

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 WEDNESDAY, JANUARY 19, 2022.

9:06 AM – 11:35 PM

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

Board of Adjustment members absent: Tom Coombe

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

NEW BUSINESS:

- A. Rick Viita, S27, T63N, R18W (Beatty)
- B. Jeff Wagner, S25, T63N, R18W (Beatty)
- C. John Chaulklin Jr., S26, T63N, R18W (Beatty)
- D. Michael Bruckelmyer, S2, T52N, R15W (Fredenberg)

ELECTION OF OFFICERS:

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

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

Opposed: None – 0

Motion carried 6-0

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

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

Opposed: None – 0

Motion carried 6-0

OTHER BUSINESS:

Motion by McKenzie/Skraba to approve the minutes of the December 9, 2021, meeting.

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

Opposed: None – 0

Motion carried 6-0

INTERPRETATION:

Todd and Laura Rothe (Case 6237)

The property owners were granted variance approval for a structure located at a reduced shoreline setback and to exceed allowable height at a reduced shoreline setback. The Board of

Adjustment discussed and limited the height of the structure to 27 feet based on application materials/correspondence submitted by the applicant; however, the 27 feet was not included in the motion to approve. The applicant has submitted a land use permit for the new dwelling with a maximum height of 35 feet. An interpretation by the Director was made that the structure was limited to 27 feet in height per the variance approval. An interpretation of the intent to limit the height of the structure to 27 feet is requested.

Jenny Bourbonais, Acting Secretary, stated that while the structure height was not limited in the motion, the height of 27 feet was a part of the Board's discussion and in other factors. The Board discussed the original variance application and materials presented at the November 12, 2020, hearing as well as information regarding the land use permit submitted for the new structure. Chair *Werschay* stated that it was clear the intent was to limit the height to 27 feet.

A motion by Board member Svatos, supported by McKenzie, affirmed the Director's interpretation that the November 12, 2020, variance approved a structure height of no more than 27 feet. Further, the applicant's correspondence during the variance process also indicated that they would build at 27 feet. This interpretation was supported unanimously by the Board of Adjustment.

NEW BUSINESS:

Case 6290 – Rick Viita

The first hearing item was for Rick Viita, subject property located in S27, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system (SSTS) installation at a reduced shoreline setback. *Emily Anderson*, St. Louis County Environmental Specialist, reviewed the staff report as follows:

- A. The applicant is requesting a subsurface sewage treatment system (SSTS) installation at a reduced shoreline setback.
- B. The proposed SSTS design would add a sewage basin to an existing boathouse located 20 feet from the shoreline (or more), which would pump sewage up to a holding tank that will meet the 50 foot shoreline setback.
- C. The proposed holding tank will have a ten foot property line setback.
- D. The required shoreline setback for a system and its components is 50 feet.
- E. A proposed well will also meet all setbacks.
- F. The property has a dwelling/boathouse with no ISTS records on file and a garage. There is an existing privy located on the property.

Emily Anderson reviewed staff facts and findings as follows:

- A. Official Controls:
 1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards and the setback requirements on the MN Shoreland Rules. The required setback is 50 feet from the shoreline for this General Development classification.
 2. The applicant is requesting a reduced shoreline setback of 20 feet.

B. Practical Difficulty:

1. The existing cabin/boathouse was built at the lakeshore. There are no ISTS permits on file.

C. Essential Character of the Locality:

1. The area is characterized by development.

Emily Anderson noted one item of correspondence from Scott Holm with questions about the proposal. This correspondence was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback as proposed include, but are not limited to:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system install, a final inspection by a Qualified Inspector of the St. Louis County On-Site Wastewater Division of Planning and Community Development Department shall ensure the 20 foot shoreline setback to the grinder/lift station and all other setbacks are met prior to issuing the Certificate of Compliance.
3. All other local, county, state and federal regulations shall be met.

Rick Viita, the contractor and applicant, was not present.

Robert Koch, 12985 Eveleth Avenue, Apple Valley, MN, the landowner, stated the deck was there when they purchased the property in 1997 or 1998. They re-sided and re-roofed the structure. They have no current plans to build a dwelling. Their current plan is to sell the property, which would require a holding tank. This holding tank will have adequate chambers and space to the mound system and it will be available for him or for the next landowner.

