

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY THURSDAY, MAY 13, 2021.

11:23 AM – 1:30 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: None - 0

Also present: Thomas Stanley, St. Louis County Attorney's Office,
Matthew Johnson, Director of St. Louis County Planning and Community Development

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

NEW BUSINESS:

- A. Eugene Cornick, S17, T60N, R21W (French)
- B. Andrew Aho, S14, T66N, R19W (Camp Five)
- C. Pike Lake Golf & Beach, S31, T51N, R15W (Canosia)

OTHER BUSINESS:

Motion by Skraba/McKenzie to approve the minutes of the April 8, 2021 meeting.

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

Opposed: None – 0

Abstained: Filipovich - 1

Motion carried 5-0-1

Board members determined that based on the large caseload for the June Board of Adjustment hearing, a second hearing date would be scheduled for June 17, 2021 unless the number of variance cases decrease. The June 10, 2021 and the potential June 17, 2021 hearings will be a hybrid in-person and virtual public hearing that will be held at either the Virginia Government Services Center or at the St. Louis County Public Works facility in Virginia.

NEW BUSINESS:

Case 6251 – Eugene Cornick

The first hearing item was for Eugene Cornick, property located in S17, T60N, R21W (French). 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 centerline setback where 48 feet is required and a reduced road right-of-way setback where 15 feet is required. *Donald Rigney*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to build a new detached garage located 29 feet from the centerline of Duncan Road where a minimum of 48 feet is required and located approximately 5 feet from the right-of-way of Duncan Road where a minimum of 15 feet is required.
- B. The property is mostly wetlands except for the corner where the development is located.
- C. The applicant brought in fill for the tuck-under garage.

Donald Rigney reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62 states that the required setback from the centerline of a local public road is 48 feet; the applicant is requesting a reduced setback of 29 feet from the centerline.
- 2. Zoning Ordinance 62 states that the required right-of-way setback of a local public road is 15 feet; the applicant is requesting a reduced setback of approximately 5 feet from the right-of-way.
- 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 the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

B. Practical Difficulty:

- 1. A majority of the parcel is designated as wetland which limits the development potential of the property.
- 2. A variance is not the only option.
 - a. Alternative: An addition to the dwelling to expand the existing garage may be done with a land use permit.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area.
- 2. There have been no similar variance requests in the area.

D. Other Factors:

- 1. The driveway used to access the proposed garage is also utilized to access the tuck-under garage located beyond the proposed garage.
- 2. Due to the location of the wetlands and minimal upland, the opportunity for conforming development that does not impede access to the existing garage is limited.

Donald Rigney noted two items of correspondence from Grand Lake Township in support of the applicant's request. This correspondence had been provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow an accessory structure to be located at a reduced road centerline setback where 48 feet is required and a reduced road right-of-way setback where 15 feet is required, the following conditions shall apply:

1. The road centerline and right-of-way setback for the structures shall be maximized to the greatest extent possible.
2. The Wetland Conservation Act shall be followed.
3. No further variances shall be allowed on the property.

Eugene Cornick, the applicant, stated that the overhang from the eaves would only be about six inches. He would be able to comply with the township's request. The township's request would not affect his proposed structure.

No other audience members spoke.

Board member *Skraba* asked if the township's request that the eaves need to be far enough away from the road right-of-way so that snowplows have clearance. *Donald Rigney* stated the township wanted to make sure that the eaves do not fall into the 12 foot road right-of-way. *Jenny Bourbonais*, Acting Secretary, stated that this could be added as a condition per Grand Lake Township correspondence.

DECISION

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

A. Official Controls:

1. The variance request is in harmony with the general purpose and intent of official controls. The wetlands on the property should be protected and the structure fits in its proposed location.

B. Practical Difficulty:

1. A majority of the parcel is designated as wetland which limits the development potential of the property.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area.
2. There have been no similar variance requests in the area.

The following conditions shall apply:

1. The road centerline and right-of-way setback for the structures shall be maximized to the greatest extent possible.
2. The Wetland Conservation Act shall be followed.
3. No further variances shall be allowed on the property.
4. The structure shall be set back so that the eaves of the new structure shall not fall within the 12 foot road right-of-way, per Grand Lake Township's request.

