

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, MARCH 9, 2023.

11:35 AM – 1:50 PM

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

Board of Adjustment members absent: None

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

NEW BUSINESS:

- A. Peder Larson, S5, T62N, R16W (Greenwood)
- B. Scott Holm, S27, T63N, R18W (Beatty)
- C. Theodore Klein, S12, T51N, R18W (Culver)
- D. Bart Hanson, S6, T53N, R16W (Unorganized)

ELECTION OF OFFICERS:

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

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

Opposed: None – 0

Motion carried 7-0

Motion by Pollock/McKenzie to elect Dan Manick as Vice Chair.

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

Opposed: None – 0

Motion carried 7-0

OTHER BUSINESS:

Motion by McKenzie/Werschay to approve the minutes of the December 8, 2022 meeting.

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

Opposed: None – 0

Motion carried 7-0

Jenny Bourbonais, Acting Secretary, stated that the case load for the April public hearings will mean splitting the Planning Commission and Board of Adjustment meetings into separate days. The Planning Commission hearing will be on April 13, 2023. The Board of Adjustment hearing will be on April 20, 2023.

Handouts were provided by Board member *Manick* of the March 3, 2023 training in Staples, MN. Board member *Manick* stated he appreciated the training as a new member of the Board of Adjustment.

NEW BUSINESS:

Peder Larson

The first hearing item was for Peder Larson, property located in S5, T62N, R16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to a principal dwelling located outside the shore impact zone to exceed 400 square feet allowed. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting a 522 square foot addition to a nonconforming dwelling located outside the shore impact zone.
- B. The maximum allowed addition size is 400 square feet.
- C. The applicant applied for and received a performance standard permit PS-000130 for a two-story 400 square foot addition in 2021 which was not constructed.
- D. The current requested addition will not increase the nonconformity and is planned to retain the existing height of the current cabin at 18 feet.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. St. Louis County Zoning Ordinance 62, Article IV, Section 4.3D., allows a maximum addition to a nonconforming structure located outside the shore impact zone of 400 square feet. The applicant is requesting 522 square feet.
 2. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 3. Objective LU-3.3 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.
- B. Practical Difficulty:
 1. The current nonconforming structure is located on a parcel that has shoreline on two sides.
 2. The applicant applied for and received a performance standard permit for a 400 square foot addition that does not require a variance.
- C. Essential Character of the Locality:
 1. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
 2. There have been no similar variance requests within the plat.

D. Other Factors:

1. The property is a platted lot of record that was approved in 1922.
2. The applicant received a performance standard permit for a 400 square foot addition that does not require a variance. The addition has not been constructed.

Mark Lindhorst noted no items of correspondence.

BOARD OF ADJUSTMENT DETERMINATION

Conditions that may mitigate the variance for a 522 square foot addition include, but are not limited to:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim, and roof.
2. St. Louis County On-Site Wastewater SSTS standards shall be followed.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake.
4. In the event that it is determined that the structure is not structurally sound to be added onto or is replaced, a new structure may be allowed and shall require a permit. All setback requirements shall be met or set back to the greatest extent possible and all other ordinance requirements shall be met.

Peder Larson, 110 Bank Street SE, Minneapolis, the applicant, stated they bought this cabin in 2012 from a pair of contractors. Working with someone out of Ely, they came up with the design that was approved a performance standard permit in August 2021. They reached out to Heather Hiner, an architect that has done work on this lake before. She suggested that they keep the cabin to a single story. A single story would not be functional within the 400 square foot space they were allowed. While they went through a number of plans including increased square footage to the east of the cabin, they decided on a plan that would give them the functionality they needed. They are happy with the way the proposed plan will look.

