

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD **THURSDAY, JANUARY 9, 2020, ST. LOUIS COUNTY GOVERNMENT SERVICES BUILDING, LIZ PREBICH ROOM, VIRGINIA, MN.**

9:45 AM – 10:38 AM

Board of Adjustment members in attendance: Steve Filipovich
James McKenzie
Sonya Pineo
Dave Pollock
Roger Skraba
Ray Svatos
Diana Werschay, Chair

Board of Adjustment members absent: None - 0

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

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

ELECTION OF OFFICERS

Motion by Skraba/Pineo to elect Diana Werschay as Chair.

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

Opposed: None – 0

Motion by Pineo/Svatos to elect Roger Skraba as Vice-Chair.

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

Opposed: None – 0

NEW BUSINESS:

- A. Greg LaPatka, S27, T63N, R18W (Beatty)
- B. Daniel Gaylord, S29, T63N, R12W (Morse)

OTHER BUSINESS:

Motion by Pineo/McKenzie to approve the minutes of the December 13, 2019 meeting with one correction.

In Favor: McKenzie, Pineo, Skraba, Svatos, Werschay – 5

Opposed: None – 0

Abstained: Filipovich, Pollock - 2

Motion carried 5-0-2

Due to having zero cases, there will be no public hearing in February.

NEW BUSINESS:

Case 6206 – Greg LaPatka

The first hearing item was for Greg LaPatka, property located in S27, T63N, R18W (Beatty). The applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3, to allow an addition that will increase a nonconformity by decreasing the shoreline setback. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting to increase a nonconformity while decreasing the shoreline setback as a way to resolve an outstanding violation.
- B. The applicant constructed two additions and a deck without permits.
- C. The original structure is located 63 feet from the shoreline.
- D. The 114 square foot lakeside addition was constructed 56 feet from the shoreline. The addition includes a bump-out beyond the original footprint which increases the nonconforming setback by 7 feet.
- E. The second addition was constructed to the rear of the structure and may have been allowed with a performance standard permit, which allows up to 400 square feet to the rear.
- F. The applicant applied for a boathouse in 2019 which resulted in discovering the dwelling additions that had been constructed without permits.
- G. The applicant had previously applied for and was issued a land use permit for a garage in 2014.
- H. The variance is to approve the lakeside addition. The applicant may be able to obtain a performance standard permit for the rear addition.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62, Article IV, Section 4.3, allows expansion for riparian non-conforming principal structures if certain standards are met including that additions do not decrease the shoreline setback.
 2. The Comprehensive Land Use Plan Objective LU-3.3 “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. Information provided by the applicant was limited and is not sufficient to provide justification for allowing the after-the-fact variance at a reduced setback. The request as provided is clearly self-created.
 2. The applicant is allowed one water oriented accessory structure such as a gazebo that would allow a screened sitting area at a reduced setback without variance.
 3. A performance standard permit for an addition up to 400 square feet may have been allowed to the rear of the structure without variance. However, no permit was applied for any additions to the principal structure.
- C. Essential Character of the Locality:
 1. The neighborhood consists of conforming and nonconforming seasonal and year-round principal structures. No previous variances of similar nature were applied for in the area.

D. Other Factors

1. The property owners had knowledge that permits were required due to the fact that a permit for a garage was applied for at the time the additions were constructed in 2014. The applicant also applied for a boathouse permit in 2019; it is unclear why no application for a permit for the additions was received at the time of construction. Therefore, the applicant has not provided the burden of proof to justify a variance.
2. As stated above, the request is self-created and the applicant has not provided justification for granting a variance. Per St. Louis County Zoning Ordinance, Article VIII, Section 8.6 B. 4. (b.) (vi.), when an applicant seeks variance for additions or alterations to a structure that have already commenced, it shall be presumed that the changes to the structure were intentional and the plight of the landowner was self-created, as per Minnesota Statutes, section 394.27, Subdivision 7 and all acts amendatory thereof. Therefore, absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

E. Was the construction completed prior to applying for the variance? If not, what extent of the construction has been completed?

1. The structure additions were built some time in 2014 when a permitted garage was being built on the property.
2. What steps were taken by the landowner to comply with county ordinances?
 - a. After several letters were sent to the landowner regarding the violations, the landowner contacted the Department inquiring on options to resolve the issues. No steps were taken by the applicant to comply with county ordinances other than applying for an after-the-fact variance.
3. Has the landowner worked cooperatively with the county to seek resolution/alternatives?
 - a. The applicant was given an opportunity to remove the addition and apply for a performance standard permit for the addition to the rear of the structure. He opted to apply for an after-the-fact variance.
4. Did the construction lead to the “practical difficulty” claimed by the landowner?
 - a. Yes. However, the practical difficulty was self-created.

