.

Doug Mertens, 707 South 6th Avenue, Virginia, the applicant, stated that they purchased this property three to four years ago. When he purchased the property, they were told they could add 400 square feet. He was not aware that the existing cabin was only 45 feet from the shoreline. He measured 48 feet from the shoreline before. There has been shoreline erosion and they have been losing their shoreline bit by bit. When they applied for a dwelling addition, they required a variance. They purchased this property to not tear up everything on the site. They cannot build a

new cabin further back because of the location of the Fayal sewer line. Unlike the city of Virginia, one cannot build over the sewer line. This impacted the location of the accessory structure. He has worked with staff to determine what can be done. He could not build closer to the road because they would need to remove the existing cabin and the structure would have been too tall. This proposal would be to add the garage and build a small addition to the rear, smaller than they originally wanted, which would be used for their retirement home. He will improve the cabin to make it nice to live in.

The garage is a 36 foot by 60 foot structure. His wife does pottery and he will use the space to restore old cars. He keeps his tools inside the garage. There will be a game room with a pool table in the loft for his grandson. There is a bathroom but no living quarters.

No audience members spoke. There were no virtual attendees in the audience.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if this is city sewer and water. *Doug Mertens* stated this is Fayal sewer. He had Peterson put in a drilled well. The sewer line angles through the middle of the property. The line goes across behind the new garage.
- B. Board member *Pollock* asked if a performance standard permit would be the only permit required if the cabin was five feet further from the shoreline. *Jared Ecklund* stated yes.
- C. Board member *Skraba* asked how big the cabin is currently. *Doug Mertens* stated the current structure is 20 foot by 20 foot and they are requesting a 20 foot by 20 foot addition. They will add a dining room and bedroom and space to host holiday meals. The cabin did not have water or sewer when he purchased the property. It has water and sewer now.
- D. Board member *Pollock* stated the applicant is asking for reasonable use of the property.
- E. Board member *McKenzie* asked if the applicant added a basement underneath the cabin. *Doug Mertens* stated the basement was there when he purchased the property. The basement is exactly 20 foot by 20 foot. He knows no other history about the basement. Board member *Pollock* noted this is a reason why the cabin cannot just be moved back.
- F. Board member *McKenzie* stated he is struggling with practical difficulty. This request is not unreasonable. Board member *Skraba* stated the location of the Fayal sewer line limits where the structure can go. There is also a question on what would be gained if the structure was moved back. The applicant would be allowed a 10 foot by 20 foot addition at its current location. *Doug Mertens* stated he and his wife spend their time in the accessory structure.
- G. Board member *Coombe* added this cabin has been there for years. It also has a basement. How does one pick up a cabin with a basement and move it back? The cost to reconstruct a new basement is massive. The screening in this area is great.

DECISION

Motion by McKenzie/Svatos to approve a variance to allow a 400 square foot addition to a nonconforming principal structure that is located between 25 feet and the shore impact zone, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 states that the maximum size addition allowed to a principal structure located between 25 feet from the shoreline and the shore impact zone is 200 square feet; the applicant is requesting approval for a 400 square foot addition.
2. Approving the proposal would allow reasonable use of the applicant's property as the area is already highly developed.
3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The existing structure is too small for reasonable living quarters at 400 square feet. It is not large enough for a retirement home.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. This is a highly developed area on Long Lake for years with both cabins and year-round homes.
2. The applicant's property is well-screened.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. There was no correspondence received objecting to the variance request. The next-door neighbor was in support of the variance.
2. Land Use Division staff have been working with the applicant for some time on this proposal.

The following conditions shall apply:

1. The structure shall be unobtrusive earth-toned colors, including siding trim and roof.
2. The stormwater from the structure shall not discharge directly into the lake or onto adjacent lots.
3. If it is determined that the structure is not structurally sound for an addition and needs to be replaced, a replacement dwelling shall meet all ordinance requirements.

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

Opposed: None - 0

Motion carried 6-0

Case 6300 – Jessica Lietz

The third hearing item was for Jessica Lietz, subject property located in S10, T62N, R16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.10, C. to allow a water oriented accessory structure to exceed the maximum

allowed size of 250 square feet and to exceed the maximum allowed height of 12 feet. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval to expand an existing sauna structure that is located approximately 52 feet from the shoreline of Lake Vermilion.
- B. The structure allowed by variance is 12 feet by 18 feet in size and the proposed addition is another 12 feet by 18 feet. The proposed addition will increase the size of the structure to 432 square feet where 250 square feet is allowed for a water oriented accessory structure.
- C. The proposed height of the structure is 20 feet where 12 feet is allowed for a water oriented accessory structure.
- D. The applicant is also proposing to increase the height of the structure by adding storage trusses.
- E. The existing structure was allowed by variance in 1983 for a reduced shoreline setback of approximately 52 feet. Greenwood Township administered zoning at this time.
- F. The applicant is proposing to add on to the existing structure towards the shoreline. The proposed addition is on the lake side of the structure.
- G. The proposal would still meet the water oriented accessory structure shoreline setback requirement of 30 feet but would not meet other water oriented accessory structure standards. The expanded structure would meet an approximate 40 foot shoreline setback.
- H. The applicant also intends to remove two other nonconforming structures on the property. One structure is a nonconforming second principal dwelling. The other structure is a dilapidated storage structure.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62 states that the maximum size of a water oriented accessory structure shall be limited to 250 square feet; the applicant is requesting an addition that would increase the size of the structure to 432 square feet.
 2. Zoning Ordinance 62 states that the maximum height of a water oriented accessory structure shall be limited to 12 feet; the applicant is requesting a height increase that would increase the height of the structure to 20 feet.
 3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 5. 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 that the landowner did not create.
 - a. The parcel is a nonconforming lot of record which allows development of one principal dwelling.