There was one virtual attendee that spoke without issue.

Scott Holm, 2604 Vermilion Camp Road, stated he had no issues with the variance after seeing the site plan.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Skraba* asked if the system will be fully contained. *Emily Anderson* stated it will be. There is a high-level alarm that will sound when the system is full and the landowner will contact a pumper to pump the tank.
- B. Board member *Pollock* asked about the existing dwelling/boathouse and if a variance should be given for pressurized water for this structure. Board member *Skraba* stated that an existing nonconforming use is allowed. If the structure is altered at all, it would lose the ability to keep its existing use.

- C. Board member *Skraba* asked if the proposed future cabin indicated on the site sketch will also utilize the proposed holding tank. *Emily Anderson* stated the proposed system would need to either be upgraded or added onto for an additional dwelling. Given all the current setbacks, this should not be a problem.
- D. Board member *Skraba* asked about the tank size. *Emily Anderson* stated it would be a 1,000 gallon tank.
- E. Board member *Pollock* stated that the holding tank could be moved to where a proposed future cabin would be located. The holding tank should not be allowed at the shoreline with the dwelling/boathouse. Is this structure even a boathouse? *Jenny Bourbonais*, Acting Secretary, stated that a pre-existing nonconforming use is allowed to remain. If the landowners were to come in and request this structure as a new structure, it would not be allowed. Additions or alterations in the future, may not be allowed.
- F. Board member *Pollock* asked if a new dwelling is applied for, what would happen to this structure? There could be two dwellings on this property in the future. Board member *Skraba* stated this is on the applicant to decide. *Jenny Bourbonais* stated this structure is a dwelling, not an accessory dwelling due to the location.
- G. Board member *McKenzie* asked how old a structure needs to be to be grandfathered in. *Jenny Bourbonais* stated if the structure predates the zoning ordinance and there is no record of a land use permit on file, it may be not a compliance issue.
- H. Board member *Svatos* asked if there has been extensive work done recently to this structure. Was a permit ever issued for this? *Jenny Bourbonais* stated there was one land use permit issued for a garage in 2001. In those records, the dwelling/boathouse was labeled as a cabin.
- I. Board member *Pollock* asked if anything has been done to this structure that would have required permits. *Jenny Bourbonais* stated that, as of 2018, there was a pre-existing deck and the garage (that was issued a permit in 2001) in place. To replace a deck would require a permit. By state statute, the deck could also be replaced as long as it was exactly the same as the original. The 2018 Assessor's photos show that the structure is a boathouse with garage style doors on the lake side of the structure.
- J. Board member *Werschay* asked why the applicant did not want a larger holding tank. *Robert Koch* stated this was recommended by the contractor. This holding tank would be a selling feature if it did not need to be moved. He would be all for a larger holding tank. Board member *Pollock* added the designer/installer indicated that the grinder station would pump to a 1,500 gallon two compartment holding tank to be used for a potential cabin. *Emily Anderson* added that if they wanted to add another dwelling with pressurized water, it would require an upgrade to a 2,000 gallon for the septic. Another structure without pressurized water would be allowed to use the existing system flow. If the landowner wanted to move forward with a larger holding tank, it would be a design update that the designer/installer would do. As long as this system remains compliant, it would be on an operating permit and the upgrade could happen then, too.
- K. Board member *McKenzie* stated proper disposal is always best. The variance is for the grinder pump, not a pressurized water system.

DECISION

Motion by *Skraba/McKenzie* to approve a variance for relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a

subsurface sewage treatment system installation at a reduced shoreline setback, based on the following facts and findings:

A. Official Controls:

1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards and the setback requirements on the MN Shoreland Rules. The required setback is 50 feet from the shoreline for this General Development classification.
2. The applicant is requesting a reduced shoreline setback of 20 feet.
3. The landowner is fixing a deficiency and making things cleaner and safer.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The existing cabin/boathouse was built at the shoreline.
2. The property slopes uphill towards the road making gravity to a tank that meets the shoreline setback difficult.
3. There is no place to put a holding tank where it would not need to be pumped up anywhere.
4. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area is characterized by development.
2. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The system will be contained and wastewater will not go anywhere else. Other structures utilizing water located on this property, would need to be hooked up this system.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system install, a final inspection by a Qualified Inspector of the St. Louis County On-Site Wastewater Division of Planning and Community Development Department shall ensure the 20 foot shoreline setback to the grinder/lift station and all other setbacks are met prior to issuing the Certificate of Compliance.
3. All other local, county, state and federal regulations shall be met.