In Favor: Filipovich, Pollock, Skraba, Svatos, Werschay - 5
Opposed: McKenzie - 1

Motion carried 5-1

Case 6252 – Andrew Aho

The second hearing item was for Andrew Aho, property located in S14, T66N, R19W (Camp Five). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to a nonconforming principal structure located within the shore impact zone that exceeds 200 square feet. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval for an oversized addition to a nonconforming principal dwelling where 200 feet would be allowed.
- B. The dwelling is located approximately 30 to 35 feet from the shoreline where 100 feet is required.
- C. The 32 foot by 20 foot addition is proposed to be located on the rear of the structure and not be located any closer to the lake.
- D. The development on the property consists of a dwelling, a holding tank, and accessory structures. A full septic system has been proposed and has been approved by the On-Site Wastewater Division.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62, Article IV, Section 4.3 D. allows a nonconforming principal structure located between 25 feet from the shoreline and the shore impact zone to be expanded by up to 200 square feet.
 - a. The applicant is proposing an addition of 640 square feet.
 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- B. Practical Difficulty:
 1. The only unique aspect of the parcel is that the private road runs through the middle of the property.
 - a. This would only possibly prevent the structure from being moved to or rebuilt at the required 100 foot shoreline setback.
 - b. This would not prevent the structure from being moved or rebuilt to maximize the shoreline setback.
 - c. The location of the road does not impact the applicant's ability to meet ordinance requirement for allowed addition size of 200 square feet.
 2. The applicant would be allowed an addition of up to 200 square feet with a performance standard permit.

3. The proposed addition of 640 square feet is over three times what would be allowed with a performance standard permit.
4. Even if the structure were located outside of the shore impact zone, the maximum size addition that would be allowed is 400 square feet.
5. An alternative is to reduce the size of the proposed addition to what is allowed by ordinance (200 square feet).

C. Essential Character of the Locality:

1. It does not appear there have been any similar requests in this area. The only variance requests in this area were for a new dwelling to be located 75 feet from the shoreline where 100 feet is required and for a new privy on a lot that does not meet the minimum zoning requirements.
2. The majority of the structures in this area are at least located outside of the shore impact zone. Many of them meet the required shoreline setback of 100 feet.

D. Other Factor:

1. There is very little vegetative screening located between the dwelling and the shoreline.
 - a. Although the proposed addition is to the rear of the dwelling, adding additional vegetation between the dwelling and the shoreline would help screen and reduce the risk of shoreline erosion.

Jared Ecklund noted one item of correspondence from Alistair Wilson in support of the applicant's request. This correspondence had been provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow an addition to a nonconforming principal structure located within the shore impact zone that exceeds 200 square feet, the following conditions shall apply:

1. The color of the structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
2. No further expansion of the structure shall be allowed.
3. No further variances shall be allowed on the property.
4. The stormwater runoff from the structure shall not discharge directly into the lake or onto adjacent lots.
5. A plan to enhance the vegetation in the shore impact zone shall be submitted and approved by the Planning and Community Development Department prior to the issuance of a land use permit.

Andrew Aho, the applicant, stated the addition will have heating, bathroom, laundry facilities, storage and to increase the size of their kitchen to make it more functional. They currently use their outdoor sauna for bathing. They have planted a dozen trees along the shoreline and intend to plant more. They keep a buffer of natural vegetation along the shoreline. They have owned the property for six years and have lived on the property for nearly two years. Because of where the road is located, there is no real opportunity to move the dwelling away from the lake.

No audience members spoke.

The Board of Adjustment discussed the following:

- A. Board member *Werschay* asked if there are any residences beyond the applicant's property. *Andrew Aho* stated there are two cabins beyond his property. The road has several easements.
- B. Board member *Svatos* asked if the applicant had gone through the process of a septic system. *Andrew Aho* stated they have a permit to build a mound system beginning in June. They will also have a well since they hand-carry water presently.
- C. Board member *McKenzie* added that the structure is located within the shore impact zone. The dwelling is too close to the water and should be moved back.

