

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 THURSDAY, SEPTEMBER 8, 2022.

9:00 AM – 1:06 PM

Board of Adjustment members in attendance: Tom Coombe
Steve Filipovich at 9:05 AM
James McKenzie
Dave Pollock
Roger Skraba
Ray Svatos
Diana Werschay, Chair

Board of Adjustment members absent: None - 0

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

NEW BUSINESS:

- A. Sean Stepan (with Mitchum Johnson), S20, T54N, R16W (Cotton)
- B. Jeremy Doesken, S34, T55N, R16W (Ellsburg)
- C. Dan Berling, S26, T67N, R17W (Crane Lake)
- D. Sandberg Construction, S9, T63N, R18W (Beatty)
- E. Susan Springhetti, S33, T60N, R18W (Unorganized)
- F. Robert and Judith Shykes, S27, T52N, R15W (Fredenberg)
- G. Heather Nylund, S18, T50N, R16W (Solway)

OTHER BUSINESS:

Motion by Skraba/Svatos to approve the minutes of the August 11, 2022, meeting.

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

Opposed: None – 0

Motion carried 7-0

NEW BUSINESS:

Case 6326 – Sean Stepan (with Mitchum Johnson, contractor)

The first hearing item was for Sean Stepan (with contractor Mitchum Johnson), subject property located in S20, T54N, R16W (Cotton). 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 holding tank installation at a reduced shoreline setback from a Recreational Development Lake where a minimum of 75 feet is required. *Jason Walsh*, St. Louis County Environmental Specialist Senior, reviewed the staff report as follows:

- A. The applicant is requesting a replacement system (holding tank) for an existing noncompliant system (privy) with reduced setbacks.

- B. The proposed holding tank will be at least 50 feet from Strand Lake while meeting all other applicable setbacks.
- C. The parcel contains a dwelling, multiple accessory structures, and an existing privy.
- D. The parcel is mostly lawn with few trees.

Jason Walsh reviewed staff facts and findings as follows:

A. Official Controls:

- 1. SSTS Ordinance 61 states that all ISTS components must be setback in accordance with Table VII of SSTS Technical Standards and the setback requirements on the Minnesota Shoreland Rules. The required setback for Strand Lake, a classified Recreational Development lake, is 75 feet from shoreline.
- 2. The applicant is requesting a reduced shoreline setback of 50 feet for all system components.

B. Practical Difficulty:

- 1. The existing dwelling, accessory structures, road setback, and parcel size do not allow the holding tank to meet the required 75 feet setback from Strand Lake.

C. Essential Character of the Locality:

- 1. Neighboring parcels vary in development. Parcels range from having no structures, to only a camper, to a dwelling with accessory structures.
- 2. No other neighboring variances are known.

D. Other Factors:

- 1. The parcel is a peninsula.
- 2. The area outside of the 75 feet lake setback would not meet structure setbacks and property line setbacks.

Jason Walsh noted no items of correspondence.

STAFF RECOMMENDATION

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

- 1. All other On-Site Wastewater SSTS standards shall be met.
- 2. Setbacks shall be maximized to greatest extent as possible.
- 3. Following system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing the Certificate of Compliance.
- 4. All other local, county, state and federal regulations shall be met.

Sean Stepan, 5035 Thompson Road, Hermantown, the applicant, stated this will be an improvement to what currently exists on the property.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked what would be done with the unvaulted privy. *Jason Walsh* stated that the privy will need to be abandoned, which is a standard procedure before the final inspection.
- B. Board member *Filipovich* asked if there will be a pumping schedule or a water meter on the new holding tank. *Jason Walsh* stated there will be a pumping contract and a high-level alarm that signals when the system needs to be pumped. This is standard for all holding tanks unless someone is living on a property full time. There will be a water meter to measure water usage. Water usage records are required for holding tanks, but a water meter is not specifically required.
- C. Board member *Pollock* asked what the applicant is required to do with pumping records and water usage records. *Jason Walsh* stated these are required for the five-year renewal for an operating permit. There is a renewal notice that is sent to applicants prior to their renewal due date.

DECISION:

Motion by Skraba/Svatos to approve a variance for a reduced shoreline setback of 50 feet to the holding tank, based on the following facts and findings:

- A. Official Controls:
 - 1. SSTS Ordinance 61 states that all ISTS components must be setback in accordance with Table VII of SSTS Technical Standards and the setback requirements on the Minnesota Shoreland Rules. The required setback for Strand Lake, a classified Recreational Development lake, is 75 feet from shoreline.
 - 2. The applicant is requesting a reduced shoreline setback of 50 feet for all system components.
 - 3. There is currently no vaulted privy on the property. The variance proposal for a holding tank at a reduced shoreline setback is the only location on the site to fix this problem.
 - 4. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:
 - 1. The existing dwelling, accessory structures, road setback, and parcel size do not allow the holding tank to meet the required 75 feet setback from Strand Lake.
 - 2. Setbacks limit where a new system can be placed.
 - 3. Practical difficulty has been demonstrated in complying with the official controls.
- C. Essential Character of the Locality:
 - 1. Neighboring parcels vary in development. Parcels range from having no structures, to only a camper, to a dwelling with accessory structures.
 - 2. No other neighboring variances are known.
 - 3. The variance request will not alter the essential character of the locality.
- D. Other Factors:
 - 1. The parcel is a peninsula.

2. The area outside of the 75 feet lake setback would not meet structure setbacks and property line setbacks.
3. This variance for a holding tank will help mitigate having no wastewater collection system. This is a solution that is better than what currently exists on the property. It is a solution that properties have been able to use since SSTS Ordinance 61 was adopted in 2014.

The following conditions shall apply:

1. All other On-Site Wastewater SSTS standards shall be met.
2. Setbacks shall be maximized to greatest extent as possible.
3. Following system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing the Certificate of Compliance.
4. All other local, county, state and federal regulations shall be met.