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

Opposed: Pollock - 1

Motion carried 5-1

Case 6291 – Jeff Wagner (landowner)/Chris Gunderson (contractor)

The second hearing item was for Jeff Wagner, property located in S25, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County 62, Article IV, Section 4.4 D, to allow a single

lot of record that is less than one-half acre in size with no public sewer or water to be allowed as a buildable lot. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval for a nonconforming legal lot of record that is less than one-half acre to be permitted as buildable.
- B. The parcel is an undeveloped lot on Lake Vermilion with approximately 0.41 acres.
- C. Since the property is undeveloped, a minimum one-half acre is required to be considered buildable.
- D. The applicant is proposing to build a principal structure that will meet all setbacks.
- E. There was previously a garage on this property that was removed. As the structure was not a principal structure, the applicant could not rebuild the garage as a dwelling under the provisions of the ordinance.

Jared Ecklund reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62 states that a single lot of record may be allowed as buildable if the lot is a minimum of one-half acre in size with no public sewer or water; the applicant is proposing to develop the lot that is approximately 0.41 acres in size.
2. Zoning Ordinance 62 also states that a principal structure that is located on a lot less than one-half acre in size may be replaced if the structure was located on the property prior to the enactment of this ordinance.
 - a. Since the proposed new structure is a dwelling, a variance is required.
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. The lot is 0.09 acres shy of what is required to be considered buildable for the proposed structure.
2. The lot is larger than several lots in the county that have existing development and would allow replacement dwellings.
3. The only alternative is to gain additional property or lots from an adjoining landowner in order to meet the minimum required area to be developed.

C. Essential Character of the Locality:

1. This lot is one of the smaller lots in this area.
 - a. There are a couple of lots that are smaller, but most of them in this local area meet the minimum area required to be developed, even if they were currently undeveloped.

D. Other Factors:

1. The previous landowner had applied for a variance on the property in 2000.

- a. That request included a Health Department variance for a septic system for year-round use and a Land Use variance for a 40 foot by 30 foot home.
- b. The Health Department variance was denied without prejudice to allow the applicant to work with the Health Department for a workable system.
 - i. A holding tank was not an option for year-round use in 2000.
- c. The Land Use variance was denied without prejudice because the Health Department standards could not be met.
- d. In 2000, a holding tank was not an option to meet Health Department Standards.
- e. A holding tank is now an option for a year-round use.
 - i. A holding tank application has already been approved by the On-Site Wastewater Division.
- f. The applicant's contractor submitted a land use permit application for a dwelling on the property that appears to meet all land use standards, except for the lot size requirements.

Jared Ecklund noted two items of correspondence from Edward and Peggy Bonach in opposition and Roger Johnson in opposition. This correspondence was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

A condition that may mitigate the variance for a single lot of record that is less than one-half acre in size with no public sewer or water to be allowed as a buildable lot as proposed includes, but is not limited to:

1. All local, county, state and federal regulations shall be met.

Both Chris Gunderson, the contractor, and Jeff Wagner, the landowner, were present.

Jeff Wagner, 12985 Ridge Drive, McCordsville, IN, the landowner, stated they have a large parcel on Treasure Island they purchased in 2009. They rented property to have water access to boat back and forth. They found this lot and it serves their need for water access. There was a garage on the property with a pine tree going through the roof. They had contractors look at this structure to see if it could be fixed. The slab was still there and is good. They purchased this property in 2014/2015. They have put in a dock and cleaned up the lot. They envisioned adding storage on this property. They were aware of the history of the previous landowners trying to build on this lot. Before he offered on the property, he spoke with someone in St. Louis County about the previous variance. They would use this property when it becomes difficult to get to their island property. They intend to retire in this area. They want to keep this property natural and not remove too many trees and vegetation. They do not want to rebuild where the old garage was located as it was closer to the property line. They have a SSTS permit to construct for a holding tank.