DECISION

Motion by Skraba/Svatos to approve a variance to allow an addition to a nonconforming principal structure located within the shore impact zone that exceeds 200 square feet, based on the following facts and findings:

- A. Official Controls:
 - 1. The variance request is partially in harmony with the general purpose and intent of official controls. It would not be practical to move the dwelling.
 - 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.
- B. Practical Difficulty:
 - 1. The only unique aspect of the parcel is that the private road runs through the middle of the property.
 - 2. The applicant has owned the property for six years and has lived on the property for two years with a privy and hand-carrying water.
 - 3. The addition is not going towards the lake and will be screened from the lake.
- C. Essential Character of the Locality:
 - 1. The variance will not alter the essential character of the locality.

The following conditions shall apply:

- 1. The color of the structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
- 2. No further expansion of the structure shall be allowed.
- 3. No further variances shall be allowed on the property.
- 4. The stormwater runoff from the structure shall not discharge directly into the lake or onto adjacent lots.
- 5. A plan to enhance the vegetation in the shore impact zone shall be submitted and approved by the Planning and Community Development Department prior to the issuance of a land use permit.

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

Opposed: McKenzie - 1

Motion carried 5-1

Case 6253 - Pike Lake Golf and Beach

The third hearing item was for Pike Lake Golf and Beach, property located in S31, T51N, R15W (Canosia). The applicant is requesting an appeal per St. Louis County Zoning Ordinance 62, Article 8.6 of the denial of a commercial use within the shoreline setback. *Jenny Bourbonais*, St. Louis County Land Use Manager, reviewed the staff report as follows:

- A. The applicant was granted a conditional use permit by the St. Louis County Planning Commission on May 14, 2020.
- B. The property was historically used as a golf course and was granted approval for a Commercial, Retail and Service Establishment-Class II as well as a Residential Planned Development-Class I.
- C. No request for a league volleyball court was presented to staff or to the Planning Commission.
- D. In 2021 correspondence, the applicant indicated a proposed location for two volleyball courts on the 2020 site sketch.
- E. A land use permit was issued for the golf cart storage building 40 feet wide by 380 feet in length on October 19, 2020.
- F. LU-003260 was issued for the storage building meeting all setbacks.
- G. The site map also indicated four volleyball courts meeting shoreline setbacks.
- H. In February 2021, construction began on the volleyball court foundation.
- I. Staff reviewed additional changes to the plans and began discussion with the property owner on setbacks.
- J. After further review of again more changes to the proposal, the storage building does not appear to reflect what was approved by the land use permit and the volleyball court foundation appeared to be located within the shore impact zone (50 feet).
- K. On March 9, 2021, St. Louis County received a summary of the proposed changes and requested uses for the proposed property.
- L. An email response was provided to the applicant stating that the volleyball courts would need to meet the shoreline setback as previously indicated in prior proposals.
- M. In April 2021, the applicant was in contact with the Department on how to rectify the situation and proposed an after-the-fact variance. The Director determined that an after-the-fact variance is not allowed because the use would not be allowed within the shoreline setback.
- N. On April 16, 2021, an administrative appeal was received by the Planning and Community Development Department.
- O. The applicant was made aware of Ordinance requirements and confirmed that the requirements were not being met.
- P. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per Minnesota Statutes, section 394.27, subdivision 7, and all acts amendatory thereof.
- Q. On May 5, 2021, an email was sent indicating no further work shall be done on the property until the administrative appeal decision was made by the Board of Adjustment.
- R. Site visits were conducted on May 6, 2021 and May 10, 2021, and work has continued on including, but not limited to: construction on the storage building, land alteration, backfill of soils surrounding the foundation that does not meet the shoreline setback.
- S. Staff measured a 47 foot shoreline setback for the volleyball court foundation.