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

Opposed: None - 0

Motion carried 7-0

Case 6327 – Jeremy Doesken

The second hearing item was for Jeremy Doesken, subject property located in S34, T55N, R16W (Ellsburg). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4 to allow the existing principal structure to be located at a reduced shoreline setback where 100 feet is required, and relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3.D, to allow an addition that exceeds the maximum allowed addition of 400 square feet to a nonconforming principal structure that is located between the shore impact zone and required 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 dwelling to be located at a reduced shoreline setback where 100 feet is required.
- B. The dwelling on the property was permitted with a land use permit in 1999. The application indicated that the structure would be about 110 feet from the shoreline.
- C. When the structure was built, it was built at a setback of approximately 91 feet from the shoreline where 100 feet was required.
- D. There is a bump-out on the front of the structure. It is not known when that was added onto the structure after the 1999 permit was issued.
- E. The applicant is also proposing an attached garage addition with an overhang covering a sidewalk to the dwelling that is located 91 feet from shoreline.
- F. The proposed attached garage addition is 30 foot by 28 foot with an 8 foot by 36 foot overhang to cover a sidewalk to the entrance of the house.
- G. The overall size of the addition with overhang is 1,128 square feet.
- H. The maximum allowed addition size for a nonconforming dwelling located between the shore impact zone and the shoreline setback is 400 square feet.
- I. The proposed project would add storage and parking for the year-round home.
- J. There is a concrete slab that the applicant poured prior to variance approval. If the variance is not approved, the applicant could use this as a parking pad.

- K. There is a home with attached garage, detached garage, boathouse, two small accessory structures, and septic.
- L. Trees screen the property along property lines and along the shore.
- M. The property slopes from the road towards the shore with a 24-foot drop in elevation.

Mark Lindhorst reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62 states that the required shoreline setback on Wilson Lake is 100 feet; the applicant is requesting approval for the dwelling to remain at a reduced shoreline setback of 91 feet.
- 2. Zoning Ordinance 62 states that the maximum allowed size addition to a nonconforming principal structure located between the shore impact zone and the shoreline setback is 400 square feet; the applicant is requesting approval for an 1,128 addition to the dwelling.
- 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 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. There are no unique physical circumstances that would prevent a dwelling on the property from meeting the required setbacks.
 - a. The structure was permitted in a conforming location and it appears there was/is adequate area where the structure could have met all required setbacks.
- 2. The dwelling was built by a previous owner of the property.
 - a. The current owner/applicant purchased the property in 2021.
- 3. There is a 12 foot by 16 foot bump-out on the lake side of the dwelling that is the closest point to the shoreline.
 - a. Based on the 1999 permit application and other information available, it is unclear if that bump-out was added to the design after the permit was issued or if that was part of the original design.
 - b. Without the bump-out, the structure may meet the required 100 foot shoreline setback.
 - c. Even with the bump-out, there was adequate space to meet all setbacks.
- 4. One alternative is to remove the bump-out on the lakeside of the dwelling.
- 5. The only other alternative is to move the structure to the required setback.

C. Essential Character of the Locality:

- 1. There are several nonconforming and several conforming structures on this lake.

2. The lot consists of two platted lots and the property conforms to the minimum zone district requirements.

D. Other Factors:

1. The current owner/applicant is the second owner of the property since the structure was built at a reduced shoreline setback.
2. Had the dwelling been built in the approved location, a variance would not be required for the proposed addition.
3. The concrete has already been poured for the proposed addition slab.
 - a. The applicant discussed the plans for the concrete slab and stated that the concrete was scheduled to be poured before the public hearing.
 - b. The applicant was made aware that if the concrete was poured, it could only be used as a slab for a parking area if the variance is not approved for the proposed addition.

Mark Lindhorst noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for the existing principal structure to be located at a reduced shoreline setback where 100 feet is required, and for an addition that exceeds the maximum allowed addition of 400 square feet to a nonconforming principal structure that is located between the shore impact zone and required shoreline setback as proposed include, but are not limited to:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
2. If the structure is replaced in the future, it shall be replaced in a conforming location.
3. The structure shall not be expanded in the future.

Jeremy Doesken, 1247 Blackburn Drive, Cotton, the applicant, stated there had been an amendment to the original 1999 permit for a 24 foot by 24 foot attached garage. What was built was a 28 foot by 34 foot structure. There is a bathroom and kitchen inside that structure and it was never used as a garage. The plumbing and electrical goes up through the cement inside the structure. They purchased the property after learning they could build an addition. The other issue was there had been a well in the middle of the driveway surrounded by asphalt. They had a new well put in. Once they had the concrete lined up, he applied for the permit. That was when staff saw the 91 foot shoreline setback. He has all of the materials ready to go.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked what the size of the bump-out is. *Mark Lindhorst* stated the bump-out is 12 foot by 16 foot.
- B. Board member *Coombe* asked how much of the bump-out is within the shoreline setback. *Mark Lindhorst* stated the bump-out is what extends into the shoreline setback. There is approximately nine feet that extends towards the shore creating the 91 foot shoreline setback.

- C. Board member *Pollock* stated that while it is not known if the bump-out was included in the original 1999 permit, the original 1999 application sketch did not show any bump-outs. *Mark Lindhorst* stated that the applicant may have just drawn a rectangle and not included any additional drawing.
- D. Board member *Skraba* stated it could also be the orientation of the structure because the original sketch showed everything symmetrical, and the actual layout is tilted more to the west.
- E. Board member *Filipovich* stated the 2011 Multiple Listing Service (MLS) did state there was a three season porch and a solarium.
- F. Board member *Werschay* noted that the original 1999 permit had dimensions changed on it.
- G. Board member *Skraba* asked what is inside the bump-out. *Jeremy Doesken* stated that this is the sunroom.

DECISION:

Motion by Coombe/McKenzie to approve a variance for the existing principal structure to be located at a reduced shoreline setback where 100 feet is required, and for an addition that exceeds the maximum allowed addition of 400 square feet to a nonconforming principal structure that is located between the shore impact zone and required shoreline setback, based on the following facts and findings:

A. Official Controls:

- 1. The original landowner had an over-the-counter land use permit in 1999 for a structure at a 110 foot shoreline setback. The structure was built at a 91 foot setback because of a 12 foot by 16 foot bump-out.
- 2. The home has been sold and resold again. The applicant believed the home was compliant.
- 3. The bump-out has existed in its present location for approximately 23 years without complaints.
- 4. The applicant's proposed attached garage and overhang will be located to the rear of the structure and will be away from the lake at 133 feet.
- 5. The variance request will create no damage to the environment.
- 6. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The home was built in about 1999.
- 2. The applicant did not know that the home was built closer to the lake than stated in the original land use permit. The attached garage and overhang will not be visible from the lake and will be located at the back of the existing structure.
- 3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

- 1. There are several nonconforming and conforming structures on this lake.
- 2. The lot consists of two platted lots and the property conforms to the minimum zone district requirements.
- 3. The structure has existed in its present location since about 1999.