Chris Gunderson, the contractor, stated he had nothing to add.

There were two virtual attendees at this time. Neither wished to speak on this case. No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* asked if the lot is configured as it was originally platted. *Jared Ecklund* stated that it is.
- B. Board member *Werschay* asked if a change in use permit would have allowed the garage to become a principal dwelling. *Jared Ecklund* stated no, because in order for a structure to change its use, it would need to meet all ordinance requirements.
- C. Board member *McKenzie* stated that the objections of the neighbors carry a lot of weight. These neighbors have a legitimate interest in the ordinance being adhered to.
- D. Board member *Skraba* stated 0.09 acre is not far off from a half-acre. Because this is a smaller lot, the new structure will not be large.
- E. Board member *Pollock* stated the previous variance was denied without prejudice because the Health Department standards could not be met. A holding tank can be used now.
- F. Board member *McKenzie* asked about a finalized plan for this structure. *Chris Gunderson* stated that the structure would be 32 foot by 40 foot in size. It will be a garage/storage on the bottom and living space on the second floor.

DECISION

Motion by Skraba/Pollock to approve a variance for a single lot of record that is less than one-half acre in size with no public sewer or water to be allowed as a buildable lot, based on the following facts and findings:

- A. Official Controls:
 - 1. Zoning Ordinance 62 states that a single lot of record may be allowed as buildable if the lot is a minimum of one-half acre in size with no public sewer or water; the applicant is proposing to develop the lot that is approximately 0.41 acres in size.
 - 2. Zoning Ordinance 62 also states that a principal structure that is located on a lot less than one-half acre in size may be replaced if the structure was located on the property prior to the enactment of this ordinance.
 - a. Since the proposed new structure is a dwelling, a variance is required.
 - 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 variance request is in harmony with the general purpose and intent of official controls because a holding tank is now an allowed form of sewage treatment for the property and that would make it buildable.
- B. Practical Difficulty:
 - 1. The lot is 0.09 acres shy of what is required to be considered buildable for the proposed structure.
 - 2. The lot is larger than several lots in the county that have existing development and would allow replacement dwellings.
 - 3. The only alternative is to gain additional property or lots from an adjoining landowner in order to meet the minimum required area to be developed.
 - 4. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. This lot is one of the smaller lots in this area.
 - a. There are a couple of lots that are smaller, but most of them in this local area meet the minimum area required to be developed, even if they were currently undeveloped.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The previous landowner had applied for a variance on the property in 2000.
 - a. That request included a Health Department variance for a septic system for year-round use and a Land Use variance for a 40 foot by 30 foot home.
 - b. The Health Department variance was denied without prejudice to allow the applicant to work with the Health Department for a workable system.
 - i. A holding tank was not an option for year-round use in 2000.
 - c. The Land Use variance was denied without prejudice because the Health Department standards could not be met.
 - d. In 2000, a holding tank was not an option to meet Health Department Standards.
 - e. A holding tank is now an option for a year-round use.
 - i. A holding tank application has already been approved by the On-Site Wastewater Division.
 - f. The applicant's contractor submitted a land use permit application for a dwelling on the property that appears to meet all land use standards, except for the lot size requirements.
2. The difference of 0.09 acre in size where a half-acre is required is a small amount that should not limit this property from being developed.

The following condition shall apply:

1. All local, county, state and federal regulations shall be met.

In Favor: Filipovich, Pollock, Skraba, Svatos, Werschay - 5

Opposed: McKenzie - 1

Motion carried 5-1

Case 6292 – John Chaulklin Jr.

The third hearing item was for John Chaulklin Jr., property located in S26, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.7, to allow an accessory structure to be located at a reduced road right-of-way setback of a public road where 15 feet is required and a reduced road centerline setback where 48 feet is required. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval for a garage structure to be located zero feet from the cul-de-sac of a public road.
- B. The radius of the cul-de-sac of the road is 43 feet.
- C. The applicant is proposing the structure to be located 43 feet 2 inches from the center pin of the cul-de-sac.

