

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY THURSDAY, SEPTEMBER 10, 2020.

10:40 AM – 12:05 PM

Board of Adjustment members in attendance: Steve Filipovich
James McKenzie
Sonya Pineo
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. Michael and Sharon Wefel, S28, T57N, R15W (White)
- B. David and Joanne McLaughlin, S28, T61N, R13W (Unorganized)

OTHER BUSINESS:

Motion by Skraba/McKenzie to approve the minutes of the August 13, 2020 meeting.

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

Opposed: None – 0

Motion carried 7-0

NEW BUSINESS:

Case 6226 – Michael and Sharon Wefel

The first hearing item was for Michael and Sharon Wefel, property located in S28, T57N, R15W (White). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.4, D., to allow a lot that does not conform to the zoning district minimal dimensional standards and is less than one-half acre in size to be permitted as buildable and St. Louis County Zoning Ordinance 62, Article III, Section 3.7, to allow a structure be located at a reduced road centerline setback, where 48 feet is required. *Stephen Erickson*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is requesting a lot be considered a buildable parcel. The existing parcels north of the road do not meet the zoning minimum of one-half acre in size to be considered buildable. Between two parcels the applicant owns approximately 0.3 acres north of Road 38.
- B. If the variance is granted, the applicant is proposing to construct a 34 foot by 26 foot pole building.
- C. The applicant is also requesting a reduced road centerline setback of 47 feet where 48 feet is required for the proposed pole building.

- D. The applicant owns additional riparian parcels along Loon Lake.
- E. The applicant owns more than one-half acre. However, the parcel north of the road is required to have a minimum of one-half acre to be buildable due to Road 38 (a public road) splitting the parcels.

Stephen Erickson reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62, Article IV, Section 4.4D states that a single lot of record may be permitted as a buildable lot if all of the following criteria can be met:
 - a. The lot is a minimum of one-half acre in size with no public sewer or water.
 - b. The lot shall meet the definition of a lot of record.
 - c. The lot, when created, complied with official controls in effect at the time.
- 2. Zoning Ordinance 62 states that the required road centerline setback for a public local road is 48 feet. The applicant is requesting a 47 foot setback.
- 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.

B. Practical Difficulty:

- 1. Due to Road 38 being a public township road, it splits the parcels north/south of the road. The applicant owns more than one-half acre in total but the parcel north of the road is required to have a minimum of one-half acre to be buildable.
- 2. There may be room to meet the 48 feet road centerline setback by repositioning the structure or reducing the size; however, the road setback of 48 feet may still affect structure location.

C. Essential Character of the Locality:

- 1. The applicant was granted a variance in 2014 to construct a home at a reduced shoreline, property line, centerline, and road right-of-way setbacks. The 2014 variance was for property south of the road on a separate parcel from the current proposal.

D. Other Factors

- 1. If Road 38 was a private road, no variance would be required as the applicant owns more than one-half acre on both sides of the road.
- 2. If Road 38 was a private road, it would have a setback of 15 feet from the edge of road.
- 3. The 48 foot road setback here may not make sense as Road 38 turns into a private road east of the proposal.

Stephen Erickson noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a lot that does not conform to the zoning district minimal dimensional standards and is less than one-half acre in size to be permitted as buildable and a structure be located at a reduced road centerline setback, the following condition shall apply:

1. The parcel shall be used only for an accessory structure or septic unless additional acreage is obtained to conform to zoning minimums.