No call-in users, present audience members or virtual attendees spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* stated in the staff report, it was mentioned that the proposed addition would not increase the nonconformity. *Mark Lindhorst* stated this means the proposed addition would go no closer to the lake than the existing structure already is.
- B. Board member *Manick* asked about the proposed 1,180 square foot addition. Would that have included a 400 square foot ground level addition with the addition square footage on the second floor across? *Peder Larson* stated yes.
- C. Board member *Werschay* asked if the new addition will tie into the existing roof. *Peder Larson* stated that their architect thought they could tie the roof with the new addition. When they had an inspection done in 2012, they were told this was a solid building. They are hoping to just be able to tie the addition in with the existing roof.

DECISION

Motion by Coombe/McKenzie to approve a variance request for a 522 square foot addition, based on the following facts and findings:

- A. Official Controls:

1. The Zoning Ordinance allows for variances and the proposed addition is located mainly to the east or on the rear of the structure. This cabin is located on a lot with water located on two sides.
2. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The building has been owned by the applicant for approximately 11 years. The applicant wants to improve the property to better suit the owners.
2. The applicant is requesting to use the property in a reasonable manner that is not actually permitted by official controls (setbacks).
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The addition will be to the rear or to the east of the dwelling.
2. The dwelling will be in unobtrusive earth-toned colors.
3. The dwelling will be lower in height as compared to the original performance standard permit request. Neighboring properties will be less impacted by the lower roof line.
4. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant received a performance standard permit for a 400 square foot addition that does not require a variance.
2. The second story addition would have raised the structure height to approximately 25 feet. The current request is for a structure approximately 18 feet in height in line with the existing cabin.
3. The dwelling addition will fit nicely into the lay of the land of the lot.
4. The applicant may not need to blast into any existing ledge rock.

The following conditions shall apply:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim, and roof.
2. St. Louis County On-Site Wastewater SSTS standards shall be followed.
3. The stormwater runoff from the proposed structure shall not discharge directly into the lake.
4. In the event that it is determined that the structure is not structurally sound to be added onto or is replaced, a new structure shall be allowed and shall require a permit. All setback requirements shall be met or setback to the greatest extent possible and all other ordinance requirements shall be met.

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

Opposed: None - 0

Motion carried 7-0

Scott Holm

The second hearing item was for Scott Holm, 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 after-the-fact approval for a variance that was unanimously denied at the January 9, 2020, Board of Adjustment meeting.
- B. This is an application by a new owner requesting approval of a previously denied variance.
- C. The requested variance is the same request that was heard in 2020. The current property owner was unaware of the previous variance decision and subsequent compliance issues prior to the purchase of the property.
- D. The previous owner constructed two additions and deck without permits; of which one (114 square foot lakeside addition) was constructed to the front of a principal dwelling located 63 feet from the shoreline.
- E. The addition was constructed without benefit of permit and has reduced the shoreline setback to 56 feet.
- F. The previous landowner did not do anything to rectify the property before the property was sold.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. St. Louis County 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. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii states: "Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance."
 3. Through the Land Use Goals, Objectives and Implementation section, the Land Use Plan is meant to provide ways of improving the variance process and encourages adherence to existing criteria to ultimately reduce the volume of variance applications received by the county.
 4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 5. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statue 394.22 Subd. 10.
- B. Practical Difficulty:
 1. Information provided by the applicant is the same request that was previously denied and is not sufficient to provide justification for allowing the after-the-fact variance.
 2. A performance standard permit for an addition up to 400 square feet may have been allowed to the rear of the structure without variance if all other compliance issues are resolved.

3. Removal of the addition to the lakeside of the dwelling would bring the property into compliance. A deck to the front may be allowed to remain in the current location with permit.

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 proposed variance is the same request that was previously denied. Therefore, the applicant has not provided the burden of proof to justify a variance.
2. Therefore, absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

Mark Lindhorst noted no items of correspondence.

BOARD OF ADJUSTMENT DETERMINATION

Conditions that may mitigate an after-the-fact variance to allow a 114 square foot lakeside addition located 56 feet from the shoreline include, but are not limited to:

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, 2023.
2. All other applicable permits shall be obtained.