- D. This will put the structure approximately two inches from the cul-de-sac (right-of-way).
- E. The center pin of the cul-de-sac is also considered the centerline of the road, so the proposed structure will also be located at a reduced road centerline setback of 43 feet where 48 feet is required.
- F. The property slopes towards the shoreline.
- G. There is good screening from the lake.

Jared Ecklund reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62 states that the required right-of-way setback for a public road is 15 feet; the applicant is requesting approval for setback of zero feet from the right-of-way.
- 2. Zoning Ordinance 62 states that the required road centerline setback for a public road is 48 feet; the applicant is requesting approval for a setback of 43 feet from the road centerline.
- 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. The property is somewhat unique because it is located on a point with a cul-de-sac right-of-way and is somewhat pie shaped. As you move farther from the shoreline, there is less area to meet all setback requirements.
- 2. A cul-de-sac is unique in the fact that there is not any through traffic at this point of the road.
 - a. Some of the neighboring property owners may use it to turn around, but the traffic is less than other portions of the road.
- 3. A garage that is attached to the dwelling may allow for a greater road setback to be met.
 - a. Because there is limited space between the dwelling and the road right-of-way, a variance may still be required for this alternative.
 - b. The building site for the proposed garage is several feet above the elevation of the dwelling.
 - i. An attached garage would require a significant amount of excavation and fill.
- 4. Moving the location of the garage slightly to the west may allow for a greater road setback to be met.
 - a. A setback of 10 feet from the side property line and 10 feet from the mound is required.
- 5. Area available for development may be limited due to the location of the septic system and the dwelling.
 - a. The setback of the proposed structure could be maximized.

6. Another alternative may be to vacate portions of the cul-de-sac. This alternative may involve other property owners and the Township working together in the vacation process. This alternative may also still require a road setback variance depending on how much of the road or cul-de-sac would be vacated.

C. Essential Character of the Locality:

1. There are a number of accessory structures in this area that appear to be located at a reduced road right-of-way setback.
2. There have been five other variance approvals in this plat for structures to be located at reduced right-of-way and road centerline setbacks.
 - a. Setbacks at that time may have been more restrictive.
3. One variance was approved for a garage to be located 5 inches from the right-of-way and 15 feet from the centerline of the road in 2014 on a lot in this plat.
 - a. This lot is not on the cul-de-sac.

D. Other Factors:

1. The cul-de-sac is a feature of the plat and has not been paved as was possibly intended.
 - a. The road essentially ends at these few lots within the plat.
2. Some site prep for the proposed garage has already been done by creating a level space and a retaining wall behind the dwelling.
 - a. This site prep may have been done to create a parking area and to address stormwater around the dwelling.

Jared Ecklund noted one item of correspondence from Jan and Randy McKeachie Johnston in opposition. This correspondence was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for an accessory structure to be located at a reduced road right-of-way setback of a public road where 15 feet is required and a reduced road centerline setback where 48 feet is required as proposed include, but are not limited to:

1. The applicant shall have the property surveyed and submit a copy of the certificate of survey before a land use permit is issued to ensure that the proposed structure will be located outside of the cul-de-sac.
2. Any apron or driveway work within the cul-de-sac shall be approved by the township.
3. The road setbacks of the structure shall be maximized to the greatest extent possible while meeting all other setbacks.

John Chaulklin, 1923 Vermilion Drive, the applicant, stated the property line from the aerial map is shifted so the neighbor's boathouse is not on his property. Staff's alternative location would not work because it would be too close to the property line and would require another variance. It might be difficult to meet septic system setbacks there as a new system was installed for the cabin. He is all for getting emergency vehicles plenty of room to maneuver in this area. While the county plows up to his driveway, he plows this area to keep it open. There is vegetation within the cul-de-sac radius. There are structures that are built close to or on the road. This is an 800 square foot cabin and will be his retirement home. The proposed garage will be used to park a vehicle in and

for storage. During the summer of 2021, the septic system was built and there were materials being hauled in. They had to park off the driveway until construction was completed.

One virtual attendee spoke.