Michael Wefel, the applicant, stated the property belonged to his wife's aunt and uncle, who bought the property in the 1940s or 1950s. The size was limited when they bought the property, which is why there was a variance to build a cabin there. There is also limited space for the garage. Their neighbor was willing to sell a small piece of land so that they could have a parking space. They are the only residents who live on Road 38 year-round. Beyond their house, it is considered a private driveway. They are at the very end of a road that nobody uses. They would like to have a storage building for their pontoon and such. He added that his neighbors have structures closer to the road, but the road is also private there and is no longer a public road.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* asked for clarification on the additional parcels. *Stephen Erickson* stated that while the applicant owns property on both sides of the road, the parcels north of Road 38 do not meet the minimum 0.5 acre.
- B. Board member *Filipovich* asked how the 0.3 acre parcel was calculated given that property lines are straight and the road that divides the property curves. *Michael Wefel* stated they did not divide the property. *Stephen Erickson* stated the 0.3 acre calculation came from the survey.
- C. Board member *Pollock* asked if lots are treated differently if the property lines meet and they are contiguous and could be considered a single lot. Board member *Skraba* stated the land north of the road has to be 0.5 acre in size. The applicant cannot combine any property they own north of the road to equal 0.5 acres. *Jenny Bourbonais*, Acting Secretary, stated that the issue is that a public road divides the property. Anything north of the road, although adjoining, does not equal 0.5 acre. This is needed if the applicants want to build on that part of the property.
- D. Board member *Pollock* asked if the applicant has considered vacating Road 38. This could be resolved if this road was a private road. *Michael Wefel* replied that he does not know how to go about that and did not know it was a possibility. Board member *Pollock* added in the event a variance is denied, this could be resolved with the township.
- E. Board member *Filipovich* asked if these parcels were the same when the applicants purchased them. *Michael Wefel* stated the riparian property south of the road was the aunt and uncle's original property. Because the lot lacked depth, there was no storage and because of the trees, they approached the neighbor for additional property to be able to park. That was how they got the property north of the road. That parcel was created in either 2015 or 2016.
- F. Board member *McKenzie* stated he is familiar with this road and expressed surprise that it is not just a private road.

DECISION

Motion by Skraba/Svatos to approve a variance to allow a lot that does not conform to the zoning district minimal dimensional standards and is less than one-half acre in size to be permitted as buildable and a structure be located at a reduced road centerline setback of 47 feet where 48 feet is required, based on the following facts and findings:

A. Official Controls:

1. The variance request is in harmony with the intent and purposes of official controls.
2. Road 38 divides the property and becomes a private road on the other side of the applicant's property.

B. Practical Difficulty:

1. Due to Road 38 being a public township road, it splits the parcels north/south of the road. The applicant owns more than one-half acre in total but the parcel north of the road is required to have a minimum of one-half acre to be buildable.
2. The applicant was able to purchase property north of the road for a parking area and a potential future accessory structure.

C. Essential Character of the Locality:

1. The variance will not alter the essential character of the locality.

D. Other Factors

1. If Road 38 was a private road, no variance would be required as the applicant owns more than one-half acre on both sides of the road.
2. If Road 38 was a private road, it would have a setback of 15 feet from the edge of road.
3. The 48 foot road setback here may not make sense as Road 38 turns into a private road east of the proposal.

The following condition shall apply:

1. The parcel shall be used only for an accessory structure or septic unless additional acreage is obtained to conform to zoning minimums.

In Favor: Filipovich, McKenzie, Pineo, Pollock, Skraba, Svatos, Werschay

Opposed: None - 0

Motion carried 7-0

Case 6227 – David and Joanne McLaughlin

The second hearing item was for David and Joanne McLaughlin, property located in S28, T61N, R13W (Unorganized). The applicant is requesting relief, after-the-fact, from St. Louis County Subdivision Ordinance 60, Article IV, Section 4.3 E, to allow a division that fails to meet the standards of St. Louis County land use regulations to be deemed a lot of record for the purposes of issuing land use permits and relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.4 D to allow a nonconforming lot that does not meet the definition of a lot of record be considered buildable.

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

- A. The applicant is requesting approval to allow a division that fails to meet St. Louis County land use regulations to be deemed a lot of record for the purpose of issuing land use permits after-the-fact.
- B. The applicant is also requesting approval to allow the applicant's property to be deemed a lot of record for the purpose of issuing land use permits.
- C. The applicant applied for a minor boundary adjustment in July 2020. The purpose of the minor boundary adjustment was to resolve an encroachment of the neighbor's septic system, garage and another small structure.
- D. The septic system was abandoned and the new system is not an encroachment issue. The corner of the garage and another small structure remain an encroachment issue.
- E. It was determined that the proposal would not meet subdivision and zoning standards. The proposal would reduce the area of a nonconforming lot of record.
- F. The property was 2.43 acres in size where 4.5 acres is required.
- G. A discussion was had with the applicant regarding the application and that the property would lose the lot of record status. The applicant was given alternatives at that time.
- H. Alternatives included:
 - a. Granting an easement to the neighbor.
 - b. Applying for a variance before moving forward with the minor boundary adjustment.
- I. The applicants chose to move forward with the minor boundary adjustment prior to applying for a variance because the neighbor was in the process of selling their property and needed the encroachment resolved.
- J. The applicant was aware that the lot of record status would be lost and a variance would be required to build in the future.
- K. The applicant was also made aware that they need to demonstrate practical difficulty and that a variance was not guaranteed.
- L. After discussing this with the applicant, the permit was issued for the minor boundary adjustment.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Subdivision Ordinance 60 states that 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.
 - a. The applicant's minor boundary adjustment did not meet land use regulations because it reduced the area of an existing nonconforming property. The applicant is requesting the lot of record status to be retained.
 2. Zoning Ordinance 62 states that a single lot of record may be permitted as a buildable lot if the lot meets the definition of a lot of record and the lot, when created, complied with official controls in effect at the time.
 - a. A lot of record is defined as a lot or parcel of land that has been lawfully created and recorded by the County Recorder prior to the date of enactment of this ordinance, or amendments thereto.
 - b. The property is created when the deed is recorded after the minor boundary adjustment. Since the property does not comply with the official controls and