Scott Holm, 2604 Vermilion Camp Road, Cook, the applicant, stated when they purchased the property, the previous variance was not disclosed to them. They were told that the front porch was built without a permit. The situation was not known to them until he spoke to Land Use staff. He reached out to staff to see what he could do with the property. There was a garage with an unfinished loft that needed to be finished. He submitted an affidavit of use in order to finish the loft and turn it into his office space, but the variance denial stopped all work. He wants to keep the 114 square foot front addition which is a three-season porch. He would forego building a bunkhouse on the lot. He would forego a storage building. They are working to fix the drainage to the front and are rebuilding a failed retaining wall. This was intended to be the last property they own before retirement.

Two members of the audience spoke.

Robert Koch, 12985 Eveleth Avenue, Apple Valley, stated he is the adjacent property owner. He does not understand the request. After he was told the applicant wants to keep what he has, stated he has no issue with the applicant's request and asked the Board of Adjustment to let the applicant keep what he has.

Dane Weber was listening in and declined to speak.

Dean Salminen was listening in and would be in support of the applicant's request as this is no fault of his own.

No other call-in users, present audience members or other virtual attendees spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked how much time there was between the original 2020 variance denial and when the property was sold. Board member *Werschay* stated the property was purchased by the current landowner in May 2021.
- B. Board member *Pollock* asked at what point enforcement comes into play. *Mark Lindhorst* stated the decision notice was sent out to the original landowner and that notice stated that the property needed to be brought into compliance. This goes into the enforcement database. Staff hopes the applicant works on bringing the property into compliance. This property had no resolution, and the property was then sold. Board member *Pollock* asked if there was no action done by the original landowner to bring the property into compliance. *Mark Lindhorst* stated not that they know of. *Jenny Bourbonais*, Acting Secretary, added that at the time of denial there was no enforcement date added or discussed. It does take time to work with an applicant back and forth to bring the property into compliance. If there had been a date for the compliance issues to be resolved, there may have been a different outcome.
- C. Board member *Pollock* asked if it was just the front addition that was to be removed. The addition to the rear was not included in the variance denial. *Mark Lindhorst* stated yes. Board member *Pollock* asked when the addition to the front was removed if the applicant could apply for an after-the-fact permit for the rear addition. *Mark Lindhorst* stated yes.
- D. Board member *Werschay* asked why this request is being heard again if the request is identical. Did this need an administrative appeal process? *Jenny Bourbonais* stated that *Matthew Johnson*, Director of the Planning and Community Development Department, brought this before the Planning Commission and, while not case-specific, there was support to bring this case forward because of the new ownership.
- E. Board member *McKenzie* asked if the information provided on the variance request worksheet was from the current applicant. *Mark Lindhorst* stated that information was provided by Mr. Holm. Board member *McKenzie* stated the information on this worksheet was identical to the information received in 2020. *Mark Lindhorst* stated that some of the variance information included that which the original landowner sent. There was also information included by the current landowner.
- F. Board member *Werschay* asked if a variance denial is recorded. *Jenny Bourbonais* stated all Board of Adjustment decisions, whether approval or denial, are recorded against the property. The original variance was recorded.
- G. Board member *Coombe* asked if he would be able to vote on this hearing as he was not present at the original variance denial in 2020. *Jenny Bourbonais* stated that this is a new variance application and not a rehearing.
- H. Board member *Manick* asked if the applicant had seen reference to the front addition not being permitted. *Scott Holm* stated they had verbal communication with the original landowner. When they asked if everything had been taken care of at the County, the answer was yes. It was later they were told the variance was denied. Board member *Manick* asked if the applicant was aware that something was not permitted. *Scott Holm* stated there was

a comment in the purchase agreement that the front porch was not permitted. Board member *Manick* stated the burden is on the applicant now. *Scott Holm* stated the previous landowner was asked the question and did not answer truthfully.

