

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, OCTOBER 13, 2022.**

12:30 PM – 1:32 PM

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

Board of Adjustment members absent: None - 0

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

**NEW BUSINESS:**

- A. Chris Kucera, S5, T68N, R19W (Unorganized 68-19)
- B. James Thune, S19, T60N, R21W (French)

**OTHER BUSINESS:**

**Motion by Skraba/McKenzie** to approve the corrected minutes of the September 8, 2022 meeting.

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

**Opposed:** None – 0

**Motion carried 7-0**

**NEW BUSINESS:**

**Case 6333 – Chris Kucera**

The first hearing item was for Chris Kucera, subject property located in S5, T68N, R19W (Unorganized 68-19). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a structure at a reduced shoreline setback. *Donald Rigney*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting to place a 24 foot by 12 foot commercial structure 50 feet from the Ash River where 100 feet is required.
- B. The structure would be utilized as a bakery/coffee shop as part of an existing resort.
- C. There is currently a storage building, sauna, and improved fire pit area.
- D. The parcel is relatively flat with about 6 feet of elevation change between the shoreline and Ash River Trail.
- E. There is floodplain on the property. Existing structures are currently within floodplain. Any proposed structures must meet floodplain standards.

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

A. Official Controls:

1. The Ash River is a Tributary which requires a shoreline setback of 100 feet; the proposed commercial structure will be located at a shoreline setback of 50 feet.
2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all 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 depth of the parcel at the proposed structure location is 100 feet. There is no location on the lot that will conform to all required setbacks.
2. The plat of Boyer's Ash River Lots was recorded in 1967 prior to the first zoning ordinance in St. Louis County.
3. An alternative is to construct or convert an existing structure that conforms to zoning requirements on the nonriparian lot owned by the applicant.

C. Essential Character of the Locality:

1. The proposed structure will be utilized as a commercial bakery/coffee shop. The area is highly developed and consists of multiple uses including resorts, commercial businesses, seasonal and nonseasonal residential uses.

D. Other Factors:

1. There is currently no septic system on the parcel for the wastewater generated by the proposed commercial structure.
2. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
3. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning ordinance nonconformities throughout the county.

*Donald Rigney* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a commercial structure at a reduced shoreline setback of 50 feet as proposed include, but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.

2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
3. St. Louis County On-Site Wastewater SSTS standards shall be followed.
4. The shoreline setback for the proposed commercial structure shall be maximized to the greatest extent possible and shall be no less than 50 feet.

*Chris Kucera*, 10351 Ash River Trail, Ash Riviera Resort, Orr, the applicant, stated they want to move forward with their proposed plan for a bakery/coffee shop. They are restricted with the land they have to use.

No audience members spoke.

Board member *Coombe* asked what size cabin is being moved to this site. *Chris Kucera* stated it will be 12 foot by 24 foot.

**DECISION:**

**Motion by McKenzie/Skraba** to approve a variance for a commercial structure at a reduced shoreline setback of 50 feet, based on the following facts and findings:

A. Official Controls:

1. The Ash River is a Tributary which requires a shoreline setback of 100 feet; the proposed commercial structure will be located at a shoreline setback of 50 feet.
2. The intent and general purpose of official controls is to set guidelines for official controls while also recognizing the reality and unique circumstances such as the long-ago creation of a narrow strip of land between the Ash River and Ash River Trail that is not deep enough to allow for conforming setbacks from either the river or the roadway.
3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The applicant's parcel is too narrow to meet setbacks in several directions but is large enough to accommodate the applicant's proposal if a variance is granted.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The essential character of the locality is a community of multiple uses within a small area. A bakery/coffee shop will fit the community well.
2. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. One item of correspondence was received from the next-door neighbor as a response for the conditional use permit. The neighbor is essentially in opposition with the expanded use of the property and had a number of questions about the intended use of the property.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
3. St. Louis County On-Site Wastewater SSTS standards shall be followed.
4. The shoreline setback for the proposed commercial structure shall be maximized to the greatest extent possible and shall be no less than 50 feet.