- T. As of May 10, 2021, no land alteration permit has been issued. The compliance issues are a direct result of the property owner's continued change in plans throughout the permitting process.
- U. Other observations and potential stormwater issues include:
 - a. Several uncovered soil stockpiles were observed outside of the foundation area.
 - b. Silt-fencing was not installed around stockpile soil.
 - c. Improperly placed bio-logs were observed surrounding excavation activities.
 - d. Sediment was observed outside of the bio-log boundary, within the shore impact zone.
 - e. Excavation dewatering was observed within the shore impact zone.
 - f. Excavation dewatering flow was directed into the lake without the use of a filter bag structure.
 - g. Heavy tracking was observed on the public boat access road.
 - h. Heavy tracking was observed on the Midway Road.
 - i. Heavy tracking was observed within the site boundary.

Jenny Bourbonais noted three items of correspondence from the applicant Roger Anderson, Jeremy Aho and a resolution from Canosia Township in support. This correspondence had been provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the Director's decision to not allow an after-the-fact variance for a use that is required to meet the 75 foot shoreline setback, the property shall be brought into compliance prior to any further construction or permits that may be allowed on the property.

In the event that the Board of Adjustment determines to supersede the Director's decision to not allow an after-the-fact variance for a use that is required to meet the 75 foot shoreline setback, the applicant shall submit an after-the-fact variance proposal. The applicant shall also mitigate any other environmental issues identified prior to resuming construction.

Two government officials spoke.

Kevin Connick, Canosia Town Board Supervisor, stated the applicant and his family have been up front with the Town Board on purchasing the property and ensuring that everything was done properly. The Town Board passed a resolution in support of what the applicant is doing. The applicant worked for up to three years to acquire this property and has been improving a property that would have otherwise been wasted to add in a recreational area for communities surrounding Duluth. If Canosia Township still had zoning jurisdiction, they would grant a variance for this project.

Matthew Johnson, St. Louis County Planning and Community Development Director, stated that while playing volleyball on the beach is common, a retaining wall for the volleyball court is not. A retaining wall would not be allowed within the shoreline setback for this use. After doing a site visit, he was shocked to see the scale of the development. Had the applicant kept the original plans submitted in 2020, the development would have been just as good. There should have been some clarity when the applicant first contacted St. Louis County regarding the change in plans. If the

applicant came in and asked to build 50 feet from the shoreline, the answer would have been no. The applicant would then be able to apply for a variance but without a hardship, there is no justification to grant a variance. Had this been requested in 2020 when the applicant had their conditional use permits, staff would have required the volleyball courts back to the 75 foot shoreline setback, as originally indicated on 2020 site plans.

Roger Anderson, the applicant and property owner, stated the volleyball court foundation was constructed to separate the sand from the grass and to keep the volleyball courts level. He just laid bricks instead of a wooden barrier. He reviewed the Zoning Ordinance for some time before putting down the foundation. There is nothing in the Zoning Ordinance that addresses recreational courts and how close they can be to the lake. He checked with his two engineers to see if they could find anything stating they could not build the volleyball courts there. The site they chose was where the shoreline had eroded. He sent Mark Lindhorst, St. Louis County Senior Planner, an email asking if they could build the volleyball courts at that location. The response from staff was to submit a site sketch and staff would get back to them to ensure the proposal met ordinance requirements.

As they proceeded with this project, they had a permit to construct a storage building 75 feet of the shoreline. The location of the volleyball courts does not take away from the public beach and the courts would be in line with the back of the storage building and not next to the public boat landing. This is the best location for the volleyball courts, and it would be the best use of the land. He does not know why there was a problem with this, and he never got a clear answer onto what the problem was. They have kept St. Louis County apprised on what was going on, on this property. He has spent three years putting this project together. He did not get an answer back stating what the shoreline setback was; had he been told what the setback was, they would have shifted their plans to meet the setback. They could have put the volleyball courts on the public beach.

He added, in his opinion, the volleyball court foundation does not meet the definition of a structure. The walls do not go beyond 30 inches above the ground. This property was dedicated in 1920 to the Duluth Automobile Club and it included horseshoes, volleyball, badminton, and tennis courts. They made a commitment when they purchased this property that they would improve it with what they could afford to do.