- I. Board member *Pollock* asked if the transaction was the applicant and the original landowner. *Scott Holm* stated there were real estate agents involved. Board member *Pollock* asked if the realtors disclosed at any time the variance was denied. *Scott Holm* stated this was not disclosed to him. The realtor on the original landowner's side was his daughter. She should have done her duty to disclose that information. Board member *Pollock* added that the applicant's realtor could have disclosed that information and asked if there was anything mentioned about the rear addition. *Scott Holm* stated there was nothing in the purchase agreement that listed anything about the rear addition. Board member *Pollock* asked if a lawyer was involved. *Scott Holm* stated there was no lawyer during the purchase.
- J. Board member *Coombe* asked if the applicant was told they had to forego any additional structures on the property. *Scott Holm* stated that he is offering to forego a boathouse or a storage structure as a solution to allow him to keep the front addition. This would include any accessory structure he does not require a permit for. He wants to do what is right and wants to make a concession to keep the structure. He does not want to spend \$24,840 to tear down that addition if he does not have to. That quote was given to him based on the electric and outlets located in the front addition and due to the metal roof the addition was tied into.
- K. Board member *Manick* stated just because someone does something wrong does not make it okay. This was denied once already. If this is a financial matter, that is not enough to justify practical difficulty.
- L. Board member *Pollock* stated this is a legal issue that needs to be worked out between the realtors, the applicant and the previous landowner. Board member *Werschay* stated she does not feel the applicant had this information disclosed to them and it makes no sense to penalize the current landowner. If the applicant appeals a variance denial, it could come right back to the Board of Adjustment. Board member *Pollock* stated this is a legal problem that is a \$24,000 problem. That problem would be taken care of in the courts. This is a case of buyer beware. Board member *Coombe* agreed that this could be taken to court and spend the money for it. He agreed that economic conditions alone do not qualify for practical difficulty. But the property owner wants to use the property in a reasonable manner not allowed by Ordinance (shoreline setback encroachment) and the plight of the landowner is due to circumstances unique to the property not created by the landowner. The house and additions were put there by the previous landowner, not this one. This landowner did not create the problem. These factors can all apply with the economic conditions to create a practical difficulty. This does not have to go to court.
- M. Board member *Manick* stated he does not understand the connection between the construction being completed in 2014 and when the variance was denied in 2020. The only difference now is there is a new landowner.
- N. Board member *McKenzie* stated that he agrees with Board member *Coombe* about the economic consideration. Board member *Manick* asked how the Board of Adjustment can consider economic hardship for any one applicant without getting into specific and private information. What is the money it would cost to remove an addition relative to or based on what? Such considerations should be in perspective.

- O. Board member *Pollock* stated the court system should be used to resolve issues like the issues on this property. There is no justification of this variance at all.
- P. Board member *Svatos* asked if the Board of Adjustment should consider the applicant's willingness to concede a boathouse or accessory structure as a potential trade-off. Board member *Pollock* stated that they should concentrate on what is front of them. Board member *Coombe* does not agree with the trade-off. The Board can help people, or they can say no, but to take future consideration away from them would not help. Board member *McKenzie* stated the conditions need to be more explicit to explain which permits are still needed for which structures. Board member *Coombe* stated the applicant may work with staff to determine which permits are needed for which structures.

DECISION

Motion by Coombe/Werschay to approve an after-the-fact variance request to allow a 114 square foot lakeside addition located 56 feet from the shoreline, based on the following facts and findings:

- A. Official Controls:
 - 1. The current landowners did not know about the illegal construction in 2014 and the previous variance denial from January 2020.
 - 2. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:
 - 1. The applicant bought the house as-is with no enforcement in progress or known to them.
 - 2. Practical difficulty has been demonstrated in complying with the official controls.
- 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.
 - 2. The structure is out of the shore impact zone and has been in this location for approximately eight years. The structure was not built by the current landowner.
 - 3. The variance request will not alter the essential character of the locality.
- D. Other Factors:
 - 1. The applicant was an innocent purchaser.
 - 2. The applicant indicated it would cost approximately \$24,000 to rectify the illegal construction done by a previous landowner.