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

**Opposed:** None - 0

**Motion carried 7-0**

**Case 6334 – James Thune**

The second hearing item was for James Thune, subject property located in S19, T60N, R21W (French). The applicant is requesting relief from St. Louis County Subdivision Ordinance 60, Article V, Section 5.1 A., to allow a lot line adjustment for the alteration of property lines on a plat where an additional lot(s) for development is being created and; Article V, Section 5.2 A., to allow a proposed adjustment creating a new nonconformity and increasing an existing nonconformity; and St. Louis County Zoning Ordinance 62, Article II, Section 2.4 C., to allow transfer of land that does not meet the requirements of this ordinance; to allow transfers to adjoining parcels of nonconforming parcels where such a transfer does not adversely affect the conformity of the remaining lot as it relates to zoning and sanitary standards; and to allow a transfer that will create a new nonconformity, and increase an existing nonconformity; Article III, Section 3.2, to allow a lot that does not conform to the zoning district minimal dimensional standards to be permitted as buildable; and Article III, Section 3.11, to allow a nonriparian property within the statutory shoreland area to be less than twice the lot size and width and is not used solely for accessory structures on on-site sewage treatment systems.

*Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval for a subdivision of a platted lot that would not meet subdivision or land use regulations.
- B. The applicant is proposing to split a 1.13 acre platted lot into two parcels.
- C. A parcel of 0.12 acre would contain an existing pole building.
- D. The second parcel proposed is 1.01 acres would be transferred to the applicant's daughter for residential development in the near future.
- E. The zone district requires a minimum of 1 acre and 200 feet of width per buildable parcel.
- F. The property is also a back lot and the ordinance would require each newly created parcel to have double the lot width and acreage if they were to be used for anything other than accessory structures or SSTS.
- G. The property is currently developed with a pole building and driveway.
- H. The property is a platted lot that is a nonconforming legal lot of record. It conforms to the area requirements but is less than the minimum width requirements for the zone district. The proposal would create two parcels that are less conforming than the current nonconforming status.
- I. The applicant provided draft language for the easement from the 0.12 acre parcel to the public road.

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

A. Official Controls:

1. Subdivision Ordinance 60 states that any division that fails to meet the standards of the St. Louis County land use regulations shall not be deemed a lot of record for the purpose of issuing land use permits; the applicant is requesting approval for a subdivision that would create two parcels that do not meet land use regulations to be considered lots of record.
2. Zoning Ordinance 62 states that the minimum area and width requirements for a parcel in this zone district is 1.0 acres and 200 feet of width; the applicant is requesting approval for a subdivision that would result in one parcel to be 0.12 acre and one parcel that is 1.01 acres.
3. Zoning Ordinance 62 states that nonriparian property within the shoreland area shall be the lesser of twice the lot size (2 acres) and width (400 feet) or 4.5 acres, unless the property is to be used solely for accessory structures or an on-site septic system; the applicant is requesting approval for a subdivision of a nonriparian parcel in a shoreland area that would result in two parcels of 0.12 acre and 65 feet of width and 1.01 acres and 180 feet of width where 2 acres and 400 feet of width is required.
4. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
5. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
6. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

B. Practical Difficulty:

1. There are no unique physical circumstances on the property that would not allow the subdivision and zoning standards to be met.
  - a. The applicant intends to transfer ownership of the larger parcel and retain the smaller portion of the property as a lot of record.
  - b. The property is large enough to be developed with a residential dwelling, but not as a separate property from the pole building site.
2. The applicant could transfer the entire property (with pole building) for future development and obtain an easement for the use of the pole building and access to the pole building on the property.
3. Another alternative is to acquire additional property from a neighboring parcel so that the remnant parcel does not lose any area or width.
  - a. This would allow the remnant parcel to be developed but would not allow the 0.12 acre parcel to be considered a lot of record for the purpose of issuing permits.
4. The proposal will create a landlocked parcel (0.12 acre parcel). This is not allowed unless an easement for access is granted to a public road.

