

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, APRIL 14, 2022.

1:02 PM – 2:46 PM

Board of Adjustment members in attendance: Tom Coombe
Steve Filipovich
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. Glenn Wachtler, S27, T62N, R14W (Eagles Nest)
- B. Casey and Megan Collins SSTS, S36, T63N, R14W (Unorganized)
- C. Casey and Megan Collins / Timberland Custom Building, S36, T63N, R14W (Unorganized)
- D. Eric Ament, S36, T51N, R14W (City of Duluth)

OTHER BUSINESS:

Motion by McKenzie/Svatos to approve the minutes of the March 17, 2022 meeting.

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

Opposed: None – 0

Abstained: Werschay - 1

Motion carried 6-0-1

Jenny Bourbonais, Acting Secretary, reminded the Board of Adjustment that action should be taken on the Board of Adjustment bylaws and will schedule the discussion at the end of the May 12, 2022 hearing.

NEW BUSINESS:

Case 6303 – Glenn Wachtler

The first hearing item was for Glenn Wachtler, subject property located in S27, T62N, R14W (Eagles Nest). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow an accessory structure (garage) at a reduced property line setback where a minimum of 10 feet is required; Article III, Section 3.4, to allow an accessory structure (garage) at a reduced shoreline setback where a minimum of 100 feet is required; and Article III, Section 3.7, to allow an accessory structure (garage) at a reduced road right-of-way and road

centerline setback where a minimum of 15 feet and 48 feet is required. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to construct a 1,024 square foot garage located two feet from the property line where 10 feet is required, 60 feet from the shoreline where 100 feet is required, 11 feet from the right-of-way where 15 feet is required, and 40 feet (confirmed in the field) from the centerline of a public road where 48 feet is required.
- B. The applicant is also proposing to remove four existing nonconforming accessory structures totaling 758 square feet as part of the request.
- C. The property contains a cabin, several nonconforming accessory structures, and a wet boathouse.
- D. This parcel is part of a plat that consists of small nonconforming parcels created in 1925. Many of the parcels contain nonconforming structures that do not meet lake and road setbacks.

Mark Lindhorst reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.2, requires an accessory structure setback from the property line of 10 feet; the applicant is requesting two feet.
2. Zoning Ordinance 62, Article III, Section 3.4, requires a 100 foot shoreline setback; the applicant is requesting 60 feet.
3. Zoning Ordinance 62, Article III, Section 3.7, requires a 15 foot road right-of-way and 48 foot centerline road setback; the applicant is requesting 11 feet from the right-of-way and 40 feet from the centerline of the road.
4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
5. Objective LU-3.3 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. As proposed, a practical difficulty has been demonstrated for a structure to meet both road and shoreline setbacks.
2. The driveway location limits the proposed garage from meeting the required property line setback.
3. Alternatives for reducing the variance request:
 - a. A smaller structure size of 24 foot by 24 foot would eliminate the need for both property line and road setbacks.

C. Essential Character of the Locality:

1. The neighborhood consists of small nonconforming parcels with reduced setback structures.
2. There have been multiple variances approved for reduced setback structures from the lake and road within the plat.

D. Other Factor:

1. The nonconforming parcel has limited development area for a structure to meet all required setbacks.

Mark Lindhorst noted one item of correspondence from Harold R. Langowski in support of the variance request. This item was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variances for a 1,024 square foot accessory structure located 60 feet from the shoreline, two feet from the property line, 11 feet from the road right-of-way, and 40 feet from the centerline of the road 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 directly discharge onto adjacent lots.
3. The shore protection zone shall be preserved in a natural state and screening shall be retained.

Glenn Wachtler, 81 Ponderosa Road, River Falls, WI, the applicant, stated there have been bad storms in this area. They intend to build a concrete and steel storm shelter in the corner of the proposed structure to protect those up at the cabin during the storms. The space will also be used to store pontoon trailers instead of parking them in the yard. The property has been in their family for 40 years and they want to clean the property up.