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, 2023.
- 2. All other applicable permits shall be obtained.

In Favor: Coombe, Filipovich, McKenzie, Werschay - 4

Opposed: Manick, Pollock, Svatos - 3

Motion carried 4-3

Theodore Klein

The third hearing item was for Theodore Klein, property located in S12, T51N, R18W (Culver). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow an accessory structure at a reduced property line setback. *Mark Lindhorst*, St. Louis County Senior Planner, on behalf of *Donald Rigney*, reviewed the staff report as follows:

- A. The applicant is proposing to relocate an existing 26 foot by 36 foot (936 square foot) accessory structure located 2.8 feet from a property line where 25 feet is required.
- B. The existing structure was constructed partially on the adjoining property by a previous owner.
- C. The structure is being relocated to correct the encroachment.
- D. The parcel is heavily wooded. The structure will have good screening in all directions except to the south property line with the proposed reduced setback.
- E. There are wetlands on the parcel. As proposed, there will be not impacts on wetlands.
- F. A survey of the property line has been conducted.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. In a Multiple Use (MU)-4 zone district, St. Louis County Zoning Ordinance 62, Article III, requires a minimum 25 foot property line setback for accessory structures. The applicant is requesting a 2.8 foot property line setback.
 2. St. Louis County Comprehensive Land Use Plan states:
 - a. Goal LU-3 is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 - b. Objective LU-3.1 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.
 - c. 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.
- B. Practical Difficulty:
 1. There are no unique physical circumstances of the property.
 2. A variance is not the only option as there are alternatives:
 - a. Alternative: There is suitable buildable area to relocate the existing garage or construct the same or similar sized garage that conforms to property line setbacks.
 - b. Alternative: A land exchange to correct the encroachment.
 3. At the proposed location, there is limited area to relocate due to existing underground power and well.
- C. Essential Character of the Locality:
 1. The applicant is not proposing a new use to the area as there are other residential properties in area. Many of these properties consist of principal structures and accessory structures.
- D. Other Factors:
 1. A land use permit was issued on June 24, 1982, for a storage building on the property.

2. In 1982, the property was zoned Suburban Residential (R-1) and required a 10 foot property line setback for accessory structures.
3. The applicant has unsuccessfully pursued a land exchange to correct the encroachment.
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.

Mark Lindhorst noted no items of correspondence.

BOARD OF ADJUSTMENT DETERMINATION

Conditions that may mitigate the variance for an accessory structure at a reduced property line setback as proposed include, but are not limited to:

1. Stormwater runoff shall not discharge directly onto adjacent properties.
2. In the event that the structure is destroyed or replaced, it shall require appropriate permits and all setback requirements shall be met.

Theodore Klein, 5540 Highway 31, Culver, the applicant, stated they have underground electrical to the structure and the driveway has been paved. He does not want any structure to encroach on the driveway. It would not be feasible to move the structure elsewhere. The previous landowners were 200 feet off from where they thought the lot line was. It is 100 yards from the lot line to the nearest grave. When he purchased the property, it was in good faith. When they decided to build a house, he located the marker and measured, finding out that the lot line was not where it was said to be. He paid for a survey and that was when he found out where everything was back in 1995/1996. He is trying to correct this problem for his daughter as the house will likely be passed onto her. He spoke with a lawyer who advised him to move the structure a foot off the lot line, which is the proposal before the Board of Adjustment. After St. Patrick's Catholic Church closed, they gave the land to the Fond du Lac tribe to maintain. Both sides were mowing up to where they thought the lot line was.

Two members of the audience spoke.