2. The structure was allowed at a reduced shoreline setback through variance prior to ordinance language allowing water oriented accessory structures.
 - a. The existing structure appears to meet the standards of a water oriented accessory structure.
3. The proposed addition would double the size of the structure and the end result would be 182 square feet larger than allowed by ordinance.
4. The proposed shoreline setback of the structure would still meet the required setback of a water oriented accessory structure, but the proposed size and height would not be allowed without variance.
 - a. An addition of 34 square feet would be allowed without an increase in height.
5. There is limited available area on the property for any new development due to the intensity and configuration of existing development.
 - a. The applicants may already have reasonable use of the property without expanding the sauna 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 uses.
2. This is a highly developed area. Many of the lots in this area have water oriented accessory structures.
3. The proposal would eliminate two nonconforming structures, one of which is very visible from the shoreline.

D. Other Factors:

1. The applicant is planning to remove an existing guest cabin and a small, dilapidated accessory structure.
 - a. Both of these structures are located at reduced shoreline setbacks.
 - b. The guest cabin was the original principal dwelling located on the property prior to the current principal dwelling being built.
2. The current building footprint on the property exceeds what is allowed by over 1,000 square feet.
 - a. Removal of two of the nonconforming structures on the property would bring the property closer to compliance with current standards.

Jared Ecklund noted two items of correspondence from Kathy and Michael Minkler not in support, and Maryann and Robert Eliason not in support. These items were provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a water oriented accessory structure to be expanded to 432 square feet and for the maximum height of a water oriented accessory structure to be increased to 20 feet as proposed include, but are not limited to:

1. The structure shall not be used for human habitation.
2. The color of the structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
3. St. Louis County On-Site sewage treatment standards shall be met.

4. The requirements of the St. Louis County Solid Waste Ordinance 45 shall be met.

Erik Lietz, 4227 Nelson Road, Tower, the applicant, stated the pictures do not do justice to the actual grade of the property. The neighbor's house is almost on the same grade as their home. Where the sauna is sitting is probably 15 feet below the foundation on their house. The 20 foot height of that structure would maybe be level with the neighbor's slab. They would look over the top of the roof. They do not have a view of the lake since it is wooded, but the additional sauna height would not impact their view of the lake.

The shoreline has erosion issues. There is no vegetation growing underneath the older cabin located at the shoreline and any runoff collects under that cabin and runs like a river. The cabin needs to be leveled almost every year. The old cabin has a 20-amp circuit and no plumbing. They have not used the cabin near the shoreline since they purchased the property. It is in the way of their view of the lake. If their kids are out playing in the water, they are unable to see anything but the cabin. They want the older cabin out of the way.

He drew up a schematic that would best fit their needs and not need to be excavated into the hill towards his neighbor's property. This has been the best compromise. Their first intent was to remove the storage building and move the cabin to the side and leave it. The guest cabin would be too close to the western property line. He has tried reaching out to that neighbor but has heard no response. This would be a massive improvement to the property and will clean up the property.

No audience members spoke. There were no virtual attendees in the audience.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked if there is a garage on the property. *Jared Ecklund* stated the principal dwelling has an attached garage.
- B. Board member *Pollock* asked if the principal dwelling was permitted through St. Louis County. *Jared Ecklund* stated this structure was permitted through Greenwood Township. Board member *Pollock* asked if St. Louis County would allow two residences on this property and if the older cabin needs to be removed no matter what. *Jared Ecklund* stated that while one residence would be allowed by St. Louis County, the county would not require the older cabin to be removed unless there was a plan for new development. St. Louis County has permitting records for the principal dwelling from 1997.
- C. Board member *Pollock* asked if this older cabin is considered an accessory structure or a dwelling. *Jared Ecklund* stated because the structure has a nonconforming shoreline setback, it is a principal dwelling.
- D. Board member *Pollock* asked if the older cabin could be converted into an accessory structure and remain at its current location. *Jared Ecklund* stated it cannot. Ordinance states that ~~one~~ a nonconforming structure cannot be converted into another nonconforming structure. If certain structures were eliminated and this structure moved to the correct setback, that structure might be allowed. If the applicant wanted to change its use, the property would need to be brought into compliance.
- E. Board member *Pollock* asked what would happen to the older cabin if the variance was denied. *Jared Ecklund* stated if the variance is denied, that would be the same as no development proposal. If there is no development proposed, that structure could remain.

- F. Board member *Skraba* asked if the applicant could get a permit to expand the older cabin. *Jared Ecklund* stated no, not without another variance proposal.
- G. Board member *Coombe* stated there is nothing in the Ordinance that would not allow the applicant to remodel the interior of that structure to continue using it. *Jared Ecklund* stated remodeling does not require a permit.
- H. Board member *McKenzie* asked if the applicant suggested the removal of the two structures for the variance approval. *Jared Ecklund* stated this is part of their proposal. He does not know if the applicants would intend to remove either structure if the variance were denied. *Jenny Bourbonais*, Acting Secretary, stated that staff has been working with the applicants for some time. This proposal was one of the better options to meet the applicant's needs and to better meet county requirements. *Jared Ecklund* added there have been other options discussed with the applicants.
- I. Board member *McKenzie* asked how tall the sauna is currently. Board member *Coombe* stated the pitch looks 4/12.
- J. Board member *Skraba* stated that a boathouse would be allowed at 520 square feet. The proposed structure would be less than that. *Jared Ecklund* stated that a boathouse and a sauna are two different uses and have different requirements to follow. Board member *Skraba* added that the applicant would not be allowed a boathouse. *Jared Ecklund* stated that the only way a boathouse would be allowed would be to remove all water oriented accessory structures to construct one boathouse.
- K. Board member *Svatos* asked if the shoreline has been altered. *Jared Ecklund* stated the shoreline has been altered through the years. Board member *Svatos* stated it would be better to have vegetation along the shoreline and not just grass to the lake.
- L. Board member *Coombe* asked if the sauna is in front of the house. Based on the pictures it appears that there is a retaining wall and nothing else behind the sauna. *Jared Ecklund* stated that the sauna is in front of the principal dwelling.
- M. Board member *Pollock* asked if the applicant would be willing to forego the increased height of the sauna and just keep the height where it is. *Erik Lietz* stated the issue is aesthetic. They want the additional storage trusses because their garage is full already. If he did not get the height but had the increased size, it would be almost a flat roof. He wanted it to have a little peak and look more like a Lake Vermilion shed. He wants to side it with cedar and make it look better.
- N. Board member *Pollock* stated that it makes no sense to increase the height if the sauna is already doubling in size. Board member *Svatos* stated the height needs to go up some. It would structurally look much better with an increase in height. Board member *Coombe* added that the gable end is running parallel to the lake. With the new addition, the gable would face the lake. *Erik Lietz* stated that 20 feet would be the maximum height. It depends on what a builder will say once they are on the site.
- O. Board member *Coombe* asked if the rock wall behind the sauna would be remaining. *Erik Lietz* stated that rock wall runs the full length of the sauna behind the structure. The sauna building itself will not move.
- P. Board member *Skraba* asked if the Board could address the water drainage issues. *Jenny Bourbonais* stated the Board may address those issues, whether through a condition requiring a stormwater management plan or increasing vegetation along the shoreline. Board member *Skraba* stated the applicant can work with staff. *Jared Ecklund* stated there have been drainage issues from the road and getting into the applicant's basement. From