4. The variance request will not alter the essential character of the locality.

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

Opposed: None - 0

Motion carried 7-0

Case 6328 – Dan Berling

The third hearing item was for Dan Berling, subject property located in S26, T67N, R17W (Crane Lake). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow an accessory structure at a reduced shoreline setback. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting after-the-fact approval to allow a new 34 foot by 64 foot accessory structure located 80 feet from the shoreline where 100 feet is required.
- B. The applicant installed a 32 foot by 60 foot concrete slab in 2021 that is currently being utilized as a sport court in this location.
- C. The applicant now is requesting to construct a structure on the slab to enclose the sport court.
- D. There was not a land use permit or land alteration permit issued for the concrete slab.
- E. There is currently a house, garage, concrete slab, well, septic system and driveway.
- F. A majority of the parcel is densely vegetated with tree cover. The structure would not be seen from the road and would have good screening with existing trees in the shore impact zone.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Crane Lake is a Recreation Development Lake which requires a shoreline setback of 100 feet; the proposed accessory structure on the existing concrete slab would be located at a shoreline setback of 80 feet.
 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.
 5. Through the Land Use Goals, Objectives and Implementation sections, 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.
- B. Practical Difficulty:
 1. There are no unique physical circumstances of the property.

2. The subject property conforms to the minimum zoning requirements for lot size and width.
3. A variance is not the only option as there are alternatives that would eliminate the need for a variance request.
 - a. Alternative: Utilize the slab as is without enclosing it for an open sport court.
 - b. Alternative: Utilizing part of the existing slab, offset a structure in a manner that the structure conforms to the 100 foot shoreline setback. The remainder of the slab can remain within the shoreline setback.
4. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b. ii states:
 - a. "The plight of the landowner is due to circumstances unique to the property not created by the landowner."
 - b. "Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance."
5. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.vi states:
 - a. 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 MN Statutes, Section 394.27, Subdivision 7, and all acts amendatory thereof.

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.

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. The proposed location of the structure is self-created. The applicant has not met the burden of demonstrating a practical difficulty as proposed.
3. The applicant stated that there is sufficient area to conform to the required shoreline setback.

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

1. The 32 foot by 60 foot concrete slab was poured and completed prior to applying for a variance.
2. The applicant submitted a land use permit application that indicated that the proposed structure would be located at a reduced shoreline setback which resulted in the application being returned.
3. The applicant contacted county staff after receiving the returned application and letter indicating the shoreline setback requirement.
4. The applicant was made aware of and discussed the alternatives that do not require a variance with staff and elected to pursue a variance.

- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The County would benefit by enforcement of the Ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
 2. Approval of an after-the-fact variance for a structure that is at a nonconforming location without sufficient practical difficulty is not in keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

Mark Lindhorst noted one item of correspondence from the Crane Lake Water and Sanitary District that had no issues with the variance proposal.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for an accessory structure at a reduced shoreline setback of 80 feet include, but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake.
3. All FEMA and St. Louis County Floodplain Management Ordinance 43 standards shall be met.
4. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county and shall be implemented by the property owner within two years from the issuance of a land use permit.

Dan Berling, 1916 25th Street South, St. Cloud, stated he was unaware that there was a setback required for the slab. He did not originally intend to add a building on top of the slab. With the outdoor conditions this year, they wanted to convert the court into an indoor pickle ball court. This will not be an eyesore. There will be no water or septic. This will not be seen from the lake or land. The structure would help mitigate racquet noise. He admitted they made a mistake. This new structure will not be detrimental to the property. The lake in this area is shallow and remote and sometimes there is not even water in this bay.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked what requirements were there for a concrete slab. *Mark Lindhorst* stated that if the slab met setbacks and all land alteration criteria, no permit would have been required. Not knowing how large or where on the property this slab was going, there was never a land use permit applied for. If the applicant had spoken about this project with county staff first, staff would have told the applicant the slab would be too close to the lake. The slab, as proposed and as exists, is too close to the water.
- B. Board member *Pollock* asked if the applicant could build the new structure at the 100 foot shoreline setback and keep the slab. *Mark Lindhorst* stated that a slab or patio can extend closer to the lake.

- C. Board member *Pollock* asked if there are any size restrictions. *Mark Lindhorst* stated that in this case, staff is looking at the structure, not the slab. The structure could have a slab/patio that extends closer to the lake as long as the structure met all setbacks.
- D. Board member *Pollock* asked if a slab/patio would have the same size restriction as a deck. *Mark Lindhorst* stated a deck is considered a structure. A deck can extend from any structure 12 feet closer to the shoreline. There are no permits required as long as the slab/patio does not exceed 50 cubic yards of material within the shoreline setback for a land alteration. That is when a land alteration permit is required. No land use or land alteration permit was applied for nor issued.
- E. Board member *Coombe* asked what the slab size is. *Dan Berling* stated the slab size would be the structure size which is 34 feet by 64 feet.
- F. Board member *Skraba* stated the issue is once a variance is approved, the structure could be whatever the landowner wants it to be. There is a reasonableness here. *Dan Berling* stated he believed he did not need a permit for the slab.
- G. Board member *Skraba* stated that the slab can be moved, though some excavation may be necessary.
- H. Board member *Werschay* asked if the slab is parallel to the lake. *Mark Lindhorst* stated it is mostly parallel. No portion of the slab is 100 feet from the shoreline.
- I. Board member *Skraba* stated he understands the applicant's statement that they did not know permits were necessary. Board member *Coombe* stated the applicant did say they messed up. This is not within the shore impact zone. If the slab was added onto and the front is used as a patio and a structure is built, construction would not be easy. The landowner wants to use the property in a manner not approved by the ordinance. A lot of money has been invested in this slab.