Bill Helwig, Fryberger Law Firm, 813 Cloquet Avenue, Cloquet, stated he represents the Fond du Lac band in real estate issues. The Band wants the Board of Adjustment to know that the applicant is taking action to eliminate the encroachment they were unhappy about. The Band would like to see the structure moved back further off the property line so as there would be no further trespassing when clearing around the structure, maintaining the structure, mowing around the structure and using the structure. The Band was hoping for a 15 foot property line setback to eliminate any issues. Regarding adverse possession, the Band's property is held by the United States trust for the Fond du Lac band and there is no adverse possession against the United States. That is not a legal option.

Tim Krohn was listening in and declined to speak.

Joe Tasky, 7418 Swan Lake Road, Independence, stated he is in support of the applicant.

No other call-in users, present audience members or virtual attendees spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if this structure has been at its present location since 1982. *Mark Lindhorst* stated yes.
- B. Board member *Manick* commented the condition “In the event that the structure is destroyed or replaced, it shall require appropriate permits and all setback requirements shall be met” opens up future variance possibility in the event that the property changes hands, the structure is destroyed or replaced, and the new landowner needs to comply with this condition. *Jenny Bourbonais*, Acting Secretary, stated when issuing a land use permit for any structure, the planner would look into any previous development. Should the variance be approved, and the condition added, the new structure would need to meet all setbacks.
- C. Board member *McKenzie* asked when adverse possession comes into play. *Mark Lindhorst* stated that is a legal question and staff cannot answer that.
- D. Board member *McKenzie* noted that the site sketch shows the blacktop driveway has a five foot difference in elevation. *Theodore Klein* stated from the bottom of the driveway where the pole barn is to the other end there is a five foot drop. He would need to bring in a lot of fill to put on top of the driveway and on top of the electrical he installed underground if he were required to meet the 25 foot setback. The elevation is still flat at the proposed location. After that area, the elevation drops off. He brought 20 yards of sand in for the new concrete pad. The sand is settling now so the structure does not sink.
- E. Board member *Manick* asked about the garage door. *Theodore Klein* stated the garage door is being moved for easier access. They are moving the structure about eight feet. Board member *Manick* asked if the applicant could move the garage to staff’s alternative location and still be able to use the garage doors. *Theodore Klein* stated he would not. He has 14 feet from the existing structure to where the driveway is. He would be over where the underground power is, and the structure would be in the middle of the turnaround driveway.
- F. Board member *Pollock* asked if the applicant’s proposal has maximized the setback to the greatest extent. *Theodore Klein* stated yes.

DECISION

Motion by Manick/Pollock to approve a variance request for an accessory structure at a reduced property line setback of 2.8 feet where 25 feet is required, based on the following facts and findings:

- A. Official Controls:
 1. In a Multiple Use (MU)-4 zone district, St. Louis County Zoning Ordinance 62, Article III, requires a minimum 25 foot property line setback for accessory structures. The applicant is requesting a 2.8 foot property line setback.
 2. St. Louis County Comprehensive Land Use Plan states:
 - a. Goal LU-3 is to improve the integrity of the county’s planning-related regulation by minimizing and improving management of nonconformities.
 - b. Objective LU-3.1 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.

- c. 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.
 3. Variances are allowed under the St. Louis County Zoning Ordinance.
 4. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:
1. The structure will only be moved a few feet. The applicant is correcting a problem. It would be difficult to bring in additional fill or cover up existing underground power.
 2. 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 as there are other residential properties in area. Many of these properties consist of principal structures and accessory structures.
 2. The variance request will not alter the essential character of the locality.
- D. Other Factors:
1. A land use permit was issued on June 24, 1982, for a storage building on the property.
 2. In 1982, the property was zoned Suburban Residential (R-1) and required a 10 foot property line setback for accessory structures.
 3. The applicant has unsuccessfully pursued a land exchange to correct the encroachment.
 4. The applicant has demonstrated practical difficulty.

The following conditions shall apply:

1. Stormwater runoff shall not discharge directly onto adjacent properties.
2. In the event that the structure is destroyed or replaced, it shall require appropriate permits and all setback requirements shall be met.