being on the site, most of the water drains under the older cabin towards the lake. If there were vegetation, that could help address that issue.

- Q. Board member *Pollock* asked what the difference is between a vegetative plan and a screening plan. *Jared Ecklund* stated that a planting plan can be used for screening and erosion control. A screening plan is more to break up the visual impact on the shoreline.
- R. Board member *Pollock* asked how riprap could factor into an erosion control plan. *Jared Ecklund* stated adding riprap along the shoreline would require a land alteration permit through St. Louis County as well as possibly a DNR waters permit.
- S. Board member *McKenzie* asked about a condition to remove the two structures, both the older cabin at the shoreline and the small, dilapidated accessory structure.

DECISION

Motion by Coombe/Pollock to approve a variance for a water oriented accessory structure to be expanded to a maximum size of 432 square feet (12 feet by 18 feet) and for the maximum height of a water oriented accessory structure to be increased to 20 feet, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 states that the maximum size of a water oriented accessory structure shall be limited to 250 square feet; the applicant is requesting an addition that would increase the size of the structure to 432 square feet.
2. Zoning Ordinance 62 states that the maximum height of a water oriented accessory structure shall be limited to 12 feet; the applicant is requesting a height increase that would increase the height of the structure to 20 feet.
3. The Board is requesting three nonconforming structures to be removed, including the older cabin located at the shoreline, the small dilapidated accessory structure, and an old privy structure.
4. The variance request is and is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The lot is small and steep.
2. There are existing structures on the property.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. Area around the subject parcel contains both seasonal and year-round residential uses.
2. This is a highly developed area. Many of the lots in this area have water oriented accessory structures.
3. The proposal would eliminate two nonconforming structures, one of which is very visible from the shoreline.
4. The structure that is there will be added onto and remodeled to blend in with existing structures.
5. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The applicant is planning to remove an existing older cabin located at the shoreline, a privy structure, and a small, dilapidated accessory structure.

The following conditions shall apply:

1. The structure shall not be used for human habitation.
2. The color of the structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
3. St. Louis County On-Site sewage treatment standards shall be met.
4. The requirements of the St. Louis County Solid Waste Ordinance 45 shall be met.
5. Three existing structures shall be removed, including the older cabin located at the shoreline, privy structure, and small accessory structure.
6. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county, and shall be implemented prior to the issuance of a land use permit.

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

Opposed: None - 0

Motion carried 6-0

Case 6301 – Daniela Scardaci

The fourth hearing item was for Daniela Scardaci, subject property located in S29, T51N, R16W (Grand Lake). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3, to allow a second addition to a nonconforming principal structure, to exceed addition size allowed and to allow a principal structure width facing the water to exceed 40 percent of the lot width when located within the shoreline setback. *George Knutson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing a 20 foot by 20 foot dwelling addition off the north side of the existing dwelling.
- B. This structure received a permit for an addition in the past with a previous variance approval by Grand Lake Township.
- C. As a result of the currently proposed addition, the structure width facing the water will further exceed the maximum allowed.

George Knutson reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article IV, Section 4.3, states performance standards for additions to nonconforming principal structures and, if the performance standards cannot be met, a variance is required.
 - a. In this case, the structure has previously had an addition and, as a result of the current proposed addition, the principal structure width facing the water will further exceed 40 percent of the lot width, which is the maximum allowed for the principal structure in its current location.
 - b. The previous addition was allowed by variance in 1989 for 480 square feet. The current proposal is for a 400 square foot addition.
 - c. The current structure width facing the water is 48 percent of the lot width. The proposed addition would increase this to 68 percent.

2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

B. Practical Difficulty:

1. This lot was platted in 1947 with 100 feet in lot width.
 - a. Current zoning minimums in this area require 150 feet in lot width. The subject parcel is a nonconforming lot of record.
2. There are no alternatives for the proposed principal structure addition that would not require variance.
 - a. A conforming principal structure on this lot may be allowed a maximum principal structure width facing the water of 55 feet (55 percent).
 - b. Even if the addition were to be proposed so to not increase structure width, a variance would still be required due to the location of the structure and the previously allowed addition.
 - c. For an addition to not require variance, the principal structure would need to be relocated to a conforming area and structure width facing the water could not exceed 55 feet.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. A majority of the parcels on Grand Lake are used for seasonal or year-round residential use.
2. The subject parcel received two variances in the past.
 - a. One variance was in 1988 for a 24 foot by 28 foot garage, and one variance was in 1989 for a 20 foot by 24 foot dwelling addition.
 - b. Grand Lake Township administered their own zoning at the time of these variances.