DECISION:

Motion by McKenzie/Pollock to deny a variance for an accessory structure at a reduced shoreline setback of 80 feet, based on the following facts and findings:

- A. Official Controls:
 - 1. Crane Lake is a Recreation Development Lake which requires a shoreline setback of 100 feet; the proposed accessory structure on the existing concrete slab would be located at a shoreline setback of 80 feet.
 - 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 - 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 - 4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.
 - 5. Through the Land Use Goals, Objectives and Implementation sections, 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.

6. Land use regulations exist to protect and preserve the quality of lakes and rivers and protect property values of the applicant and other property owners nearby. The applicant proposes a variance to build 20 feet closer to the shoreline than permitted.
7. The variance request is in not harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The plight of the landowner is entirely self-created and there are no unique circumstances of the property that would have prevented the proposed project from being constructed at the required shoreline setback.
2. The already-completed concrete slab and the expenses associated with construction shall not be considered a practical difficulty.
3. 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.
4. The applicant has stated to staff that there is sufficient area on the property where the structure can meet the required setback.
5. Practical difficulty has not 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.
2. There are cabins and homes with a fair amount of density near the applicant's property.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The 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. The proposed location of the structure is self-created. The applicant has not met the burden of demonstrating a practical difficulty as proposed.
3. The applicant stated that there is sufficient area to conform to the required shoreline setback.
4. The applicant can still make use of the concrete slab using it for its originally intended purpose or to use it as part of construction of an accessory structure.

In Favor: Filipovich, McKenzie, Pollock, Svatos - 4

Opposed: Coombe, Skraba, Werschay - 3

Motion carried 4-3

Case 6329 – Sandberg Construction

The fourth hearing item was for Sandberg Construction, subject property located in S9, T63N, R18W (Beatty). The applicant is requesting relief from St. Louis County Zoning Ordinance 62,

Article IV, Section 4.3 D., to allow a second addition to a nonconforming principal structure that was previously approved an expansion. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval for a second addition to a nonconforming principal structure that was previously approved an expansion.
- B. The structure is located approximately 45 feet from the shoreline.
- C. A variance was approved on the property in 1995 for an 18 foot by 36 foot (648 square foot) addition to the dwelling. This addition was never built.
- D. The new owners of the property are proposing an addition to the rear of the structure with an additional screen porch area.
- E. The addition to the rear would meet the 1995 variance approval.
- F. The proposed screen porch exceeds the 1995 variance approval and would be considered a second addition if approved.
- G. The proposed screen porch is 200 square feet in size.
- H. Overall, the total size of both additions is 192 square feet larger than the addition size approved by variance in 1995.
- I. Neither the addition nor the screen porch will be closer to the shoreline than what already exists.
- J. There is a good vegetative cover on the island aside from the rock outcrop on the eastern side of the island.
- K. The center of the island is the top of the hill and slopes down to the shore with a 20-foot elevation change.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Zoning Ordinance 62 states that a nonconforming principal structure may be expanded once with a performance standard permit without variance.
 - 2. The 1995 variance approved a 648 square foot addition to the dwelling.
 - a. A portion of the proposed addition (the 20 foot by 32 foot portion) could be allowed based on the 1995 variance provided the setback of the structure is not reduced and all other standards are met without the need for another variance.
 - b. The proposal to add the screen porch with the addition exceeds what was approved in 1995.
 - 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 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. Although the subject parcel is an island property, it is conforming and there appears to be area on the property where all setbacks could be met.
 - a. The property is roughly 1.3 acres and 195 feet in width.
 - b. If the property were to be redeveloped, it would be likely that a structure could meet all setback requirements.
2. The previous variance already approved a 648 square foot addition where 200 square feet would be allowed with a performance standard permit by today's standards.
3. The additional square feet of the current proposal when compared to the 1995 approval is for a screen porch.
 - a. The approved addition could be designed in a way to incorporate the screen porch area without the need for an additional variance.
4. Although the previously approved addition would have encroached into the shoreline setback on two sides, it would not have reduced the shoreline setback of the structure because the closest point of the existing dwelling is closer than the previously approved addition.
5. The existing dwelling is approximately 690 square feet.
 - a. The approved 1995 variance would nearly double the size of the dwelling, and the proposed addition would more than double the ground floor area of the structure.
 - b. Adding a second level above the proposed addition would significantly increase the living area within the structure.

C. Essential Character of the Locality:

1. The subject property is an island property without any adjacent neighbors.
 - a. The closest neighbor is located approximately 320 feet to the north of the island.
2. The island is located in a small bay and is visible from several residential properties around the small bay.
 - a. The properties around this bay range from approximately 320 feet to 750 feet from the island.
 - b. There are several nonconforming dwellings in this area.
3. There have not been any similar variances in the area for a second addition to a nonconforming principal structure in the past.

D. Other Factors:

1. The previous variance was approved on the property when it was owned by a different landowner.
2. The applicant is proposing a maximum height that would meet the maximum allowed height for an addition to a nonconforming structure.
 - a. When the height was discussed with the applicant, it was confirmed that the maximum height standards would be met.
3. 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.
4. The record review of the septic system on the property failed because there is no permit on file for a septic system.

- a. A compliance inspection is required before any land use permit is issued on the property.

Mark Lindhorst noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a second addition to a nonconforming principal structure that was previously approved an expansion as proposed include, but are not limited to:

1. The structure shall not be expanded in the future.
2. The structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
3. St. Louis County Onsite Wastewater SSTS standards shall be followed.
4. The structure shall not exceed the maximum allowed height of 20 feet.

Vincent Moccio, 115 Valley View Place, Minneapolis, the applicant, stated they knew they had a variance on this property when they purchased it in 2006. The cabin was built in 1966. They were uncertain that it was still valid. His wife was told that the variance was good and they could design what they wanted as long as it would not be nonconforming. They wanted a design that works for them and would not be any more nonconforming. The design they have now is less nonconforming. While there is a difference between what was approved (648 square feet) and what they are requesting now (840 square feet), there will be more square footage outside of the shoreline setback. The 1995 variance approved 260 square feet within the shoreline setback and would have been on both sides of the dwelling. This design now is only 150 square feet within the shoreline setback and will only be on one side of the dwelling. This design will also make the additions less visible. The porch and addition will not be seen from the lake and they will be in the trees. They do not see why they are asking for a second variance. They will comply with the height requirements and build with a neutral tone color. They have made as few improvements as they can and want to keep the land as natural. They do not want to change the natural character of this property.