F. How would the county benefit by enforcement of the ordinance if compliance were required?

1. The county would benefit by the enforcement of the ordinance if compliance were required. Absent the demonstration of practical difficulty, the variance should not be granted. Doing so will likely encourage others to do the same disregarding the purpose and intent of Zoning Ordinance 62.

Mark Lindhorst noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting an after-the-fact variance to allow a 114 square foot lakeside addition 56 feet from the shoreline, the following conditions shall apply:

1. A plan to enhance vegetation within the shore impact zone shall be submitted, approved by the county prior to issuance of a land use permit. The plan shall be implemented by the property owner no later than June 30, 2020.
2. All other applicable permits shall be obtained.

Greg LaPatka, the applicant, stated that there has been an existing deck that wrapped around most of the house. All construction was done at the time the garage was constructed. He thought that permits had been pulled at the time the garage was built. His now ex-wife had pulled the permit for the garage. That was an oversight on his part. He did not know he was in violation until he applied for the boathouse. He explained that the deck was to remedy his homeowner's insurance policy which requires a landing for an existing door. The distance from the deck to the property line is about 25 to 30 feet.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired the size of deck could be allowed and at what setback distance. *Mark Lindhorst* explained that decks can be up to 12 feet in width as long as they do not extend into the shore impact zone.
- B. *Jenny Bourbonais*, Acting Secretary, stated that any permits to correct violations will need to be obtained regardless of the variance outcome. This includes the addition to the rear and the deck.

DECISION

Motion by McKenzie/Pollock to deny an after-the-fact variance to allow a 114 square foot lakeside addition 56 feet from the shoreline, based on the following facts and findings:

- A. Official Controls:
 1. The variance request is not in harmony with the general purpose and intent of official controls. The variance would increase the nonconformity by decreasing the shoreline setback.
 2. Zoning Ordinance 62, Article IV, Section 4.3, allows expansion for riparian non-conforming principal structures if certain standards are met including that additions do not decrease the shoreline setback.
 3. The Comprehensive Land Use Plan Objective LU-3.3 "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. Practical difficulty has not been demonstrated. The applicant should have been aware that permits were needed because the applicant applied for a land use permit for a garage and construction of the garage and additions were completed at the same time. The request as provided is clearly self-created.

C. Essential Character of the Locality:

1. The neighborhood consists of conforming and nonconforming seasonal and year-round principal structures. No previous variances of similar nature were applied for in the area.

D. Other Factors

1. The property owners had knowledge that permits were required due to the fact that a permit for a garage was applied for at the time the additions were constructed in 2014. The applicant also applied for a boathouse permit in 2019; it is unclear why no application for a permit for the additions was received at the time of construction. Therefore, the applicant has not provided the burden of proof to justify a variance.
2. The nonconforming additions were constructed at the same time as a permitted structure was built.
3. The applicants provided limited and inadequate information that demonstrates practical difficulty.
4. The applicant did not respond or pursue remedies to bring the property into compliance until after several letters were sent by staff.

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

Opposed: None - 0

Motion carried 7-0

Case 6207 – Daniel Gaylord

The second hearing item was for Daniel Gaylord, property located in S29, T63N, R12W (Morse). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a dwelling and accessory structure to be located at a reduced shoreline setback where 75 feet is required. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to build a 30 foot by 30 foot dwelling on a small island on Shagawa Lake. The dwelling will in a location where the shoreline setback can be maximized at approximately 40 feet where 75 feet is required.
- B. The applicant is also proposing an accessory structure to house a composting toilet at a reduced shoreline setback of approximately 50 feet. This structure would be similar to a privy, but will not have a pit or a tank. Any form of sewage treatment would need to be approved by the on-site wastewater division staff prior to any permit being issued for a dwelling on the property.
- C. The structure would not be limited to the same setback requirements from a dwelling as a privy.
- D. Due to the narrow shape of the island, there is no location on the island where the 75 foot shoreline setback can be met.
- E. There is a small area where a structure can be placed outside of the shore impact zone.
- F. The island is completely vegetated.