D. Other Factor:

1. St. Louis County On-Site Wastewater did not pass record review of the proposal.
 - a. If this proposal receives variance approval, the applicant will need to work with St. Louis County On-Site Wastewater to get a passing grade for the septic system prior to the issuance of a land use permit.

George Knutson noted one item of correspondence in support from the Town of Grand Lake. This item was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a 400 square foot addition to a principal structure located within the shoreline setback and for an addition size expanding the structure width facing the lake to 68 percent of the lot width include, but are not limited to:

1. Stormwater from the structure shall not discharge directly onto adjacent properties or into the lake.
2. St. Louis County On-Site Wastewater sewage treatment standards shall be followed.
3. Floodplain Ordinance 43 and FEMA standards shall be followed.
4. A shoreline vegetation plan shall be submitted for review.
5. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
6. All other local, county, state, and federal regulations shall be met.
7. No further expansion of the dwelling shall be allowed.

Daniela Scardaci, 4933 Westlund Road, Saginaw, the applicant, stated updating the septic will be a big project and will cost thousands of dollars. The proposed addition will be a screened porch. She does not know why she would need to update her septic system to get a screened porch. She was proposing a 20 foot by 20 foot addition, but she would be okay with a smaller 20 foot by 16 foot or 20 foot by 18 foot screen porch. This will be an area for her to spend time with family in the summer as the interior of the house is very small. She stated that the addition would be like her neighbor's screened porch off to the side of their dwelling.

Jenny Bourbonais, Acting Secretary, stated it is not because the applicant is applying for a screened porch, but it is because the applicant applied for a variance that triggered the record review of the septic. Any land use permit would need the septic system to be brought into compliance before a permit is issued.

No audience members spoke. There were no virtual attendees in the audience.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* stated that the dwelling is angled from the shoreline. *George Knutson* stated the addition would go on the north side of the dwelling towards the garage.
- B. Board member *Skraba* asked if this is a part of Grand Lake that would get a sewer line. *George Knutson* stated that is not known.
- C. Board member *Skraba* asked if staff's pictures are a representation of the project. *Daniela Scardaci* stated this was the general idea of what she was trying to accomplish without having a set plan.
- D. Board member *Skraba* stated that no matter what is done to the house, it will require a variance. *Daniela Scardaci* stated she understands.
- E. Board member *Pollock* stated what the applicant is asking for is 68 percent lot width facing the lake. Even at a conforming setback, the applicant would only be allowed 55 percent lot width facing the lake.
- F. Board member *Skraba* asked if the applicant has considered a detached screen house. *Daniela Scardaci* stated it would be nice to have the screen porch attached to the house for the convenience.
- G. Board member *Pollock* asked if the septic needs to be brought into compliance. *George Knutson* stated if the variance is approved, the septic would need to be compliant for a land use permit to be approved. Board member *Pollock* asked if the variance is not approved,

would the landowner have to do something with the septic regardless? *George Knutson* stated that is for the On-Site Wastewater division to determine. This system did pass a point of sale inspection.

- H. Board member *Skraba* asked if the applicant is aware of alternative options. *George Knutson* stated alternatives were discussed with the applicant. There is also a boathouse on the property. If the boathouse were removed, the applicant would be allowed a water oriented accessory structure. While the structure would be detached, it could be closer to the lake.
- I. Board member *McKenzie* stated this project is not ready to go. There is no set plan by the applicant. There is not enough information. They do not know the interior layout of the house.
- J. Board member *Pollock* asked if the applicant could come back with a smaller addition size if this variance is denied. He cannot agree with 68 percent structure width facing the lake.
- K. *Jenny Bourbonais* clarified that staff does not recommend applicants get full designs of their proposal in the event that the variances are not approved.
- L. Board member *Svatos* stated that the applicant is stuck because of the septic status. It is tough not knowing potential costs.
- M. Board member *Coombe* stated it was not that long ago that they discussed removing lot width standards. This was determined to go case-by-case. The Board eventually agreed to 55 percent of lot width facing the lake.
- N. Board member *Skraba* stated because of the orientation of the house now, the addition would make it seem even wider because of how the structure is angled.
- O. Board member *Skraba* stated there was no need as to say why this dwelling addition for a screen porch is justified.
- P. Board member *Pollock* asked what requirements there would be for a detached screened porch. *George Knutson* stated that a detached screen porch would need to meet shoreline setback of 75 feet and be located 10 feet from the property line.
- Q. Board member *Skraba* noted there are no alternatives for the proposed principal structure addition that would not require variance. *George Knutson* stated this was specifically for the dwelling, not for a detached structure. A detached structure can be permitted with a land use permit.
- R. Board members discussed denying the variance without prejudice to give the applicant the opportunity to return. Board member *Skraba* stated that it seemed the septic situation overwhelmed the applicant, and she did not know what to do. Board member *Pollock* asked if the applicant does nothing when denied without prejudice, does this request go away? *Jenny Bourbonais* stated it would depend on if the denial was conditioned to come back within a certain period of time. Otherwise, it is up to the applicant to determine when and if they want to come back with a new proposal. The Board would need to be specific as to what the Board of Adjustment is looking for when denying without prejudice.