No audience members spoke. One virtual attendee was in the audience. *David Chiabotti* stated he had no comment.

The *Board of Adjustment* discussed the following:

- A. Board member *Filipovich* asked if a variance is required because the parcel is under 0.5 acres in size. *Mark Lindhorst* stated it did not because there was existing development on the lot. There is no variance required for lot size. By removing those four accessory structures, the applicant will remain under the 15 percent lot coverage as required for the zone district.
- B. Board member *Svatos* asked about how close the neighbor's structures are to that property line. The adjoining landowner to the reduced setback sent in correspondence in support of the variance request.
- C. Board member *Skraba* asked if the storm cellar would go in the basement of the garage or on the main level. *Glenn Wachtler* stated the plan is for a shelter on the main level.
- D. Board member *Coombe* asked which way the roof gables would face. *Glenn Wachtler* stated it would go west and east. Any runoff would go north and south.

DECISION:

Motion by McKenzie/Skraba to approve a variance for a 1,024 square foot accessory structure located 60 feet from the shoreline, two feet from the property line, 11 feet from the road right-of-way, and 40 feet from the centerline of the road, based on the following facts and findings:

- A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.2, requires an accessory structure setback from the property line of 10 feet; the applicant is requesting two feet.
2. Zoning Ordinance 62, Article III, Section 3.4, requires a 100 foot shoreline setback; the applicant is requesting 60 feet.
3. Zoning Ordinance 62, Article III, Section 3.7, requires a 15 foot right-of-way and 48 foot centerline road setback; the applicant is requesting 11 feet from the right-of-way and 40 feet from the centerline of the road.
4. The official controls recognize there are circumstances that require allowances for unique situations that might impede reasonable use of the property. The applicant's parcel was created long ago when modern needs may not have been anticipated.
5. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. As proposed, a practical difficulty has been demonstrated for a structure to meet both road and shoreline setbacks.
2. The driveway location limits the proposed garage from meeting the required property line setback.
3. The applicant's parcel was created long ago when lots were created for simple seasonal cabins. The applicant's parcel only has a depth of 100 feet. There is a competing setback for road setbacks and shoreline setbacks.
4. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The neighborhood consists of small nonconforming parcels with reduced setback structures.
2. There have been multiple variances approved for reduced setback structures from the lake and road within the plat.
3. There are other structures on neighboring properties that may have been compliant when built but would not be compliant now.
4. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant is proposing to remove four existing accessory structures.
2. The applicant is not proposing a new use to the area.
3. The applicant wants to include a storm shelter inside the new accessory structure.

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 directly discharge onto adjacent lots.
3. The shore protection zone shall be preserved in a natural state and screening shall be retained.
4. Four existing accessory structures shall be removed upon completion of the proposed structure.
5. The requirements of the St. Louis County Solid Waste Ordinance 45 shall be met.

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

Opposed: None - 0

Motion carried 7-0

Case 6304 - Casey and Megan Collins SSTS

The second hearing item was for Casey and Megan Collins, subject property located in S36, T63N, R14W (Unorganized). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback where a minimum of 75 feet is required. *Emily Anderson*, St. Louis County Environmental Specialist, reviewed the staff report as follows:

- A. The applicant is requesting an ISTS replacement design to replace an existing, nonconforming system.
- B. The proposed ISTS design would add pressurized water to a currently hand-carried-water-only dwelling served by both a nonconforming privy and ISTS. The existing ISTS will be properly abandoned.
- C. The proposed ISTS consists of a grinder/lift station to be placed 40 feet from the shoreline with the drain field located 60 feet from the shoreline. The required shoreline setback for a system and its components is 75 feet.
- D. The proposed system will maintain building and well setbacks as required.