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

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked if the screen porch could be incorporated into the design for the proposed addition without the need for a variance. *Mark Lindhorst* stated the 648 square feet approved by variance could allow for a screen porch within that addition. A redesign of the 1995 variance approval may be necessary.
- B. Board member *Werschay* asked staff to address the variance requirements. *Jenny Bourbonais*, Acting Secretary, stated that just because the addition will meet the shoreline setback, that does not mean that the entire structure meets shoreline setback. That is the purpose for the first variance request and approval. The original structure does not meet shoreline setback. A variance would be required for any square footage above and beyond what was originally approved. Since the original addition was never built, staff allowed the landowner to come forward with another variance request as a second addition to a nonconforming structure.

- C. Board member *Skraba* asked if there was a reason the original variance was not canceled. *Jenny Bourbonais* stated that was an option, but these requests would still require a variance.
- D. Board member *Coombe* asked if the first condition should be removed: The structure shall not be expanded in the future. A variance does not mean that something could not happen in the future, such as the landowners needing handicap ramps. Board member *Skraba* stated that is acceptable.
- E. Board member *McKenzie* asked about practical difficulty. Board member *Skraba* stated that the applicants are offsetting the addition to one side and making it less obtrusive to the land. This may be less nonconforming. Board member *Coombe* stated the applicants want to use the property in a reasonable manner. The landowners are good stewards by tucking the screen porch into the structure instead of putting it out front.
- F. Board member *McKenzie* stated practical difficulty should be something that would allow something that did not give the landowners reasonable use in the past. It appears that the cabin as it currently exists gives the landowners reasonable use of the property.

DECISION:

Motion by *Skraba/Coombe* to approve a variance for a second addition to a nonconforming principal structure that was previously approved an expansion, based on the following facts and findings:

- A. Official Controls:
 - 1. The original variance would allow for part of the applicant's request. This is a reasonable request because the additions do not further encroach on shoreline setbacks or lot coverage.
 - 2. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:
 - 1. The applicants have tried to be less nonconforming by changing the layout of the addition.
 - 2. They will use less square footage than what the original 1995 variance approval. The structure will be more suitable for reasonable use.
 - 3. The applicants are utilizing existing trees to help shield the additions from view.
 - 4. Practical difficulty has been demonstrated in complying with the official controls.
- C. Essential Character of the Locality:
 - 1. The subject property is an island property without any adjacent neighbors.
 - a. The closest neighbor is located approximately 320 feet to the north of the island.
 - 2. The island is located in a small bay and is visible from several residential properties around the small bay.
 - a. The properties around this bay range from approximately 320 feet to 750 feet from the island.
 - b. There are several nonconforming dwellings in this area.
 - 3. The variance request will not alter the essential character of the locality.
- D. Other Factor:

1. The landowners are trying to be less intrusive by designing the layout to offset to one side instead of both sides of the dwelling.

The following conditions shall apply:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
2. St. Louis County Onsite Wastewater SSTS standards shall be followed.
3. The structure shall not exceed the maximum allowed height of 20 feet.

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

Opposed: None - 0

Motion carried 7-0

Case 6330 – Susan Springhetti

The fifth hearing item was for Susan Springhetti, subject property located in S33, T60N, R18W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.7 to allow a structure at a reduced road centerline setback and a reduced road right-of-way setback. *George Knutson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is requesting an accessory structure at a 31 foot road centerline setback and a reduced road right-of-way setback.
- B. Legal notification was sent regarding the variance proposal of a reduced property line setback after which the applicant confirmed that the property line setback can be met.
- C. The Board need not consider the property line setback as part of the proposal. The current request is only for a road centerline and road right-of-way setback.
- D. There is currently a 14 foot by 18 foot garage that is one foot from the south property line and 31 feet from the road centerline.
- E. The applicant is proposing to replace this structure with a 24 foot by 30 foot garage. The new structure is proposed to have a 31 foot road centerline setback and 10 foot property line setback.
- F. The applicant is a new owner of the property. They also own the adjacent lot to the north. They are planning to remove the existing dwelling and properly abandon the existing septic. A replacement dwelling will not be pursued.

George Knutson reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62, Article III, Section 3.7, states minimum setbacks required from road right-of-way and road centerline for each road classification. Palm Road is classified as a Local Road which requires a 48 foot road centerline setback and a 15 foot road right-of-way setback.
 - a. The replacement accessory structure is proposed 31 feet from the centerline of the road.
 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 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. There is an alternative that does not require a variance:
 - a. Due to the dwelling being removed from the property, there is area on the property that meets all setback requirements. The structure may be relocated to this conforming area.
2. There is steep slope with an approximate grade of 20 percent from the road to the area the existing dwelling is located on.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. A majority of the parcels in the immediate area are utilized residentially.
2. There have been no similar variances within the immediate area.

D. Other Factors:

1. The applicant owns the property directly north of the subject property.
2. Upon removal of the existing dwelling, the applicant does not plan to propose a replacement dwelling on the subject property.
3. Legal notification was sent regarding the variance proposal of a reduced property line setback. The applicant confirmed that the property line setback can be met (see correspondence from applicant dated August 23, 2022). The Board need not consider the property line setback as part of the proposal on the day of the hearing given the fact the setback can be met. The current variance request as August 23, 2022 is only for a road centerline/right-of-way setback.

George Knutson noted one item of correspondence from the applicants noting they no longer require a property line setback variance.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a 24 foot by 30 foot accessory structure located at a 31 foot road centerline setback and a reduced road right-of-way setback, as proposed, include but are not limited to:

1. Stormwater from the structure shall not discharge directly onto adjacent properties or the road.
2. Structure shall not contain living space or be utilized as a dwelling.
3. Setbacks shall be maximized to the greatest extent possible.
4. St. Louis County Onsite Wastewater SSTS standards shall be followed.
5. All other local, county, state, and federal standards shall be followed.