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

Opposed: None - 0

Motion carried 7-0

Bart Hanson

The fourth hearing item was for Bart Hanson, property located in S6, T53N, R16W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2 and Section 3.7 to allow a structure at a reduced property line setback, reduced road centerline setback, and a reduced road right-of-way setback. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is requesting to replace a 24 foot by 16 foot garage that is located seven feet from the road right-of-way and three feet from the south property line.
- B. The proposed structure will be a 30 foot by 26 foot garage.

- C. The new structure is proposed to have a seven foot road right-of-way setback and one foot property line setback.
- D. There is good vegetative screening from the shore, property lines, and road on the property.

Ada Tse reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62, Article II, Section 3.2, states the minimum accessory structure setback required from property lines is 10 feet in Zone District 11.
 - a. The replacement structure is proposed at a one foot property line setback.
- 2. Zoning Ordinance 62, Article III, Section 3.7, states minimum setbacks required from road right-of-way and road centerline. Pomander Walk Road is classified as a Local Public Road which requires a 48 foot centerline setback and a 15 foot road right-of-way setback.
 - a. The replacement structure is proposed to be located seven feet from the road right-of-way and 19.5 feet from the road centerline.
- 3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 5. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

B. Practical Difficulty:

- 1. There is limited conforming area due to the shape of the parcel.
 - a. The applicant has demonstrated practical difficulty due to the configuration of the parcel.
- 2. Alternatives exist that either do not require variance or minimize the degree of variance:
 - a. The proposed structure may be located to maximize road and property line setbacks.
 - b. A smaller structure may be proposed at a conforming location.
 - c. A smaller structure may be proposed at a location that maximizes setbacks.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area. There are existing garages on the property that do not meet the required road or property line setbacks.
- 2. There have been two approved variances for an accessory structure at a reduced road setback and one variance approved for a reduced property line setback within the immediate area.

D. Other Factors:

1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
2. 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 through the county.
3. On-Site Wastewater passes SSTS record review for the proposed project.

Ada Tse noted no items of correspondence.

BOARD OF ADJUSTMENT DETERMINATION

Conditions that may mitigate the variance for a 30 foot by 26 foot accessory structure at a reduced road right-of-way setback of seven feet, reduced road centerline setback of 19.5 feet, and reduced property line setback of one foot as proposed include, but are not limited to:

1. A certificate of survey shall be obtained to locate property lines.
2. Stormwater from the structure shall not discharge directly onto adjacent properties or the road.
3. The structure shall not contain living space or be utilized as a dwelling.
4. Setbacks shall be maximized to the greatest extent possible.
5. St. Louis County Solid Waste Ordinance 45 standards shall be followed.
6. All other local, county, state, and federal standards shall be followed.

Bart Hanson, 13999 102nd Avenue North, Maple Grove, the applicant, stated they purchased this property 20 years ago. They did not have a survey when they purchased the property and the garage was not built where it was supposed to have been built. The existing structure needs to come down as it has dry-rot. They would like to keep the existing footprint.

Kelly Hanson, 13999 102nd Avenue North, Maple Grove, the applicant, stated they have a couple options. They could knock down both accessory structures and they could keep the one that is in good condition. The structure is on the property line. The adjoining landowner was confused as to why they received variance notice. They have things scattered across their yard and cannot currently park a car in the garage. They want a garage to park their car and pontoon in that is not dilapidated and falling apart. They are retired now.

Derek Lindquist, 11 Himango Road, Esko, stated he is the applicant's contractor. A survey may need to be done just to make sure that the property line distances do not dramatically change, especially down by the lake. The applicants are using an existing parking area and with a new structure, any car runoff would be confined to a garage and not go towards the lake. They would use gutters to direct any runoff away from the lake.