does not meet the definition of a lot of record, it is not considered buildable, unless the lot of record status is retained through variance.

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 Minnesota Statute 394.22 Subd. 10.
6. The zoning in this area makes sense because the majority of the parcels meet or exceed the minimum area and width requirements for the zone district.

B. Practical Difficulty:

1. Prior to the minor boundary adjustment, the property was nonconforming due to the fact that it did not contain 4.5 acres per zoning minimums.
 - a. Any reduction in area on a nonconforming parcel is considered an increase to an existing nonconformity.
 - b. The property will lose its lot of record status, unless a variance is approved.
2. The neighbor's septic system was located on the applicant's property.
 - a. The applicant stated that this was not known until the property was recently surveyed.
 - b. The applicant applied for a minor boundary adjustment after the encroachment was discovered.
3. A common solution to an encroachment situation on a nonconforming parcel is to do a minor boundary adjustment with an equal swap of land.
 - a. As long as the minor boundary adjustment results in no net loss of area or width, the properties will retain lot of record status because it does not increase a nonconformity.
 - b. Due to the orientation of the properties involved with the minor boundary adjustment, there is no clear opportunity for an equal swap that would not result in increasing or creating a new nonconformity.
4. An option would have been for the applicant to grant an easement to the neighboring landowner for the use of the property where the septic system is located.
 - a. This discussion was had with the landowner prior to the minor boundary adjustment being processed.
5. Another option would be for the applicant to acquire additional property from a neighboring landowner to replace the area that was transferred by the minor boundary adjustment.
 - a. Good land use practices would typically encourage the landowner acquiring enough additional property from a neighboring landowner to result in a conforming parcel.
 - b. The applicant would need an additional 2.17 acres to meet the zoning minimum acreage.

C. Essential Character of the Locality:

1. The variance would have little impact on the area.
2. Both properties involved with the minor boundary adjustment are already developed.
3. Many of the parcels in this area are much larger and meet the minimum required acreage.

D. Other Factors:

1. The applicant's neighbor at the time of the minor boundary adjustment was the applicant's son.
2. The applicant's neighbor (son) was in the process of selling his property.
 - a. The minor boundary adjustment was applied for to resolve the encroachment issue of the septic system being located on the adjacent property.
3. The applicant was made aware of the issue before the minor boundary adjustment permit was issued.
 - a. The applicant was given the easement alternative and chose to move forward with the minor boundary adjustment.
4. The applicant and his son were also advised to hold off on the minor boundary adjustment and the closing of the son's property until after the variance hearing because denial of the variance would not allow permits to be issued on the applicant's property in the future.
 - a. The applicant and his son chose to move forward with the minor boundary adjustment and the closing before the variance hearing.
 - b. At the time of this report, the closing may have taken place, but the neighbor's property still appears to be in the applicant's son's name.
 - c. There may be some lag time between the closing and the property being listed in the new owner's name.

Jared Ecklund noted two items of correspondence; one from the applicant explaining the situation in further detail and one from Dawn Marks who is opposed. Both items were 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 a division that fails to meet the standards of St. Louis County land use regulations to be deemed a lot of record for the purposes of issuing land use permits after-the-fact and to allow a nonconforming lot that does not meet the definition of a lot of record be considered buildable, staff has no recommended conditions of approval.

Dan McLaughlin, 6208 Fall Street North, Moorhead, MN, deferred comment to David McLaughlin. He added that he built the playhouse and he did not realize it was on the other property until the survey was completed.