Peter Springhetti, 4068 Ridgetop Court, Newburgh, IN, the applicant, stated they purchased this property in spring 2022 from the neighbors. This property is adjacent to their cabin property. They have been on Sand Lake since 2005. They have improved the value of the property which is what they intend for this new property. The primary goal of purchasing this property was to build a garage. They also wanted to remove the old cabin on the property because it had collapsed. They want to clean up the debris on that lot and improve the aesthetics of the lot. Due to the topography, water, septic, and setbacks they are unable to build a garage on their original 2005 lot. The existing garage is 14 foot by 18 foot and located one foot from the south property line and 31 feet from the road centerline. They want a 24 foot by 30 foot garage located ten feet from the property line and 31 feet from the road centerline. The topography drops 12 plus feet from the edge of the road west to the 75 foot shoreline setback and drops an additional 10 feet to the north towards their original lot. There is a power pole with three guyed wires on the east side of the property that restricts their access to the lot. They talked with Lake Country Power who will not remove the pole. Their option is to put the structure south of the power pole which will provide 30 feet of access to the lot. The property has a 36 foot by 30 foot solid building area. The 30 foot depth only starts 31 feet from the road centerline, not 48 feet. Due to the topography of the lot, staff's alternative location would not provide structural integrity as per their contractor's opinion.

Susan Springhetti, 4068 Ridgetop Court, Newburgh, IN, the applicant, was present. She handed out a sketch to the Board that identified the level terraced area. There is a rock retaining wall that was there long before they purchased the property. The present house is 12 feet lower than the edge of the road. Digging six inches below the ground level there is water. This was a big reason why the house has collapsed. The house should not have been built there. Staff's alternative location would include an 8 foot drop in elevation. About two-thirds of the garage would require a tremendous amount of fill (600 to 800 yards per their contractor). The structural integrity would be at risk. Any fill would encroach on the 75 foot shoreline setback and there is a risk of runoff into the lake. Their contractor stated it would be twice the cost at that location and nobody would take on the foundation work.

Peter Springhetti stated that based on the drawings, their concerns about the viability of staff's alternative location is that 20 feet of the 30 foot depth of the garage would be located over an 8 to 10 foot elevation drop to the west. Their contractor would not back the integrity of the garage because of the large amount of fill needed to level the garage. The ground on that lot is sandy. Their contractor is concerned about runoff from the fill going into the lake. Their proposed location is stable ground. This will meet the minimum shoreline setback and be 17 feet beyond that. Their neighbors have large garages that do not conform to the road centerline setback and are closer to the road than their proposed garage would be. The area close to the road is the only buildable area for a garage. Cleaning the lot will help improve the condition and value of their property and their neighbors and other surrounding properties. This will help preserve the quality and integrity of the shoreline. The proposed structure leaves only four neighbors to the south of their property on a dead-end road with limited traffic. They have support from two neighbors since notice went out.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked if a replacement dwelling could be pursued on this property. *George Knutson* stated potentially. Board member *Pollock* stated this leads into the condition stating no living space shall be allowed in the garage and it cannot be utilized as a dwelling. *Jenny Bourbonais*, Acting Secretary, stated that staff would rather not see a garage with living quarters that close to the road. There is opportunity for either a dwelling or a garage to meet ordinance requirements on this property.
- B. Board member *Svatos* asked if this is a county or township road. *George Knutson* stated this is a county road.

DECISION:

Motion by McKenzie/Svatos to approve a variance for a 24 foot by 30 foot accessory structure located at a 31 foot road centerline setback and a reduced road right-of-way setback, 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 for each road classification. Palm Road is classified as a local road which requires a 48 foot road centerline setback and a 15 foot road right-of-way setback. The replacement accessory structure is proposed 31 feet from the centerline of the road.
- 2. The intent and general purpose of official controls is to attempt to set guidelines for official controls while recognizing the reality of unique circumstances such as what the applicant has encountered that were not created by the landowner.
- 3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. Siting the proposed garage to meet setbacks was caused by several factors such as the location of the power pole with guyed wires that the applicant tried and failed to have moved and the steep drop in elevation from the edge of the road which would require extensive fill to place the garage. The applicant's builder suggested building on a filled area. To stabilize the fill could possibly encroach on the 75 foot shoreline setback.
- 2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

- 1. The Sand Lake area is long settled and a fairly dense area in what used to be seasonal cabins that are now year-round homes that may not be in conformance with setbacks. It appears that several neighbors have garages which are closer to the road.
- 2. The variance request will not alter the essential character of the locality.

D. Other Factors:

- 1. The applicant's garage is not an unreasonable size.
- 2. This is not proposing a new use to the area.
- 3. The applicant has made a good-faith effort to try and place the garage in the best available location.

The following conditions shall apply:

1. Stormwater from the structure shall not discharge directly onto adjacent properties or the road.
2. Structure shall not contain living space or be utilized as a dwelling.
3. Setbacks shall be maximized to the greatest extent possible.
4. St. Louis County Onsite Wastewater SSTS standards shall be followed.
5. All other local, county, state, and federal standards shall be followed.

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

Opposed: None - 0

Motion carried 7-0

Case 6331 – Robert and Judith Shykes

The sixth hearing item was for Robert and Judith Shykes, subject property located in S27, T52N, R15W (Fredenberg). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a dwelling addition at a reduced shoreline setback. *George Knutson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 14 foot by 26 foot (364 square foot) addition to an existing dwelling that will reduce the shoreline setback to 91 feet from Fish Lake Reservoir where 100 feet is required.
- B. The dwelling is currently at a conforming location of 105 feet from the shoreline.
- C. The proposed height of the dwelling addition will be 20 feet where 25 feet is allowed.
- D. The property has good vegetative screening from the lake and property lines.
- E. The property slopes towards the lake with an average slope of 13 percent and a total of 20 feet in elevation change.