No audience members spoke. Both virtual attendees declined to speak.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if Pomander Walk Road is a dead-end road with only a few more homes along the road. *Ada Tse* stated this dwelling is near the end of the dead-end road and there are only a few cabins beyond the applicant's property.
- B. Board member *Coombe* asked about the conforming area and how large it is. *Ada Tse* stated there is about 1,000 square feet in size but is triangular. Board member *Coombe* asked about the topography. *Ada Tse* stated that the topography generally slopes down but is relatively flat.
- C. Board member *Coombe* asked which way the garage door would be facing. *Kelly Hanson* stated the garage doors would face Pomander Walk Road the same way they do now.
- D. Board member *Manick* asked if a new survey would be necessary if there is an existing survey. *Bart Hanson* stated their adjoining neighbors had a survey done on both sides. They have not had a survey done. *Jenny Bourbonais*, Acting Secretary, stated that is up to the Board of Adjustment. If the survey is on both sides of this property and both neighbors provide documentation stating a survey was done on those specific property lines, that would satisfy the condition.
- E. Board member *Pollock* asked if there were survey pins. *Bart Hanson* stated that he has located two pins, but not all four.
- F. Board member *Manick* asked how much space will be between the one accessory structure that will remain and the proposed garage. *Derek Lindquist* stated that they would be about one foot apart. The smaller structure is a 20 foot by 14 foot shed. If they need to fire-rate the closest wall, they would.
- G. Board member *Manick* asked what will happen if the shed is located on the neighbor's property. *Jenny Bourbonais* stated the variance is for a new structure. As long as the new structure is on the applicant's property and meets whatever conditions the Board of Adjustment sets, they would not need to deal with the neighboring property owner.
- H. Board member *Coombe* asked how wide Pomander Walk Road is. *Derek Lindquist* stated the road is about 16 feet wide and it depends on where the grass is. Board member *Filipovich* stated based on the legal description, the road is likely a platted road and its width would be noted on the plat map.

DECISION

Motion by McKenzie/Coombe to approve a variance request for a 30 foot by 26 foot accessory structure at a reduced road right-of-way setback of seven feet, reduced road centerline setback of 19.5 feet, and reduced property line setback of one foot, based on the following facts and findings:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.7, states minimum setbacks required from road right-of-way and road centerline. Pomander Walk Road is classified as a Local Public Road which requires a 48 foot centerline setback and a 15 foot road right-of-way setback.
 - a. The replacement structure is proposed to be located seven feet from the road right-of-way and 19.5 feet from the road centerline.
 - 2. Zoning Ordinance 62, Article II, Section 3.2, states the minimum accessory structure setback required from property lines is 10 feet in Zone District 11.
 - a. The replacement structure is proposed at a one foot property line setback.
 - 3. Official controls generally exist to regulate development and allow for reasonable use of the property through the granting of variances for exceptional circumstances.

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

B. Practical Difficulty:

1. The shape and size of the applicant's parcel, which is practically triangular, makes it difficult to site the proposed garage on the property without interfering with the road centerline setback, road right-of-way setback, property line setbacks and possibly the well setback.
2. The only possible conforming area on the parcel appears to be impractical.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The neighborhood near the cabin is a mix of year-round and seasonal homes similar in type.
2. The parcel in question is located near the end of a dead-end road with little traffic that would not see a reasonably sized garage near the road centerline and road right-of-way that would not normally be allowed and should not affect the character of the locality.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The parcel is located at the end of a dead-end road with four dwellings beyond the applicant's driveway, three of which are seasonal residences.
2. There was no correspondence received on this case.
3. The applicant did state their adjoining neighbor was in support of this variance proposal.

The following conditions shall apply:

1. A certificate of survey shall be obtained to locate property lines.
2. Stormwater from the structure shall not discharge directly onto adjacent properties or the road.
3. The structure shall not contain living space or be utilized as a dwelling.
4. Setbacks shall be maximized to the greatest extent possible.
5. St. Louis County Solid Waste Ordinance 45 standards shall be followed.
6. All other local, county, state, and federal standards shall be followed.

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

Opposed: None - 0

Motion carried 7-0

Motion to adjourn by Pollock. The meeting was adjourned at 1:50 p.m.