Jared Ecklund reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62 states that the required shoreline setback on Shagawa Lake is 75 feet; the applicant is proposing a new dwelling structure located approximately 40 feet from the shoreline and a new accessory structure at approximately 50 feet from the shoreline.
2. The property falls within the Forest and Agriculture future land use category in the Comprehensive Land Use Plan.
3. Objective LU-3.1 of the 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 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 zoning requirements and lake setback for this property are some of the least restrictive requirements contained within Zoning Ordinance 62.

B. Practical Difficulty:

1. There is no location on the property where the 75 foot shoreline setback can be met.
2. The applicant's property meets the minimum acreage requirements for the zone district.
3. The proposed dwelling structure is likely to be located within the shore impact zone.
 - a. It is possible for a structure to be built outside of the shore impact zone; however there is no location on the property to meet the required 75 foot shoreline setback.
 - b. The size or design of the proposed structure could be manipulated in order to be located outside of the shore impact zone.
4. It may be possible for the proposed accessory structure to be located outside of the shore impact zone; however, there is no location on the property to meet the required 75 foot shoreline setback.
5. It is not necessarily required that the composting toilet be located outside of the proposed dwelling structure.
 - a. Since it is not a pit or vaulted privy, there is not a required setback from another structure.
 - b. Incorporating the composting toilet into the proposed dwelling structure would reduce the number of nonconforming structures on the property.
6. The property is somewhat unique because it is a narrow island.
7. Based on recorded documents, it appears that the island has been tied to the same family since 1957. Since that time, no structures have been constructed/permitted on the island.
8. The only type of structure that would be allowed on this island without a variance is a water oriented accessory structure.
 - a. The maximum allowed size for a water oriented accessory structure on the island would be 400 square feet for a boathouse.
 - b. It may be reasonable to allow a 400 square foot dwelling with the shoreline setback being maximized in lieu of a boathouse.

C. Essential Character of the Locality:

1. The island is located approximately 120 feet to the north of Bulinski's Point Plat.
2. A variance was approved on a small island approximately 0.9 miles to the northeast of the applicant's island in August 2015.
 - a. The variance was approved for a 375 square foot dwelling at a shoreline setback of 55 feet.
 - b. That island is 0.6 acres, while the subject property is approximately 1.5 acres.
3. A variance was approved on a small island approximately 0.6 miles to the northeast of the applicant's island in August 2018.
 - a. The variance was approved for a 128 square foot dwelling at a shoreline setback of 70 feet.
4. There have been several variances in the plat of Bulinski's Point which is located just south of the subject parcel.
 - a. The majority of the approved variances were for structures and/or septic systems on lots that did not meet the minimum area or width requirements.
 - b. Three variances were approved in Bulinski's Point for structures at reduced shoreline setbacks. Two were dwellings at setbacks of 65 feet and 57 feet and one was for a garage at a shoreline setback of 62 feet.

D. Other Factor

1. Due to the fact that the shoreline setback cannot be met and that the property has remained undeveloped, it may be considered that the property is not suitable for development.

Jared Ecklund noted one resolution from the Town of Morse opposed to this variance request. This item of correspondence had been handed to the Board prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a dwelling and accessory structure to be located at a reduced shoreline setback where 75 feet is required, the following conditions shall apply:

1. The structures shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater from the proposed structures shall not discharge directly into the lake.
3. The shoreline setback of the structures shall be maximized to the greatest extent possible, and shall be no closer than 50 feet.
4. The overall size of the dwelling shall be limited to no larger than 400 square feet.
5. If the proposed dwelling is built, there shall be no other structures allowed on the island with the exception of an approved privy structure.
6. The screening within the shore impact zone shall be retained to the greatest extent possible.
7. Any form of sewage treatment shall be approved by the on-site wastewater division prior to the issuance of a land use permit.

Daniel Gaylord, the applicant, stated they want to build a modestly-sized cabin in order to allow for recreational and expanded family use of the island. They want to have the separate building for their composting toilet. They could reconfigure and resize their building to fit it outside of the

shore impact zone. He added that no one ever developed this island because the family had not known which island they owned.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Inquired about staff's recommendation that the setback for the dwelling be maximized to the greatest extent possible and shall be no closer than 50 feet. *Jared Ecklund* stated that staff feels the structure can be reconfigured in order to be built outside of the shore impact zone.
- B. This is a lot of record that meets the minimum acreage. The issue is the island is narrow and there is no place on the island where a structure could meet the 75 foot shoreline setback.
- C. Inquired about why a 400 square boathouse was mentioned. *Jared Ecklund* stated that when something is not allowed, staff will look at other provisions in the ordinance. A 400 square foot boathouse would be the only structure allowed without a variance. A similarly-sized dwelling may be more reasonable than the size proposed.
- D. The most critical area of the island is the shore impact zone because it is surrounded by water.
- E. Some islands are too small to be developed and this may be one of them.
- F. Inquired if denying without prejudice could apply to allow the applicant to work on an exact location. *Jenny Bourbonais*, Acting Secretary, stated that staff has worked with the applicant for months in order to come up with the current variance request.