- a. The applicant is in the process of obtaining an easement for access to the pole building.
- b. An easement could also be obtained for the use of the pole building if the entire parcel is transferred.

C. Essential Character of the Locality:

1. The general area is a highly developed area between Sturgeon and Little Sturgeon Lakes.
  - a. The shorelines of both lakes are highly developed.
2. The parent parcel is large enough to be developed as it currently is.
3. Other back lots in this area are developed with dwellings and accessory structures.

D. Other Factors:

1. The applicant also owns property on the shoreline of Sturgeon Lake approximately 400 to 500 feet from the subject parcel.
  - a. There may be space on this property for an accessory storage building that could replace the storage space if the pole building on the subject parcel were sold with the nonriparian property in its entirety.
2. There are alternatives to the request that would allow the proposed development without the need for variance. The applicant is aware of alternatives and may be working towards other means to allow development without variance.

*Jared Ecklund* noted one item of correspondence from the applicant. This item was provided to the Board of Adjustment prior to the hearing.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a subdivision that fails to meet the standards of the St. Louis County land use regulations to be deemed a lot of record for the purpose of issuing land use permits, to allow a lot that does not conform to the zoning district minimal dimensional standards to be permitted as buildable, and to allow a nonriparian property within the statutory shoreland area to be less than twice the lot size and width as proposed include, but are not limited to:

1. The 0.12 acre parcel with the pole building shall not contain a dwelling and shall not contain any living space within the existing structure.
2. All local, county, state and federal regulations shall be met.

*James Thune*, 7565 Lucas Drive, Side Lake, the applicant, stated he lives down Rudstrom Road. They did not build a pole building on their riparian property because of the way that property is laid out. He just wants to provide his daughter with property to build a house. The intent was not to make this complicated. He has tried reaching out to his neighbors to obtain more property and was unsuccessful. That neighbor offered him part of a wooded lot for a piece of his riparian property. They have a draft easement for the driveway and are waiting for the survey to be completed. He does not want to landlock the pole building. Because of what is being stored in this building, there are insurance issues that complicate not being able to own this building.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Werschay* asked if a vaulted privy would be allowed on either property. *Jared Ecklund* stated that may not be allowed for any property that will have residential use. There needs to be a septic site and replacement area on the site. Board member *Coombe* asked about a holding tank. *Jared Ecklund* stated that a holding tank is an option for properties that already exist. For newly created parcels, subdivision standards require septic suitability for each parcel. This is required for the 1.01 acre parcel. There must be two SSTS sites identified before a subdivision permit is issued. This is not required for the 0.12 acre parcel because this parcel will not have a residential use. There is no room for any SSTS to meet the existing setbacks. *Jenny Bourbonais*, Acting Secretary, stated that a condition could be added to the 0.12 acre parcel to avoid turning the existing pole building into a dwelling.
- B. Board member *Werschay* asked if there was any point in time where an easement was not needed to connect two parcels. *Jared Ecklund* stated to create a parcel, one needs to demonstrate they can access that parcel. The 0.12 acre parcel would not have any access to a public road without an easement. This needs to be done before a subdivision permit can be issued.
- C. Board member *McKenzie* asked if there is already an existing nonconformity. *Jared Ecklund* referenced ordinance language that states one cannot create a nonconformity and one cannot expand an existing nonconformity. This proposal would create a new nonconformity with the 0.12 acre parcel. The remnant parcel would remain conforming as it meets the minimum lot area requirement of 1 acre, and the width of the property is not changing as the property width would remain the same along the road.
- D. Board member *Coombe* stated that if this variance is approved, the accessory structure could not be rebuilt on the 0.12 acre parcel if it is destroyed. *James Thune* stated that is a possibility, although this is a newer structure.
- E. Board member *Pollock* stated is it reasonable to have a standalone parcel with an easement through property? This is way too complicated and there is an alternative. Board member *Skraba* stated he understands this, but the applicant explained the insurance issue, the parcel, and the family dynamics. He has been through this area, and it is well developed. Board member *Pollock* stated this is way beyond what is before the Board. Board member *Coombe* stated that the only alternative is an easement if the applicant's intent is to keep the pole building and give the daughter property to build a house.
- F. Board member *Werschay* asked if the 0.12 acre parcel could not be sold as a standalone parcel. *Jenny Bourbonais*, Acting Secretary, stated that there could be a condition added that the parcel could not be deemed a standalone parcel for the purpose of development.
- G. Board member *Coombe* asked the applicant if they could live with that. *James Thune* asked if the property would revert back to Lot 52 and added that property in this area is hard to come by now. *Jared Ecklund* stated there is no way to state the property cannot be sold. It could be stated that this 0.12 acre parcel cannot be used as a standalone parcel for the purposes of development. Once the pole building is gone, the parcel would need to be in common ownership with either lot in order to be developed or else the parcel would need to remain raw land.
- H. Board member *Pollock* asked if this standalone parcel could be connected to the applicant's riparian property. *Jenny Bourbonais* stated staff cannot speak to connecting the standalone