He does not know why the entire project would be shut down to deal with the volleyball court. This is an ongoing \$30 million project. There are also 25 people working onsite now. He could rip out the wall, but this would not be what is best for the community. He could remove the volleyball courts, not have leagues, or meet the shoreline setback.

No audience members spoke.

The Board of Adjustment discussed the following:

- A. Board member *Skraba* asked if the Board of Adjustment is voting on whether the property owner is allowed to do this. The Board of Adjustment would be voting on whether the property owner could come forward with an after-the-fact variance. *Jenny Bourbonais*

stated this is an appeal of the Director's decision that did not allow the property owner to come forward with an after-the-fact variance.

- B. Board member *Svatos* asked if the volleyball foundation is located at 47 feet where 50 feet is required. *Jenny Bourbonais* stated the issue is that the foundation is located within the shoreline setback, which is 75 feet.
- C. Board member *Pollock* asked for clarification on what the Board of Adjustment can determine. *Jenny Bourbonais* stated there are two options. If the Board of Adjustment determines that the Director's decision stands to not allow an after-the-fact variance, the property would need to be brought into compliance. The volleyball court foundation would need to meet a 75 foot setback. If the Board of Adjustment determines to supersede the Director's decision to not allow an after-the-fact variance, the property owner would need to submit an after-the-fact variance proposal to allow the volleyball court foundation at its current location within the shoreline setback and the shore impact zone.
- D. Board member *Filipovich* asked what the property owner had proposed for setbacks in the 2020 land use permit. *Jenny Bourbonais* stated the storage building met all setbacks, as did the volleyball courts. Until the most recent site plans, both the storage building and the volleyball courts met all setbacks.
- E. *Jenny Bourbonais* stated that the foundation is the issue. The applicant referred to this as a retaining wall or a fence. The perception that this would not require permitting is not accurate. A foundation would need to meet the 75 foot shoreline setback and, at its current location, is within the shore impact zone, which is 50 feet.
- F. *Jenny Bourbonais* stated that this decision is not because the use is a commercial use, but because the use does not meet shoreline setback.
- G. Board member *Werschay* added that the applicant does not intend to build on top of this foundation.
- H. Board member *Svatos* asked if the 25 foot issue was resolved, if the problem would be gone. *Jenny Bourbonais* stated yes. The foundation would then meet the 75 foot shoreline setback. Previous proposals that included the volleyball courts indicated that the courts would meet the 75 foot shoreline setback.
- I. Board member *Skraba* asked if they decide the applicant should come back with an after-the-fact variance, it would be at a different time. *Jenny Bourbonais* stated yes. Board member *Skraba* asked if recreation is legal. *Jenny Bourbonais* stated it is and recreation is not the issue here. Board member *Skraba* asked if removing the foundation and replacing it with wood would help the issue.
- J. Board member *Skraba* stated that he does not feel the applicant acted in malice and there is no animosity here. There has been some miscommunication.
- K. Board member *McKenzie* stated there are three sketches that were submitted in the Board members' packets. He asked what changed between the first two sketches showing the volleyball courts at a 75 foot shoreline setback to the final sketch showing the volleyball courts at a 50 foot shoreline setback. *Roger Anderson* stated the third sketch was drawn up by Benchmark Engineering after staff responded to his original email asking for plans or pictures.
- L. Board member *McKenzie* asked what the height of the 'retaining wall' is. *Roger Anderson* stated on the exterior, three feet into the ground and 30 inches above the ground. The reason is because the area is below grade compared to the event center.

- M. Board member *Werschay* stated that the Director should not have the right to deny someone from applying for an after-the-fact variance. It should be the Board of Adjustment's responsibility to determine this.
- N. Board member *McKenzie* stated he feels the applicant could be asking for forgiveness and not permission. The applicant has been moving forward with changes and could apply for an after-the-fact variance to keep the changes that have been made since the conditional use permit was issued.
- O. Board member *Skraba* stated that if there was no retaining wall and the applicant used treated wood, nobody would know all the better. The applicant is just keeping the sand in. The applicant is using a fancier way to keep the sand in. The applicant read the Ordinance and felt confident enough to move forward.
- P. Board member *Pollock* stated that by supporting the Director, both the applicant and staff will get together and work this out.
- Q. Board member *Filipovich* stated that the whole project should not be shut down while this is worked out. There are things that should be brought into compliance. The applicant should be allowed to come in for an after-the-fact variance to determine if the volleyball courts can remain.