Emily Anderson reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards and the setback requirements in the MN Shoreland Rules. The required setback is 75 feet from the shoreline for this Recreational Development classification.
 - 2. The applicant is requesting a reduced shoreline setback of 40 feet.
- B. Practical Difficulty:
 - 1. The parcel is located on a peninsula with the lake on three sides.
 - 2. An alternative could be to have multiple pump tanks to carry the sewage back to the mainland and have a drain field on the mainland; however, these tanks may need variances as well.
- C. Essential Character of the Locality:
 - 1. The area is characterized by some development.
- D. Other Factor:
 - 1. The proposal is reliant on approval of a building/land use variance.

Emily Anderson noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback of 40 feet and a drain field at a reduced shoreline setback of 60 feet as proposed include, but are not limited to:

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

Casey Collins, 4110 Upton Avenue South, the applicant, stated they have been coming to this property for the past ten years. They were looking for a property to work on. They have been cleaning up this property, removing structures. They want to respect the character of the property and the environment and the surrounding natural wonder. They have worked extensively with the On-Site Wastewater division. They have spoken with staff about what they could do with this property to do what is right by it.

One audience member spoke. There was one virtual attendee in the audience that did not speak.

Brandon Luoma, 7418 North Forest Lane, Britt, stated he is the general contractor and will be building on the property. Everything they work on will be done right and done to the code.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked if the request is not just for a grinder pump but for the entire system. *Emily Anderson* stated the request is for the full system. The grinder system will be located 40 feet from the shoreline. This setback should be maximized to the greatest extent possible. The drain field would be located 60 feet from the shoreline. The designer will work to maximize that setback.
- B. Board member *Svatos* asked if the well is located right next to the existing septic tank. *Emily Anderson* stated there is no well on the property.

DECISION

Motion by Skraba/Coombe to approve a variance for a subsurface sewage treatment system installation at a reduced shoreline setback of 40 feet and a drain field at a reduced shoreline setback of 60 feet, based on the following facts and findings:

- A. Official Controls:
 1. SSTS Ordinance 61 states that all SSTS components must be setback in accordance with Table VII of the SSTS Technical standards and the setback requirements in the MN Shoreland Rules. The required setback is 75 feet from the shoreline for this Recreational Development classification.
 2. The applicant is requesting a reduced shoreline setback of 40 feet.
 3. With the topography on this property, the septic system is being placed in the best location.
 4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The parcel is located on a peninsula with the lake on three sides.
2. The designer designed this system for the best location on the property. Any location on this property would require a variance.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area is characterized by some development.
2. The new system will be more conforming than what currently exists.
3. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. There is no other location on this peninsula where this septic system will work.

The following conditions shall apply:

1. All other On-Site Wastewater SSTS standards shall be met.
2. The setback shall be maximized to the greatest extent possible.
3. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a 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 6305 - Casey and Megan Collins with Timberland Custom Building

The third hearing item was for Casey and Megan Collins, with contractor Timberland Custom Builders, subject property located in S36, T63N, R14W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a principal dwelling at a reduced shoreline setback where a minimum of 100 feet is required and Article VI, Section 6.10 C., to allow a second water oriented accessory structure where only one is allowed, and at a reduced shoreline setback where 30 feet is allowed, and to exceed the maximum size where a maximum of 250 square feet and maximum height of 12 feet is allowed. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting a principal dwelling located 75 feet from the shoreline where 100 feet is required.
- B. The applicant is requesting a second water oriented accessory structure on a property where only one water oriented accessory structure is allowed per the minimum lot area and width.
- C. The water oriented accessory structure would be 561 square feet in size where 250 square feet is allowed, located 25 feet from the shoreline where 30 feet is allowed, and with a maximum height of 20 feet where 12 feet is allowed.
- D. The applicant is also proposing to downsize and convert the existing cabin to a second water oriented accessory structure.