George Knutson reviewed staff facts and findings as follows:

A. Official Controls:

1. Fish Lake Reservoir is a Recreation Development Lake which requires a shoreline setback of 100 feet; the proposed principal structure addition will be located at a shoreline setback of 91 feet.
2. The parcel is a Minnesota Power lease lot and is a legal lot of record for permitting purposes.
3. The parcel is located in the Lakeshore Development Area on the Future Land Use Map found in the St. Louis County Comprehensive Land Use Plan. This area is intended for rural development and redevelopment adjacent to lakes. This includes single family residential uses in size, scale and intensity consistent with the county's developed lake shore area.
4. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
5. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

6. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

B. Practical Difficulty:

1. There are no unique physical circumstances of the property.
2. The applicant has several alternatives that would eliminate the need for the variance request.
 - a. Alternative: A second story addition may be allowed with a land use permit.
 - b. Alternative: Addition to the dwelling away from the lake may be allowed with a land use permit.
 - c. Alternative: Convert all or a portion of the existing two car attached garage to living space. An interior conversion would not require land use permit.
3. The applicant has not provided sufficient evidence as to why ordinance requirements cannot be met. As stated in the St. Louis County Comprehensive Land Use Plan, nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statutes.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. The area is currently developed with seasonal and year-round dwellings.

D. Other Factors:

1. 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 throughout the county.
 - a. Changing a conforming structure to a nonconforming structure where alternatives exist, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Ordinance or St. Louis County Comprehensive Land Use Plan.

George Knutson noted no items of correspondence.

STAFF RECOMMENDATION

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

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.

Robert Shykes, 6152 North Birch Acres Road, Duluth, the applicant, stated staff alternatives are not practical. A second story would not be practical as they are not getting younger. The cost would be greatly increased. They did not build their garage to use it as living area. Their garage is used

for vehicles and storage. Adding on to the other side of the house is not practical because their well water line goes into that corner. They would need to build a structure on top of that piping. Their proposal is the best proposal. They are going to purchase the property from Minnesota Power. They are looking for the best opportunity to add living space.

One member of the virtual audience spoke.

Peggy Donahue, 6156 North Birch Acres, stated she lives in the dwelling in front of the applicants and share a cul-de-sac. They are good neighbors, and this addition will not spoil their view. They are in support of the variance.

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked if there will be a basement under the addition. *Robert Shykes* stated the lower level will be enclosed with helical piers. Basement work would add additional cost.
- B. Board member *Coombe* asked if the addition would include a deck. *Robert Shykes* stated that they would love to have a six foot deck but that does not fit in with the rules. *George Knutson* stated a deck may be allowed depending on what gets approved. There is a 12 foot deep deck that can encroach 50 percent maximum towards the setback. The applicant may not be allowed 12 feet. Board member *Pollock* stated that there could be a 4 foot walkway. *Robert Shykes* stated they have a six foot deck that is used as a shortcut or to wash the living room windows.
- C. Board member *Pollock* asked if the walkout basement will still exist. *Robert Shykes* stated that it would. Board member *Pollock* stated there is a health and safety matter that factors in here.
- D. Board member *Skraba* stated adding on to the north or east moves the structure closer to the lake. The applicant cannot add to the south or west.

DECISION:

Motion by McKenzie/Coombe to approve a dwelling addition at a reduced shoreline setback, based on the following facts and findings:

- A. Official Controls:
 - 1. Fish Lake Reservoir is a Recreation Development Lake which requires a shoreline setback of 100 feet; the proposed principal structure addition will be located at a shoreline setback of 91 feet.
 - 2. The parcel is a Minnesota Power lease lot and is a legal lot of record for permitting purposes.
 - 3. Official controls create standards found in ordinances and statutes. These are created for ideal conditionals but also allow variance from ordinance standards when circumstances such as needs for continued health, safety and general welfare can be demonstrated.
 - 4. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:

1. The applicant stated that the property does not allow for practical expansion except in the direction of the lake shore. A natural span upward into a second story is not realistic given the couple's age.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area is long established as an area of seasonal and year-round homes. A reasonable alteration of the structure will not affect the essential character of the area.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant states the two closest neighbors support their proposed project and the Board of Adjustment has not received correspondence on this matter.
2. The applicant indicated the proposal should not result in excavation, tree removal or changes to drainage.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.

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

Opposed: None - 0

Motion carried 7-0

Case 6332 – Heather Nylund

The seventh hearing item was for Heather Nylund, subject property located in S18, T50N, R16W (Solway). The applicant is requesting relief from St. Louis County Subdivision Ordinance 60, Article IV, Section 4.3 E., to allow a subdivision that fails to meet the standards of the St. Louis County land use regulations to be deemed a lot of record for the purpose of issuing land use permits. The applicant is also requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow a lot that does not conform to the zoning district minimal dimensional standards to be permitted as buildable.

Jenny Bourbonais, St. Louis County Land Use Manager, reviewed the staff report as follows:

- A. The applicant is proposing to subdivide the existing 36.44 acre parcel into a 10 acre parcel containing the existing development and an undeveloped 26.28 acre parcel to be retained for access to an adjoining 40-acre parcel to the north under common ownership.
- B. The parcels are in a Forest Agricultural Management (FAM)-1 zone district that requires 35 acres and 600 feet of lot width.
- C. The applicant is proposing to allow the 10 acre parcel to retain lot of record status after the division of the parcel is officially executed.
- D. There is an existing homestead on the southern portion of the property. There is a house, multiple accessory structures, fenced pasture area, well and septic.

Jenny Bourbonais reviewed staff facts and findings as follows:

A. Official Controls:

1. St. Louis County Subdivision Ordinance 60, Article IV, Section 4.3 E allows minor boundary adjustments; however, any such division that fails to meet the standards of the St. Louis County land use regulations shall not be deemed a lot of record for the purposes of issuing land use permits.
2. The subject parcel is zoned Forest Agricultural Management (FAM)-1 which requires a minimum of 35 acres and 600 feet of lot width.
 - a. The existing parcel conforms to zoning and is 36.44 acres and has 600 feet of lot width.
3. The proposed subdivision of the 10 acre parcel will not conform to zoning minimums.
 - a. The proposed parcel is 10 acres where 35 is required.
 - b. The proposed lot width of the parcel is 500 feet where 600 is required.
4. The 26.28 acre parcel will be combined with an adjoining 40 acre parcel to the north under common ownership through a minor boundary adjustment.
5. 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.
6. 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.
7. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan states that county staff and decision-makers will work together to decrease the amount of zoning and subdivision ordinance nonconformities throughout the county.
8. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

B. Practical Difficulty:

1. There are no unique physical circumstances of the property.
2. There are alternatives that retain lot of record status:
 - a. Do not execute the subdivision of the property.
 - b. Record an easement for access to the adjoining 40 acres to the north in lieu of subdividing the parcel and leaving a strip of land for access.
 - c. Pursue a rezoning request.