DECISION

Motion by McKenzie/Pollock to deny a variance without prejudice for a 400 square foot addition to a principal structure located within the shoreline setback and for an addition size expanding the structure width facing the lake to 68 percent of the lot width, for the applicant to have a better plan for the dwelling addition, including a site sketch of exactly what is being requested. This motion is based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article IV, Section 4.3, states performance standards for additions to nonconforming principal structures and, if the performance standards cannot be met, a variance is required.
 - a. In this case, the structure has previously had an addition and, as a result of the current proposed addition, the principal structure width facing the water will further exceed 40 percent of the lot width, which is the maximum allowed for the principal structure in its current location.
 - b. The previous addition was allowed by variance in 1989 for 480 square feet. The current proposal is for a 400 square foot addition.
 - c. The current structure width facing the water is 48 percent of the lot width. The proposed addition would increase this to 68 percent.
2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.
5. The request would increase the percentage of structure width facing the lake and would be a second addition. Neither are allowed.
6. The variance request is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. This lot was platted in 1947 with 100 feet in lot width.
 - a. Current zoning minimums in this area require 150 feet in lot width. The subject parcel is a nonconforming lot of record.
2. There are no alternatives for the proposed principal structure addition that would not require variance.
 - a. A conforming principal structure on this lot may be allowed a maximum principal structure width facing the water of 55 feet (55 percent).
 - b. Even if the addition were to be proposed so to not increase structure width, a variance would still be required due to the location of the structure and the previously allowed addition.
 - c. For an addition to not require variance, the principal structure would need to be relocated to a conforming area and structure width facing the water could not exceed 55 feet.
3. No practical difficulty has been stated in either the staff report or in the applicant's variance application. It does not appear from the applicant's provided sketch that the septic system or well would limit placing an addition off the side of the structure away from the lake. A more detailed sketch may have aided in understanding the applicant's situation.

4. Practical difficulty has not been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. A majority of the parcels on Grand Lake are used for seasonal or year-round residential use.
2. The subject parcel received two variances in the past.
 - a. One variance was in 1988 for a 24 foot by 28 foot garage and one variance was in 1989 for a 20 foot by 24 foot dwelling addition.
 - b. Grand Lake Township administered their own zoning at the time of these variances.
3. The area around the applicant's property and the neighbors is well-screened. The applicant's lot width is 100 feet. There are five contiguous 100 foot wide lots next to the applicant's.
4. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. St. Louis County On-Site Wastewater did not pass record review of the proposal.
 - a. If this proposal receives variance approval, the applicant will need to work with St. Louis County On-Site Wastewater to get a passing grade for the septic system prior to the issuance of a land use permit.
2. The proposal received the support of the Grand Lake Township.

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

Opposed: None - 0

Motion carried 6-0

Case 6302 – Todd and Laura Rothe

The fifth hearing item was for Todd and Laura Rothe, subject property located in S27, T52N, R15W (Fredenberg). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D. (4) b, to allow a principal structure height to exceed 25 feet when located between the shore impact zone and the required setback, and to retain relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4 and Article IV, Section 4.3 D. (3), to allow a principal structure at a reduced shoreline setback and to allow a principal 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 principal dwelling with a height of 35 feet where 25 feet is allowed.
- B. On November 12, 2020, the applicant was granted a variance to construct a principal dwelling 75 feet from the shoreline of Fish Lake Reservoir where 100 feet is required, a structure width facing the lake of 49 percent where 40 percent is allowed, and a structure height of 27 feet where 25 feet is allowed.
- C. If the current request is granted, the variance granted on November 12, 2020, will be revoked.
- D. The applicant wishes to retain relief from the St. Louis County Zoning Ordinance 62 for a 75 foot shoreline setback and structure width facing the lake of 49 percent.

E. There is steep topography located on the site.

Donald Rigney reviewed staff facts and findings as follows:

A. Official Controls:

1. Fish Lake Reservoir is a Recreation Development Lake which requires a shoreline setback of 100 feet; the principal structure granted through variance on November 12, 2020, would be located at a shoreline setback of 75 feet.
2. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback; the structure granted through variance on November 12, 2020, would have a height of 27 feet. The currently proposed principal structure height is 35 feet.
3. The parcel is a Minnesota Power lease lot and is a lot of record for permitting purposes.
4. 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.
5. 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.
6. 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.
7. 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. A majority of the riparian portion of the lease lot contains steep slope. Any development of the lot, at a conforming location or not, will be affected by the steep slope and will require a design that takes the topography into account.
2. There are alternatives that would eliminate the need for a variance request.
 - a. Alternative: As proposed, the dwelling has a walkout basement with a vaulted main floor resulting in a height of 35 feet. The previous variance request granted a height of 27 feet. A redesign may reduce the height of the structure and eliminate the need for an additional variance request for height.
3. The topography of the property may complicate the development of the lot; however, the design of the proposed dwelling is a self-created practical difficulty.
4. The applicant has not provided sufficient evidence as to why the previous height variance is inadequate.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round dwellings.
2. Most principal structures in the Minnesota Power lease plat located on Larson Lane do not meet shoreline setback.
3. Principal dwelling heights in the immediate vicinity:
 - a. 5120 Larson Lane: Dwelling was constructed in 2006 with a shoreline setback of 50 feet and a height of 14 feet, approved by variance.
 - b. 5108 Larson Lane: Dwelling was constructed in 2000 with a shoreline setback of 70 feet and a height of 17 feet, approved by variance.
 - c. 6199 Lavaque Road: Dwelling was constructed in 2017 with a shoreline setback of 87 feet and a height of 15 feet, approved by variance.

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. The current design of the structure is self-created. The applicant has not met the burden of demonstrating a practical difficulty as proposed as there has already been a height variance granted for the proposed structure.

Donald Rigney noted one item of correspondence from Heather Hiner, the architect. This item was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a principal structure height of 35 feet where 25 feet is allowed include, but are not limited to:

1. As per the previous variance, the setback for the proposed structure shall be maximized to the greatest extent possible and shall be no closer than 75 feet from the shoreline.
2. As per the previous variance, the structure width facing the lake shall not exceed 49 percent of the lot width.
3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
4. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
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.

Todd Rothe, 5114 Larson Lane, the landowner, disagrees with the staff report on the essential character of the locality. He clarified 5120 Larson Lane as a single-wide year-round mobile home on top of the hill without a septic system. He clarified 6199 Lavaque Road is a double-wide modular home. 5108 Larson Lane is their current dwelling which, using the county's definition of height, is 33 feet from the basement floor to the peak.

This presentation omits the outline of this structure built into the hill from November 2020. The view of the home has not changed at all since the November 2020 variance. He did not want to

spend thousands of dollars in advanced plans until they received a setback variance. No view or scale has changed from what they have asked for.