Randy Johnston, N8336 690th Street, River Falls, WI, stated that 40-plus years ago, this cul-de-sac was not maintained by the county. Within the past 15 years, the county assumed responsibility for the cul-de-sac from Beatty Township. They have tried to be considerate of their neighbors in parking and access. Seeing the aerial photography gives a different perspective on the cul-de-sac. He and his wife would support the alternative building site. They would support moving the power pole and support a property line variance for the garage. The garage might not be visible from the lake.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Skraba* asked if accessory structures being close to the road is because of the shoreline setback. *Jared Ecklund* stated each case is different and road setback requirements have changed over the years. Board member *Skraba* added building closer to the road to maximize lake setback is better than to maximize a road setback and build closer to the lake. *Jared Ecklund* added that there are some properties within the plat that have limited depth.
- B. Board member *Svatos* stated one of the reasons for the cul-de-sac radius was for emergency vehicles to respond. Board member *Pollock* asked if the current radius would work for today's standards. *Jared Ecklund* stated that it is not known if the cul-de-sac would meet today's standards because it is an older plat that was developed for standards back then.
- C. Board member *Pollock* asked if there is enough room for parking on this property. This was one of the concerns brought up in the neighbor's correspondence. *Jared Ecklund* stated a property line survey would be important to determine if there would be area to park on this property.
- D. Board member *Pollock* asked if the area already prepped for a new garage could be used for parking if the variance is not allowed. *Jared Ecklund* stated parking in this area would not be in violation of the ordinance.
- E. Board member *McKenzie* asked what the cul-de-sac right-of-way measurement is. *Jared Ecklund* stated that the plat map shows a 25 foot right-of-way outside of the cul-de-sac.
- F. Board member *Filipovich* asked if the distance between the existing cabin and the proposed garage is enough. *Jared Ecklund* stated there is no setback requirement for two detached structures. The county does not enforce fire code.
- G. Board member *Skraba* added that moving the proposed garage over would make it more visible from the lake. As proposed, the structure would be located behind the cabin. It might be a little higher.

DECISION

Motion by McKenzie/Skraba to approve a variance for an accessory structure to be located at a reduced road right-of-way setback of a public road where 15 feet is required and a reduced road centerline setback where 48 feet is required, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62 states that the required right-of-way setback for a public road is 15 feet; the applicant is requesting approval for setback of zero feet from the right-of-way.
2. Zoning Ordinance 62 states that the required road centerline setback for a public road is 48 feet; the applicant is requesting approval for a setback of 43 feet from the road centerline.
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 variance request is in harmony with the general purpose and intent of official controls. Official controls seek a balance between protecting natural resources and providing for reasonable use of a property. Zoning Ordinance 62 has a mechanism for varying from requirements if practical difficulty can be shown.

B. Practical Difficulty:

1. The property is somewhat unique because it is located on a point with a cul-de-sac right-of-way and is somewhat pie shaped. As you move farther from the shoreline, there is less area to meet all setback requirements.
2. A cul-de-sac is unique in the fact that there is not any through traffic at this point of the road.
 - a. Some of the neighboring property owners may use it to turn around, but the traffic is less than other portions of the road.
3. The location of the well on the east side of the property and the septic system on the northwest side of the property limit where the proposed garage could be located. The existing dwelling was constructed at the shoreline setback.
4. Practical difficulty has been demonstrated in complying with the official controls due to the size and shape of the parcel.

C. Essential Character of the Locality:

1. There are a number of accessory structures in this area that appear to be located at a reduced road right-of-way setback.
2. There have been five other variance approvals in this plat for structures to be located at reduced right-of-way and road centerline setbacks.
 - a. Setbacks at that time may have been more restrictive.
3. One variance was approved for a garage to be located 5 inches from the right-of-way and 15 feet from the centerline of the road in 2014 on a lot in this plat.
 - a. This lot is not on the cul-de-sac.
4. The peninsula is densely populated with recreational properties. There are approximately 10 seasonal or year-round homes within 800 feet of the applicant's property.
5. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The cul-de-sac is a feature of the plat and has not been paved as was possibly intended.
 - a. The road essentially ends at these few lots within the plat.
2. Some site prep for the proposed garage has already been done by creating a level space and a retaining wall behind the dwelling.
 - a. This site prep may have been done to create a parking area and to address stormwater around the dwelling.
3. The applicant's property is located on a cul-de-sac. This is an engineered plat which is little more than the end of the road.
4. Five other variances have been approved for structures to be located at reduced right-of-way and road centerline setbacks.