C. Essential Character of the Locality:

1. There have been no similar variances in the area.
2. The variance would have little impact on the area.
3. The Maple Grove Road corridor between Highway 2 and Highway 33 is zoned Forest Agricultural Management (FAM)-3 or Residential (RES)-3 except for Section 18, which is zoned FAM-1. District 3 allows for a parcel size of 9 acres and 300 feet of lot width.
 - a. Section 18 may benefit from a review for a zoning amendment to be consistent with the adjacent development density along the Maple Grove Road corridor.

D. Other Factors:

1. The applicant called St. Louis County staff for a preliminary review who verbally misinformed the applicant in stating that the parcel was zoned FAM-3, which requires nine acres and 300 feet of lot width.
 - a. The proposed subdivision would be allowed in a FAM-3 zone district.
2. The applicant proceeded with a survey and listing the 10-acre parcel for sale as proposed prior to submitting a subdivision permit application for official review by St. Louis County.
3. The applicant is aware that rezoning is a possibility and may also be pursuing this option with the township.

Jenny Bourbonais noted one item of correspondence from Solway Township in support of the variance. This item was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for the creation of a parcel that does not conform to the zoning dimensional standards to remain buildable as proposed include, but are not limited to:

1. There shall be no further variances for subdivisions that increase the nonconformity.
2. St. Louis County Onsite Wastewater SSTS standards shall be followed.

Heather Nylund, 6955 Maple Grove Road, Cloquet, the applicant, stated she has a background in real estate and has been an abstractor for a title company and worked with the St. Louis County Auditor's office. They purchased this property in 1999. There are only five landowners in this zone district. After being told that she could sell off the 10 acre parcel, she completed the survey. She did not think they would get a buyer so fast because the property is more of a hobby farm than residential. Two days later, they signed the purchase agreement. It was after that county staff contacted her and said they could not subdivide as proposed. Had she known about the rezoning process, she would have started that process first. She had one day to pay for the \$650 variance. The rezoning process would have been far longer. This was likely zoned this way because it may have been part of Potlatch forest land. She will go to the Solway Township meeting on September 13, 2022 to ask the township to consider rezoning for the neighbors along this stretch of Maple Grove Road.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Werschay* asked why the county has such a large acreage requirement. *Jenny Bourbonais* stated FAM-1 is in an area of contiguous public land ownership. These lands are used for farming, agricultural management, or forestry. Those types of uses require larger acreage and lower density to be allowed in a specific area.
- B. Board member *Pollock* asked how someone can ask for a rezoning. *Jenny Bourbonais* stated a rezoning request can be submitted by an individual property owner, the Planning Commission, or the township. This would be a Planning Commission case and would need to meet specific criteria to be approved. The County Board would have the final approval to adopt as a zoning map amendment.

- C. Board member *Pollock* asked if a rezoning process is a difficult process. *Jenny Bourbonais* stated that while the process may not be difficult, it is time-consuming.
- D. Board member *Skraba* stated the easy solution to the variance is rezoning. However, it would take time for the township, the Planning Commission and the County Board to get through the rezoning process. *Jenny Bourbonais* added that staff does intend to look at each township to see where the zoning for specific areas may not fit that area. In this case, the 10 acre parcel would be conforming if the FAM-3 zone district was extended into this FAM-1 area.
- E. Board member *Skraba* stated whether a variance is granted or the area is rezoned, the end result would be the same.
- F. Board member *Svatos* asked about staff's mistake. *Jenny Bourbonais* stated there was no official review, but there was contact with the department. Once the application was received, staff recognized the mistake.
- G. Board member *McKenzie* asked what the advantage of lot of record status is. *Jenny Bourbonais* stated a lot of record is deemed buildable. The 10 acre parcel would not be buildable. Whoever purchases that property would not be able to get a land use permit for any additional development because the parcel is not a lot of record.
- H. Board member *Skraba* asked if the applicant intends to leave the parcel to the north zoned FAM-3. *Heather Nylund* stated she will talk to her family. This land is not used for more than hunting property and there are low areas.
- I. Board member *Pollock* stated that large property owners would find value in a different zoning in this area.

DECISION:

Motion by Coombe/Skraba to approve a variance for the creation of a parcel that does not conform to the zoning dimensional standards to remain buildable, based on the following facts and findings:

- A. Official Controls:
 - 1. Most of the land in this surrounding area is zoned Forest Agricultural Management (FAM)-3, which allows for nine acre parcels. The parcel in question will be 10 acres.
 - 2. The variance request is in harmony with the general purpose and intent of official controls.
- B. Practical Difficulty:
 - 1. The applicant had the property surveyed after contacting the county regarding minimum requirements and incurred financial costs thinking the proposed subdivision met zoning and subdivision ordinance minimums.
 - 2. Practical difficulty has been demonstrated in complying with the official controls.
- C. Essential Character of the Locality:
 - 1. There have been no similar variances in the area.
 - 2. The variance would have little impact on the area.
 - 3. The Maple Grove Road corridor between Highway 2 and Highway 33 is zoned Forest Agricultural Management (FAM)-3 or Residential (RES)-3 except for Section 18,

which is zoned FAM-1. District 3 allows for a parcel size of 9 acres and 300 feet of lot width.

- a. Section 18 may benefit from a review for a zoning amendment to be consistent with the adjacent development density along the Maple Grove Road corridor.
4. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The applicant has worked in good faith to legally subdivide this parcel.

The following condition shall apply:

1. St. Louis County Onsite Wastewater SSTS standards shall be followed.

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

Opposed: None - 0

Motion carried 7-0

Motion to adjourn by Skraba. The meeting was adjourned at 1:06 p.m.