David McLaughlin, the applicant, stated they just discovered that the property was this way recently. Their son and daughter-in-law have lived there for the past 16 years and had to move for his job. They have wanted to sell the property; however, because of the market they have been

unable to sell and have been paying double mortgages. This sale came through at the same time they found this property issue. They decided to do what they could for the family and did not realize the situation until staff informed them. They looked at the alternative options, but they only had days to save the closing. They have not had the time to look into alternative options. They took the chance on a variance. They want to keep the property the way it has always been. They do have future plans to add a garage.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* commented that driving through this area, the properties were laid out in a unique way.
- B. Board member *Pollock* asked if the neighbor's garage is over the applicant's property line. *Jared Ecklund* stated that the corner of the garage was over what used to be the property line. After the minor boundary adjustment, that line has shifted and the garage is no longer on the applicant's property. The issue is not the septic system as the neighboring septic system was abandoned.
- C. Board member *Pollock* asked where staff would suggest purchasing additional property if they need 0.1 acre or 2.17 acres. *Jared Ecklund* stated there are neighbors to the west and to the east in this scenario. Obtaining 0.1 acres would make the 0.1 acre minor boundary adjustment a no net loss where they are not reducing the size of the property. Obtaining 2.17 acres would make the property conforming, meaning that the property would no longer be nonconforming. He added that the two parcels are privately owned.
- D. Board member *McKenzie* asked if there was no other solution considered, such as a temporary easement or a contract to acquire property or some other promise to the new landowner. Did the applicant reach out to an attorney? *David McLaughlin* stated he did reach out to an attorney regarding an easement. He was told there are issues regarding a permanent easement he had to be aware of and he was concerned about liability. They would not have had time to explore all of these options in time to meet the closing. The top priority was the closing.
- E. Board member *Skraba* asked if any neighbor in any direction has been willing to sell a piece of property and if there has been any contact with them. *David McLaughlin* and *Daniel McLaughlin* both stated no.
- F. Board member *Pollock* asked why the neighbors were against the variance. *Daniel McLaughlin* stated that they did not realize that anything was on their property until the survey was completed. Board member *Skraba* read the Dawn Marks correspondence into the record. He interprets this as the septic was replaced two years ago and that the playhouse in question was built by Daniel McLaughlin.
- G. Board member *Skraba* asked if both lots in question are nonconforming. *Jared Ecklund* confirmed that they are.
- H. Board member *Filipovich* added the property was on the market for sale for a long time.
- I. Board member *McKenzie* stated that while it does not change much, the applicant could have done more to look for a different solution to this problem.
- J. Board member *Pollock* asked staff to confirm that the garage is located on the new piece of property. The correspondence suggested that the garage could be moved. The two lots are already nonconforming and there was just a 0.1 acre adjustment involved. *Jared*

Ecklund stated that, based on information obtained from the surveyor, the small structure and the corner of the garage are located on the 0.1 acre.

DECISION

Motion by Skraba/McKenzie to approve a variance to allow a division that fails to meet the standards of St. Louis County land use regulations to be deemed a lot of record for the purposes of issuing land use permits after-the-fact and to allow a nonconforming lot that does not meet the definition of a lot of record be considered buildable, based on the following facts and findings:

A. Official Controls:

1. The variance request is partially in harmony with the intent and purposes of official controls. Both properties were nonconforming lots of record prior to the current division of the property. Alternatives that do not require variance are limited.
2. Other than purchasing land from a neighboring landowner, it does not appear there are other solutions to this variance.
3. There may be difficulty in obtaining additional property from adjoining property owners.

B. Practical Difficulty:

1. A common solution to an encroachment situation on a nonconforming parcel is a minor boundary adjustment with an equal swap of land; however, between the two subject properties there is no way to accomplish an equal swap of property.
2. The properties are somewhat unique in that they were developed nonconforming lots of record prior to the division. Pre-existing development hinders the ability for a division that creates a conforming parcel.
3. The applicant has tried to figure out their options in time to close on the property and were under a financial constraint to sell one of the parcels in a timely manner.

C. Essential Character of the Locality:

1. The variance would have little impact on the area.
2. Both properties involved with the minor boundary adjustment are already developed.
3. Many of the parcels in this area are much larger and meet the minimum required acreage.

D. Other Factors:

1. Because both parcels were already nonconforming and a small piece of acreage was added to another nonconforming lot, the only properties effected are the subject parcels.
2. The 0.10 acre parcel adjustment eliminates property line encroachments for an accessory structure.

In Favor: Filipovich, McKenzie, Pineo, Pollock, Skraba, Svatos, Werschay

Opposed: None - 0

Motion carried 7-0

Motion to adjourn by Skraba. The meeting was adjourned at 12:05 p.m.