Since they received the setback variance, they tore down the cabin and shed which was a condition of that variance approval. There have been numerous mature white pines that were harvested and milled into boards for use inside the new house. There was no ground disturbance, only stumps. The whole shoreland has been stabilized with riprap in accordance with MN Department of Natural Resources (DNR) standards.

Heather Hiner, 5255 Maple Grove Road, architect, was also present.

Bob Kanuit, attorney for the applicant, stated they do not want to make a big deal out of this. The Ordinance is unclear from a legal standpoint. Section 4.3, which was cited by staff, applies to nonconforming uses. Nonconforming uses is a specific legal term that covers existing buildings. This is not an existing building in the setback area. This is a new building that has been granted a variance. This is not a nonconforming use. This wording could be brought before a Judge. They would prefer not to do this. The county should change the Ordinance if they want to impose height requirements on new structures in the shoreland setback area. There may be a deal to be made here.

No audience members spoke. There were no virtual attendees in the audience.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if the three neighboring properties required a height variance. *Donald Rigney* stated they were approved by variance, but a height variance was not required. The reason these three neighboring properties needed variances was for setback.
- B. Board member *Coombe* asked if the proposed structure has been built. *Donald Rigney* stated no, the applicants have not started construction.
- C. Board member *McKenzie* asked if the applicant is asserting the statute is wrong in the ordinance and asked if the applicant has looked at the Ordinance. *Todd Rothe* stated he has read the ordinance. The Ordinance states that one is restricted to a height of 25 feet when adding on to an existing structure at a nonconforming setback. Board member *McKenzie* asked if the applicant has brought this up with staff. *Todd Rothe* stated he has, and his attorney said that the ordinance does not say what the applicants are trying to do.
- D. Board member *McKenzie* stated in the application that a flat roof is not an option to explore and asked why the applicant states that a flat roof is the only alternative. *Todd Rothe* stated this is not something they are willing to do if they have to reduce the height eight feet. He could add eight feet of dirt instead of a walk-out, but the home would be the same configuration and not have a door. The structure height is because the structure is built into the hill and the relationship between the floor plan from the driveway side to the floor plan on the walk-out side.
- E. Board member *McKenzie* asked how many levels are proposed in the house. *Todd Rothe* stated two. Board member *McKenzie* asked what the distance between the floor of the main level is. *Todd Rothe* stated the floor level is different from the driveway side to the walk-out side. The driveway side is more public facing and would be about 23 feet from the main level floor to the ceiling. The 23 foot height is the exterior from the main level to the peak.

Board member *McKenzie* stated he is looking for the interior height. *Todd Rothe* stated most of the house has 9 foot ceilings except for the peak. *Heather Hiner* added that 23 feet is the exterior. The interior ceiling peak is roughly 20 feet 4.5 inches in height. This is dependent on the final truss design.

- F. Board member *McKenzie* asked if the applicant would be willing to give up the height of the peak in order to comply with the November 2020 variance approval of 27 feet. *Todd Rothe* stated he is not willing to redesign. He has too much into this project already. If they lost the proposed height, the look of the house would be compromised. He does not understand what is being gained by making the house ugly. If the county wants trailer homes and double-wide homes in the neighborhood, he will disagree that this should not be the character of a lake.
- G. Board member *McKenzie* stated that in the November 2020 variance hearing, there was a deck that came up in the discussion and the applicant had intended to cover that deck. *Todd Rothe* stated he had agreed to remove the roof in order to allow the measurement to be the same as it is to the structure. The deck had been open with a roof over the top of it.
- H. Board member *Pollock* asked what changed between now and from when the variance was approved for a structure height of 27 feet. *Todd Rothe* stated the only thing that changed was the number. They did not have a complete design at the time with a number printed on the drawing.
- I. Board member *Pollock* read from *Heather Hiner's* letter that the home was designed with the maximum height under Ordinance 62 as defined at 35 feet. That is correct if the house is at the correct shoreline setback of 100 feet. If the house does not meet the 100 foot shoreline setback, he asked what is allowed. *Donald Rigney* stated between the 100 foot setback and the shore impact zone, the structure would be allowed 25 feet in height.
- J. Board member *Coombe* asked where the 35 foot height would be measured from. *Donald Rigney* stated it would be measured on the lake side, from the bottom of the walkout to the peak of the roof. Board member *Skraba* asked if that would be from the lowest point. *Donald Rigney* stated it would be.
- K. Board member *Coombe* stated that if any house is measured from a basement ingress/egress window, the structure height would be a few feet taller. The Minnesota Shoreland Rules show how to measure a structure and how to measure with a walk-out basement. It does not show measuring from the bottom of that walk-out basement, but from the bottom of the first floor. He may be interpreting that wrong, but he has never known that rules are different between cities and counties. *Jenny Bourbonais*, Acting Secretary, stated that St. Louis County rules are either as restrictive or more so than state rules. She added that there are many rules that are different between a city and a county. There are different ways to measure in the statute. Board member *Coombe* stated that they should be following the state rules on how to measure a structure. If those are not followed, every cabin or house that has a basement bedroom with windows to make the bedroom legal would have a nonconforming structure due to structure height. Board member *McKenzie* stated in that case, it would be measuring from where the foundation meets the ground. In that case, the interpretation would be for the majority of the foundation, not an egress window.
- L. Board member *Skraba* stated in this case, there is landscaping around that basement door and the measuring comes from where that door exits the house. The Board should interpret this as measuring from the lowest point. It does not seem fair to measure from the doorway

that leads out. The intent to restrict the height of a building is to not have a skyline if there is a large house built on top of a hill. To build into the hill is to have a basement.