DECISION

Motion by Pineo/Svatos to deny a variance request to allow a dwelling and accessory structure to be located at a reduced shoreline setback where 75 feet is required, based on the following facts and findings:

- A. Official Controls:
 - 1. The variance request is not in harmony with the general purpose and intent of official controls. The structure is encroaching on the shore impact zone. As proposed, the structure would be located within the shore impact zone.
 - 2. Zoning Ordinance 62 states that the required shoreline setback on Shagawa Lake is 75 feet; the applicant is proposing a new dwelling structure located approximately 40 feet from the shoreline and a new accessory structure at approximately 50 feet from the shoreline.
 - 3. The property falls within the Forest and Agriculture future land use category in the Comprehensive Land Use Plan.
 - 4. Objective LU-3.1 of the 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 is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

6. The zoning requirements and lake setback for this property are some of the least restrictive requirements contained within Zoning Ordinance 62.

B. Practical Difficulty:

1. There has been no demonstrated practical difficulty for the proposed variance.
2. There is no location on the property where the 75 foot shoreline setback can be met.
3. The applicant's property meets the minimum acreage requirements for the zone district.
4. The proposed dwelling structure is likely to be located within the shore impact zone.
 - a. It is possible for a structure to be built outside of the shore impact zone; however there is no location on the property to meet the required 75 foot shoreline setback.
 - b. The size or design of the proposed structure could be manipulated in order to be located outside of the shore impact zone.
5. It may be possible for the proposed accessory structure to be located outside of the shore impact zone; however, there is no location on the property to meet the required 75 foot shoreline setback.
6. It is not necessarily required that the composting toilet be located outside of the proposed dwelling structure.
 - a. Since it is not a pit or vaulted privy, there is not a required setback from another structure.
 - b. Incorporating the composting toilet into the proposed dwelling structure would reduce the number of nonconforming structures on the property.
7. The property is somewhat unique because it is a narrow island.
8. Based on recorded documents, it appears that the island has been tied to the same family since 1957. Since that time, no structures have been constructed/permitted on the island.
9. The only type of structure that would be allowed on this island without a variance is a water oriented accessory structure.
 - a. The maximum allowed size for a water oriented accessory structure on the island would be 400 square feet for a boathouse.
 - b. It may be reasonable to allow a 400 square foot dwelling with the shoreline setback being maximized in lieu of a boathouse.

C. Essential Character of the Locality:

1. The variance may alter the essential character of the locality. This is a small, undeveloped island surrounded by water and no setbacks can be met.
2. The island is located approximately 120 feet to the north of Bulinski's Point Plat.
3. A variance was approved on a small island approximately 0.9 miles to the northeast of the applicant's island in August 2015.
 - a. The variance was approved for a 375 square foot dwelling at a shoreline setback of 55 feet.
 - b. That island is 0.6 acres, while the subject property is approximately 1.5 acres.
4. A variance was approved on a small island approximately 0.6 miles to the northeast of the applicant's island in August 2018.
 - a. The variance was approved for a 128 square foot dwelling at a shoreline setback of 70 feet.

5. There have been several variances in the plat of Bulinski's Point which is located just south of the subject parcel.
 - a. The majority of the approved variances were for structures and/or septic systems on lots that did not meet the minimum area or width requirements.
 - b. Three variances were approved in Bulinski's Point for structures at reduced shoreline setbacks. Two were dwellings at setbacks of 65 feet and 57 feet and one was for a garage at a shoreline setback of 62 feet.

D. Other Factors

1. Due to the fact that the shoreline setback cannot be met and that the property has remained undeveloped, it may be considered that the property is not suitable for development.
2. The Town of Morse is opposed to the variance request as stated in their January 3, 2020 resolution.

In Favor: McKenzie, Pineo, Pollock, Skraba, Svatos - 5

Opposed: Filipovich, Werschay - 2

Motion carried 5-2

Motion to adjourn by Pollock. The meeting was adjourned at 10:38 a.m.