- E. There is an existing sauna on this site which is the one water oriented accessory structure allowed by Ordinance.
- F. There are multiple water oriented accessory structures that will be removed from the property. An existing garage will also be removed as the new dwelling will replace the garage in its current location. An existing bunkhouse will also be removed.
- G. The property contains a cabin, sauna, garage, bunkhouse and four accessory structures ranging from 80 square feet to 288 square feet in size.
- H. The property consists of a peninsula which slopes towards the lake on both sides.
- I. The proposed building site will take advantage of a flat area at the center of the peninsula.

Mark Lindhorst reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Zoning Ordinance 62, Article III, Section 3.4, requires a 100 foot shoreline setback, the applicant is requesting 75 feet.
- 2. Zoning Ordinance 62, Article VI, Section 6.10, allows only one water oriented accessory structure per minimum lot area and width requirements. The applicant is requesting an additional water oriented accessory structure on a property that is approximately 2 acres where 2.5 acres is required under the Residential (RES)-5 zone district.
- 3. Zoning Ordinance 62, Article VI, Section 6.10 C., allows a maximum structure size of 250 square feet, 12 feet in height, and a 30 foot shoreline setback. The applicant is requesting a 20 foot high structure, 525 square feet in size located 25 feet from the shoreline.
- 4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 5. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

B. Practical Difficulty:

- 1. Lot width limits a principal structure from meeting the required 100 foot shoreline setback.
- 2. A performance standard permit would be allowed to replace the existing principal structure at a greater setback than being proposed.
- 3. No practical difficulty has been demonstrated in allowing an additional oversize water oriented accessory structure at a reduced shoreline setback on the parcel. As stated in the St. Louis County Comprehensive Plan, variances should be for exceptional circumstances as noted in Minnesota Statute.

C. Essential Character of the Locality:

- 1. The area consists of developed lakeshore lots. Most of the lots have principal dwellings that do not meet the shoreline setback; however, none of them have multiple water oriented accessory structures.

D. Other Factors:

1. The width of the parcel limits a structure from meeting the required 100 foot shoreline setback. The applicant is maximizing the setbacks on the property for the proposed structure. As stated in the facts and findings, a performance standard permit would be allowed to replace the existing 958 square foot cabin and at a greater shoreline setback than what is being proposed.
2. The applicant has not provided justification for allowing an oversized second water oriented accessory structure.

Mark Lindhorst noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variances for a 2,557 square foot principal dwelling located 75 feet from the shoreline and a 525 square foot second water oriented accessory structure located 25 feet from the shoreline and 20 feet in height include, but are not limited to:

1. The structures shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not directly discharge into the lake.
3. The shore protection zone shall be preserved in a natural state and screening shall be retained.
4. St. Louis County On-Site sewage treatment standards shall be met.
5. The requirements of the St. Louis County Solid Waste Ordinance 45 shall be met.

Casey Collins, 4110 Upton Avenue South, the landowner, stated the second water oriented accessory structure is already on the property. This is an existing cabin that they are decreasing the size of in order to have a viewing area on the lake. The other option would be to move the original bunkhouse to the location where the cabin is located now. This bunkhouse was built from original Boundary Waters wood and would need to be taken apart to be moved. This structure is about 400 square feet in size and less height than the cabin. If there is an issue with the building already there, they would keep the heritage cabin and move it to that location. This structure would fit in with the sauna that is already there. Every other structure other than the proposed cabin is already there. They are reducing the number of structures on the property from eleven or twelve down to four. They are abandoning an existing nonconforming septic system and adding a new septic system. This will be done with consideration of the surrounding property.

Will Spencer, 6308 5th Avenue South, Richfield, was present for Timberland Custom Buildings.