- M. Board member *McKenzie* stated the height of the building is the distance between the highest point on the roof and the lowest point at the ground level where the building foundation meets the ground. Board member *Skraba* stated that is true in one spot. However, the majority of the building is not 35 feet in height.
- N. Board member *Skraba* stated the intent is for the applicant to build this house into the side of a hill, whether it is 27 feet high as approved or 35 feet high as proposed.
- O. Board member *Coombe* stated that if the applicant built in a valley, it would not be as visible. If the applicant would build on top of the hill, even at 27 feet in height, it would be an eyesore. The applicant just wants reasonable use of the property to build into the hill.
- P. Board member *McKenzie* disagrees. While a soaring ceiling height is desirable, the structure is between the conforming setback and the shore impact zone. It should be left at the 27 foot height approved by variance. There is no practical difficulty that is not a self-created practical difficulty because of the ceiling height in the main level. This is a basement and a main level.
- Q. Board member *Coombe* stated the practical difficulty is the type of land they have. The applicant did not create this property. They are building into the hill, not on top of it.

FIRST MOTION:

Motion by McKenzie/Svatos to deny a variance from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D. (4) b, to allow a principal structure height to exceed 25 feet when located between the shore impact zone and the required setback, and to retain relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4 and Article IV, Section 4.3 D. (3), to allow a principal structure at a reduced shoreline setback and to allow a principal structure width facing the water to exceed 40 percent of the lot width if located within the shoreline setback, for a principal structure height of 35 feet where 25 feet is allowed, based on the following facts and findings:

A. Official Controls:

1. Fish Lake Reservoir is a Recreation Development Lake which requires a shoreline setback of 100 feet; the principal structure granted through variance on November 12, 2020, would be located at a shoreline setback of 75 feet.
2. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback; the structure granted through variance on November 12, 2020, would have had a height of 27 feet. The currently proposed principal structure height is 35 feet.
3. The parcel is a Minnesota Power lease lot and is a lot of record for permitting purposes.
4. 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.

5. 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.
6. 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.
7. 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.
8. The request is not in harmony with official controls as the request seeks to violate the ordinance without justification.
9. The variance request is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. A majority of the riparian portion of the lease lot contains steep slope. Any development of the lot, at a conforming location or not, will be affected by the steep slope and will require a design that takes the topography into account.
2. There are alternatives that would eliminate the need for a variance request.
 - a. Alternative: As proposed, the dwelling has a walkout basement with a vaulted main floor resulting in a height of 35 feet. The previous variance request granted a height of 27 feet. A redesign may reduce the height of the structure and eliminate the need for an additional variance request for height.
3. The topography of the property may complicate the development of the lot; however, the design of the proposed dwelling is a self-created practical difficulty.
4. The applicant has not provided sufficient evidence as to why the previous height variance is inadequate.
5. The applicant's permit application stated the property cannot be put to reasonable use because of its topography and the ordinance height restriction but did not indicate in their permit application narrative that the height level they are seeking is because the structure ceiling height is almost 23 feet. This is almost four times the normal ceiling height. Were the applicant to adhere to the height variance received in 2020, the ceiling height would be about 16 feet which is twice the normal ceiling height.
6. Practical difficulty has not been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round dwellings.
2. Most principal structures in the Minnesota Power lease plat located on Larson Lane do not meet shoreline setback.
3. Principal dwelling heights in the immediate vicinity:
 - a. 5120 Larson Lane: Dwelling was constructed in 2006 with a shoreline setback of 50 feet and a height of 14 feet, approved by variance.
 - b. 5108 Larson Lane: Dwelling was constructed in 2000 with a shoreline setback of 70 feet and a height of 17 feet, approved by variance.

- c. 6199 Lavaque Road: Dwelling was constructed in 2017 with a shoreline setback of 87 feet and a height of 15 feet, approved by variance.
4. There do not appear to be any homes near the applicant's property with the size and scale of the structure.
5. The variance request will alter the essential character of the locality.

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. The current design of the structure is self-created. The applicant has not met the burden of demonstrating a practical difficulty as proposed as there has already been a height variance granted for the proposed structure.

In Favor: McKenzie, Pollock, Svatos - 3

Opposed: Coombe, Filipovich, Skraba - 3

Motion fails 3-3

DISCUSSION ON MOTION:

- A. Board member *Svatos* asked if an interpretation is needed on this decision. *Jenny Bourbonais* stated that *Thomas Stanley*, St. Louis County Attorney's Office, has been part of this process since the previous variance approval in November 2020.
- B. Board member *Pollock* asked if there was a chance that the 27 foot height was misinterpreted and the applicant thought they were in compliance. *Jenny Bourbonais* stated there was correspondence provided by applicant from 2020 that gave the definition provided in ordinance on how height is measured. The applicant responded with a height of 27 feet from the walk-out. *Heather Hiner* stated that while she was not part of the original variance hearing, the plans have not changed. This was never 27 feet from the basement to the peak, it was always designed to 35 feet.
- C. *Jenny Bourbonais* read the following from the 2020 correspondence: "The correct figure as a maximum exterior height from basement floor to highest peak is 27 feet (vaulted main floor peak)". Most other roof lines on the proposed structure are less. Board member *Skraba* stated that the applicant misrepresented himself here if the height was always 35 feet and they stated 27 feet.
- D. Board member *Svatos* asked if there is a chance to deny this variance without prejudice to see if there is anything to work out. Board member *Skraba* did not agree and said there is nothing to work out anymore. *Jenny Bourbonais* stated the Board can make this decision.
- E. Board member *Filipovich* asked staff what part of the Ordinance language that *Bob Kanuit* referenced. *Jenny Bourbonais* stated this was the section on nonconformities. This is referenced in two different locations, which may be where some of the confusion is coming from. It is referenced in shoreland and residential areas as well.
- F. Board member *Skraba* stated he does not see any big issue with this dwelling. Board member *Coombe* stated he does not believe that the state wanted two different ways to measure a structure height for both a city and a county shoreland. He handed out the DNR definition on measuring from the Shoreland Information for Property Owners website to

clarify how the MN DNR measures. The Board can be as restrictive or maybe more restrictive, but the Board cannot throw out how the state measures.

- G. Board member *McKenzie* read: Height limits in shoreland areas are put in place to preserve the natural character on a body of water and are meant to keep development below the tree line. The reason the ordinance requirements exist is to preserve the natural character on a body of water and are meant to keep development below the tree line. It seeks to restrict structure height on the shoreline.