The following conditions shall apply:

1. The applicant shall have the property surveyed and submit a copy of the certificate of survey before a land use permit is issued to ensure that the proposed structure will be located outside of the cul-de-sac.
2. Any apron or driveway work within the cul-de-sac shall be approved by the township.
3. The road setbacks of the structure shall be maximized to the greatest extent possible while meeting all other setbacks.

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

Opposed: None - 0

Motion carried 6-0

Case 6293 – Michael Bruckelmyer

The fourth hearing item was for Michael Bruckelmyer, property located in S2, T52N, R15W (Fredenberg). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.8, to allow a principal dwelling at a reduced bluff setback where a minimum of 30 feet is required. *George Knutson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a replacement principal dwelling at a reduced bluff setback.
- B. The original dwelling was 2,304 square feet and located right along the top of the bluff.
- C. The replacement dwelling is proposed to be 2,145 square feet and located 16 feet from the top of the bluff.

George Knutson reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.8, states that all structures must be set back a minimum distance of 30 feet from the top of a bluff.
 - a. The applicant is proposing a 16 foot setback.
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. There is room on the subject parcel to meet the required bluff setback, as well as all other setback requirements.
 - a. The proposed structure could be relocated to meet all required setbacks without a reduction in size.

C. Essential Character of the Locality:

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

D. Other Factors:

1. The applicant is working with St. Louis County On-Site Wastewater on proper septic permitting.
 - a. The existing septic is undersized. A septic application for a new system has been submitted to St. Louis County On-Site Wastewater.
2. The subject parcel is a Minnesota Power lease lot.
 - a. Minnesota Power has provided preliminary approval of the proposal.
3. A walkout basement may not be an allowable foundation if excavation within the bluff is required. Excavation within a bluff is not allowed. The associated land use permit application provided states the proposed foundation is a basement.
 - a. The applicant has provided new correspondence stating the proposed foundation has been changed from a basement to a slab on grade.
4. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

George Knutson noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a reduced bluff setback as proposed include, but are not limited to:

1. St. Louis County On-Site Wastewater SSTS standards shall be followed.
2. Shoreline vegetation and land alteration standards shall be met.
3. An erosion control plan shall be submitted, approved, and implemented throughout the duration of the project until new vegetation is established.
4. All other county, local, state, and federal regulations shall be met.

Michael Bruckelmyer was not present. *Charles and Leigh Brammeier*, 6996 Bear Island Road, Duluth, property owners, were present. *Nathan Rosemount and Ken Peterson*, Bruckelmyer Brothers, 2304 Lismore Road, Duluth, were also present.

Ken Peterson, Bruckelmyer Brothers, 2304 Lismore Road, Duluth, stated he is the project manager for this project. There are structures on this road along the bluff setback. The Department of Natural Resources (DNR) pushes for bluff standards. This structure could be moved back. However, there is a utility line along the existing driveway that would require Minnesota Power to do something with that line if the structure was moved there. There is also a turnaround from the garage that would be lost if the proposed dwelling was moved back. These are lake homes in this area. If this structure was moved 30 feet back, there would be no way to see over the bluff to the water. Moving that structure back would require removing trees and to move the driveway. They would also be digging up more land than what had been previously dug up from the previous dwelling. He noted the St. Louis County Comprehensive Land Use Plan goals to preserve vegetation in shore impact zones and to protect environmentally sensitive features. One reason the DNR has a bluff setback is to protect the lake from having dwellings on the bluff. There was a previous dwelling located at this setback and they are replacing it with another dwelling in the same location. The other reason is to protect the lake from runoff and construction activity that could potentially cause run-off to the lake. They intend to use silt fencing along the bluff line. The bluff line is already established and vegetated, so there is no concern it would not be able to hold any material without giving way. The soils on the site are very good soils for drainage. The proposed dwelling would be set 16 feet back and there will be gutters. Any run-off from the structure would hit the top of the bluff first. The original proposal was a walk-out basement. This was changed to a slab on grade and they moved the structure back 16 feet to still allow the landowners a view of the lake which is why they bought this property. This will also minimize any impacts to the bluff itself. There are only so many locations where a new dwelling could be placed on this property because of the location of the garage, driveway, the proposed septic system and two septic expansion areas.