parcel to the applicant's existing property for tax purposes, but would not be considered connected for zoning purposes as the properties are not adjoining.

- I. Board member *Pollock* asked about connecting the property under a single property identification number. Board member *Pollock* added that even if the parcels were adjoining, each parcel has its own value.
- J. Board member *McKenzie* stated that the request would not be in harmony and there is no practical difficulty. The criteria for approval are not met to approve this variance. Board member *Coombe* stated that the applicant wants to use the property in a way that is not allowed by ordinance. The pole building already exists.
- K. Board members discussed adding a condition for the easement. *Jared Ecklund* stated that staff does not approve easements. This is normally part of the deed that gets recorded after the subdivision permit is issued.

### **DECISION:**

**Motion by Skraba/Coombe** to approve a variance for a subdivision that fails to meet the standards of the St. Louis County land use regulations to be deemed a lot of record for the purpose of issuing land use permits, to allow a lot that does not conform to the zoning district minimal dimensional standards to be permitted as buildable, and to allow a nonriparian property within the statutory shoreland area to be less than twice the lot size and width, based on the following facts and findings:

#### A. Official Controls:

1. The parcel is large enough on its own but to subdivide this parcel with conditions will meet the general purpose and intent of official controls.
2. The variance request is in harmony with the general purpose and intent of official controls.

#### B. Practical Difficulty:

1. Without subdividing the property this development could happen. Subdividing the property would make development difficult. With the controls and conditions will satisfy practical difficulty.
2. Practical difficulty has been demonstrated in complying with the official controls.

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

1. The general area is a highly developed area between Sturgeon and Little Sturgeon Lakes.
  - a. The shorelines of both lakes are highly developed.
2. The parent parcel is large enough to be developed as it currently is.
3. Other back lots in this area are developed with dwellings and accessory structures.
4. This will be a house and a pole building that already exist on other lots in the area.
5. The variance request will not alter the essential character of the locality.

#### D. Other Factor:

1. There is nothing other than trying to separate a building from a buildable lot to assure the two are separate for now.

The following conditions shall apply:

1. The 0.12 acre parcel with the pole building shall not contain a dwelling and shall not contain any living space within the existing structure.
2. All local, county, state and federal regulations shall be met.
3. The 0.12 acre parcel shall not be deemed a standalone parcel for the purposes of development.
4. The easement from the 0.12 acre parcel to the public road shall be submitted prior to issuing the subdivision permit.

**In Favor:** Coombe, Filipovich, Skraba, Svatos, Werschay - 5

**Opposed:** McKenzie, Pollock - 2

**Motion carried 5-2**

**Motion to adjourn by Skraba. The meeting was adjourned at 1:32 p.m.**