DISCUSSION AFTER FIRST MOTION:

- A. Board member *Coombe* stated that having a split vote twice would deny the variance request. A second motion would just muddy the water. Within 60 days, this applicant will get their variance because the Board of Adjustment did not act on this. Board member *Skraba* stated he would prefer a motion. There is more information that was brought out by Board member *Coombe* since the first motion was made. It would be cleaner to have a second motion to approve the variance. Any flaw in the Ordinance could be cleaned up instead of waiting for the courts to clean it up and instead of just letting it sit for 60 days.
- B. Board member *Pollock* asked if a motion could be made to deny the variance without prejudice. The applicant could come back for more work to be done or wait for an interpretation to be done.
- C. *Thomas Stanley*, St. Louis County Attorney's Office, stated the attorney's office treats a non-approval as a denial. If the applicant wants to argue their case through the courts that option is available to them. It would be better if the Board of Adjustment made a decision even if an opposite motion ends up in a tie. If the Board of Adjustment did not make a decision thinking that the 60 day rule would apply, it would not. Mr. Kanuit may disagree. It could be proceeded with in another venue.
- D. Board member *Coombe* asked why the 60 day rule would not apply. *Thomas Stanley* stated that the Board is there to hear the variance. Ties have always been treated as a denial. It would not be an approval of the variance. That is the position that would be taken in court. The applicants already have a variance that was granted. They heard from the landowner that the house next door to this one may be in violation of the ordinance based on the measurement of that dwelling. If there is a violation there, the applicant would not have been allowed to come forward with a variance request. The fact that a Board member made a motion to deny and the Board wants to sit on the motion for 60 days and let the attorneys fight it out in court, this would still be treated as a denial and the variance that was approved in 2020 would still be granted.
- E. Board member *McKenzie* asked if the 60 day rule would apply during an appeal. Board member *Skraba* stated that it applies to when this application was received. That started the 60 day clock. He added that this could be cleaned up and that attorneys do not need to spend time in court. This property was granted a height variance of 27 feet, even if 27 feet was not on the drawing and was not talked about because the Board did not know what the height on the drawings would be. Where the Ordinance measures from and where the state DNR measures from are two different numbers.
- F. Board member *McKenzie* stated this house is too big for this lot. This is the wrong parcel for this project or the wrong house for this parcel. Board member *Pollock* stated this is a practical difficulty that was created by the applicant.

- G. Board member *Coombe* stated practical difficulty is nothing more than an applicant proposing to use the property in a reasonable manner not permitted by an official control. This is what the applicant is asking for. A variance was already approved. The applicant did not create the lay of the land.
- H. Board member *Filipovich* stated that the road side of the dwelling will be 25 to 27 feet in height. The lake side will be 35 feet in height and the dwelling will be built into a hill. From the road side it will be the most visible because traffic will be driving by it. While the lake will have a higher profile, there will be a hill and trees behind it. Board member *McKenzie* stated this structure will be more visible because its profile will be higher than everything else.

DECISION:

Motion by Skraba/Filipovich to approve a variance from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D. (4) b, to allow a principal structure height to exceed 25 feet when located between the shore impact zone and the required setback, and to retain relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4 and Article IV, Section 4.3 D. (3), to allow a principal structure at a reduced shoreline setback and to allow a principal structure width facing the water to exceed 40 percent of the lot width if located within the shoreline setback, for a principal structure height of 35 feet where 25 feet is allowed, based on the following facts and findings:

A. Official Controls:

- 1. Fish Lake Reservoir is a Recreation Development Lake which requires a shoreline setback of 100 feet; the principal structure granted through variance on November 12, 2020, would be located at a shoreline setback of 75 feet.
- 2. Zoning Ordinance 62 states that a completed principal structure shall not exceed a total of 25 feet in height if all or any part of the structure is between the shore impact zone and the required setback; the structure granted through variance on November 12, 2020, would have had a height of 27 feet. The currently proposed principal structure height is 35 feet.
- 3. The parcel is a Minnesota Power lease lot and is a lot of record for permitting purposes.
- 4. The difference in the way measurement is from MN DNR and St. Louis County is in contradiction. The height will be 25 feet on the top side and 35 feet on the bottom side.
- 5. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The difference in the way measurement is from MN DNR and St. Louis County is in contradiction.
- 2. A majority of the riparian portion of the lease lot contains steep slope. Any development of the lot, at a conforming location or not, will be affected by the steep slope and will require a design that takes the topography into account.
- 3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round dwellings.
2. Most principal structures in the Minnesota Power lease plat located on Larson Lane do not meet shoreline setback.
3. Principal dwelling heights in the immediate vicinity:
 - a. 5120 Larson Lane: Dwelling was constructed in 2006 with a shoreline setback of 50 feet and a height of 14 feet, approved by variance.
 - b. 5108 Larson Lane: Dwelling was constructed in 2000 with a shoreline setback of 70 feet and a height of 17 feet, approved by variance.
 - c. 6199 Lavaque Road: Dwelling was constructed in 2017 with a shoreline setback of 87 feet and a height of 15 feet, approved by variance.
4. The structure will be located further back from the shoreline than other homes in the area except for the dwelling at 6199 Lavaque Road.
5. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. This is an opportunity to look at the Ordinance rather than expend a whole lot of energy into denying the variance.
2. This dwelling will fit with the property. If the structure is moved further back, the structure will be located in the road.

The following conditions shall apply:

1. As per the previous variance, the setback for the proposed structure shall be maximized to the greatest extent possible and shall be no closer than 75 feet from the shoreline.
2. As per the previous variance, the structure width facing the lake shall not exceed 49 percent of the lot width.
3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
4. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
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.

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

Opposed: McKenzie, Pollock - 2

Motion carried 4-2

Motion to adjourn by Svatos. The meeting was adjourned at 1:05 p.m.