FIRST MOTION

Motion by McKenzie/Pollock to determine that the Director's decision to not allow an after-the-fact variance for a use that is required to meet the 75 foot shoreline setback shall stand. The property shall be brought into compliance prior to any further construction or permits that may be allowed on the property.

In Favor: McKenzie, Pollock - 2

Opposed: Filipovich, Skraba, Svatos, Werschay - 4

Motion fails 2-4

DISCUSSION FOLLOWING MOTION

- A. *Jenny Bourbonais* stated that the motion does not have to match what was recommended by staff.
- B. *Thomas Stanley*, St. Louis County Attorney's Office, wanted to clarify the circumstances. Zoning Ordinance 62, Section 8.1 indicates that when there is an existing violation on the property, no permit application shall be accepted from the landowner or agents on the property on which there are current or past unresolved violations unless St. Louis County determines that the permit will resolve the violation. St. Louis County made the determination that the wall being built and the shoreline alterations taking place are not allowed under the existing Ordinance at their current location. The first two site maps indicated other locations or different configurations for the volleyball courts. An inadequate amount of time was provided before work was done. The Director made a site visit and determined a violation exists and an after-the-fact variance could not be processed at that time. This is not to say whether an after-the-fact variance could be granted or not. The question is: can the property be brought back into compliance before moving forward with any other requests or before changes are made to the property? Mr. Anderson had stated the wall could be taken out this afternoon. The volleyball courts might not be needed,

or they could be moved. The Board's decision today is to sustain the Director's determination or overrule the Director's determination.

- C. Board member *Werschay* asked if the Ordinance allows the Director to not allow an after-the-fact variance. *Thomas Stanley* stated that Ordinance 62 states that the Director cannot accept an application on where there are current or past unresolved violations unless the County determines that the permit will resolve the violation.
- D. Board member *Skraba* stated that if the applicant wants to go through a variance, they should be able to. There are issues that need to be resolved. He does not want a construction site to shut down because nobody wins. *Thomas Stanley* stated that a motion could be made to allow a permit application to be accepted by the Planning and Community Development Department on property where an unresolved violation of the St. Louis County Zoning Ordinance exists, but that there may be an opportunity to resolve the violation by allowing an after-the-fact variance request.
- E. Board member *Filipovich* stated the applicant could choose to move the volleyball courts to the 75 foot setback and still be able to continue work on the property. Board member *Skraba* stated the intent is to not stop construction on the property while working on the volleyball court.
- F. Board member *McKenzie* stated the Director was following the Zoning Ordinance and determined that a variance could not be applied for because of an ongoing violation. He does not believe any decisions were based on animosity when they were following the Ordinance.
- G. Board member *Pollock* asked what the status of work is on the rest of the site. *Jenny Bourbonais* stated conversation was had with the applicant through the applicant's consultant. The question was asked to allow work on other areas of the property. Staff responded that based on Ordinance, we cannot take in any applications and work cannot be done on any other parts of the property with current violations. Based on that part of the Ordinance, work should not continue on the property until the violations are resolved. Staff went out multiple times and work had not stopped on the property and no land alteration permits had been issued for the land alteration work on the property. Staff does not want work to stop on this property but would rather see the issues resolved. Per the Ordinance, there can be no permits issued where there are current violations. Regardless of the Board's decision, staff will continue to work with the applicant.

DECISION

Motion by Skraba/Filipovich to supersede the Director's decision to not allow an after-the-fact variance for a use that is required to meet the 75 foot shoreline setback. The applicant may submit an after-the-fact variance proposal for a use that is required to meet the 75 foot shoreline setback. The applicant shall also mitigate any other environmental issues. Other construction on the property may continue if proper permits are in place.

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

Opposed: McKenzie, Pollock - 2

Motion carried 4-2

Motion to adjourn by Skraba. The meeting was adjourned at 1:30 p.m.