Charles Brammeier, 6996 Bear Island Road, Duluth, stated they bought this property because the existing house had a sunroom where they could look out beyond the bluff down to the shore. He and his wife fell in love with the property because they could see ducks, fish and deer all the way to the lake. To move the new structure further back would mean they would look at the lake from the horizon and would be a bitter blow. It would be tough to live with if that happened and would destroy the reason for getting this property.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Skraba* asked if the accessory structure on the bluff would need a variance. *George Knutson* stated this structure is an existing nonconforming structure in its present location. If the structure were ever replaced, it would need to meet setback requirements.
- B. Board member *Pollock* asked if the proposed structure could be moved back. *George Knutson* stated based on the structure size, there could be room to move the proposed

structure another 14 feet to meet the required 30 foot setback. Staff did not see any practical difficulty at meeting the 30 foot bluff setback.

- C. Board member *Filipovich* asked if there is a road going to the lake. *Ken Peterson* stated that there is a walking path that went from the previous structure down to the lake. There is a diagonal path down to the lake. *Nathan Rosemount* stated this path was existing when the landowners bought this property. This will not be touched or changed.
- D. Board member *Filipovich* asked what the dwelling height will be. *Nathan Rosemount* stated the proposed height is 31 feet. The previous cabin was 8 or 9 feet lower than the proposed structure will be.
- E. Board member *Skraba* asked about the bluff and what direction it goes. *Ken Peterson* stated that the bluff tops off and is flat. There is no downslope behind the proposed structure.
- F. Board member *McKenzie* stated the initial justification on the application was for a walk-out basement. A slab on grade can move back from the top of the bluff. Board member *Skraba* stated his concern is about the power line. Minnesota Power would have to move the power line for one lot. This could be a major feeder line. The applicant and the landowners have tried to make amends to make this work. Board member *Pollock* stated that while the landowners have given up the walk-out basement, their current proposal for a slab on grade is safer in its location. There is no reason for this structure to have to move back. This is better for the environment than all of the work that could be done with a walk-out basement. Board member *Skraba* stated that it would be up to the landowners on what they do with the runoff off the bluff. It is easier because there is no slope behind the proposed structure. Board member *Werschay* added that the site is already there. The landowners have proposed a good compromise.
- G. Board member *McKenzie* asked what the practical difficulty would be. Board member *Werschay* stated the power line is a big one. Board member *McKenzie* stated it might not be difficult to move a power line. Board member *Skraba* stated not for one lot.

DECISION

Motion by *Skraba/Svatos* to approve a variance for a reduced bluff setback where 30 feet is required, based on the following facts and findings:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.8, states that all structures must be set back a minimum distance of 30 feet from the top of a bluff.
 - a. The applicant is proposing a 16 foot setback.
 - 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 Statue 394.22 Subd. 10.
 - 5. The intent is to protect the bluff line. The applicant and landowners have proposed to move the structure 16 feet back from the top of the bluff.

6. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The location of the power line is a major deciding factor.
2. To relocate the proposed structure further back, the landowners would need to remove a lot of existing vegetation and change the location of the driveway.
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 around the subject parcel contains both seasonal and year-round residential use.
2. There have been no similar variances within the area.
3. An existing principal structure was already located on this site. The proposed height is taller than the previous structure was.
4. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant and landowners have compromised by changing their foundation from a walk-out basement to a slab on grade.
2. The applicant and landowners have also proposed a 16 foot setback from the top of the bluff.
3. To move the structure further back would mean having to move an existing power line.

The following conditions shall apply:

1. St. Louis County On-Site Wastewater SSTS standards shall be followed.
2. Shoreline vegetation and land alteration standards shall be met.
3. An erosion control plan shall be submitted, approved, and implemented throughout the duration of the project until new vegetation is established.
4. All other county, local, state, and federal regulations shall be met.

In Favor: Filipovich, Pollock, Skraba, Svatos, Werschay - 5

Opposed: McKenzie - 1

Motion carried 5-1

Motion to adjourn by Skraba. The meeting was adjourned at 11:35 a.m.