No audience members spoke. There were no virtual attendees in the audience.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* asked if the proposed structure is more than just a personal cabin. *Mark Lindhorst* stated this is just a request for a proposed dwelling that will maximize the setbacks.
- B. Board member *McKenzie* asked if human habitation is prohibited if the original cabin becomes a second water oriented accessory structure. *Mark Lindhorst* stated yes. This structure will be a place where they can go and view the lake that has water. If they had

wanted a bunkhouse, they would have had to apply for a nonconforming accessory dwelling. As proposed, this second water oriented accessory structure would not be used as a dwelling. It will be a water oriented accessory structure.

- C. Board member *Coombe* asked what the screening is like from the old structure. *Mark Lindhorst* stated he did not do a site visit because of the snow. Based on what he has seen, there is good screening on the property. That is why there was a condition added that the shore impact zone should be preserved, and screening retained in its natural state.
- D. Board member *Skraba* asked if the landowner owns property to the south of the peninsula property. The property to the south is on Wolf Lake Road. *Casey Collins* stated they do. They bought a 10 acre parcel from the 40 acre parcel their neighbor purchased years ago. Board member *Skraba* stated he is bringing this up because the applicant is requesting a second water oriented accessory structure on a parcel that does not meet the zoning minimum requirements for two water oriented accessory structures. Can the property to the south be counted with this parcel in order to allow a second water oriented accessory structure? *Mark Lindhorst* stated he only counted the shoreland property that was included in the application at the time of variance application submission. The rest of the property is non-shoreland and was not included as staff was unaware that the applicant purchased this additional property until now. member *Skraba* stated there should be enough property for two water oriented accessory structures if the non-shoreland property is included.
- E. Board member *Skraba* stated that this part of Wolf Lake Road is private. The applicant has property on both sides of the road.
- F. *Mark Lindhorst* added that the applicant purchased additional property after they had applied for the variance. Without a deed or any documentation showing that the land was purchased by this landowner, there is no way of saying any property could be combined. Staff can only use what information they have. While the applicant purchasing additional property may allow for a second water oriented accessory structure, there are other variances on this property to consider.
- G. Board member *Pollock* asked at what point is a second water oriented accessory structure allowed? *Mark Lindhorst* stated if the landowner has double the lot acreage and lot width, more than one water oriented accessory structure is allowed. These need to be located so that they are not next to each other in order for each water oriented accessory structure to exist on a standalone parcel. The two water oriented accessory structures are located right next to each other.
- H. Board member *Pollock* stated that a second water oriented accessory structure is not allowed. The 250 square foot and the 12 foot in height should not be allowed. This is why a denial without prejudice should be used in order to get the correct information. *Jenny Bourbonais*, Acting Secretary, stated that while the additional acreage may impact the discussion on the number of water oriented accessory structures allowed on the property, there are still variances required for the size of the structure, the height of the structure and the shoreline setback for the proposed dwelling.
- I. Board member *Pollock* asked for clarification on exceeding the maximum size and maximum height on a water oriented accessory structure. If a second water oriented accessory structure is allowed, the 250 square foot size and 12 foot height is what the landowner is allowed to have. *Jenny Bourbonais* stated yes. If the property is large enough to have two water oriented accessory structures, the landowner still requires both variances for the size of the structure and the height of the structure.

- J. Board member *Coombe* asked if this variance was approved and the landowner wanted to move the smaller structure to where the cabin is located now, would the landowner be allowed to do that? *Mark Lindhorst* stated that if the variance is approved, as long as the structure is not larger or taller in height than what is allowed, the landowner could move any structure to that spot. If something were to happen to that structure, the variance would allow replacement of that structure without needing to come forward for another variance as long as it meets minimum requirements the Board of Adjustment sets.
- K. Board member *Coombe* asked about the existing height on both structures. *Casey Collins* stated the existing cabin is about 20 feet in height and the existing bunkhouse may be 12 feet in height.
- L. Board member *McKenzie* asked if the landowner wants to move the bunkhouse in its entirety to reconstruct it. *Casey Collins* stated they want to lift the cabin and move it to the same location as the existing cabin. The structure may need to be taken apart and reconstructed at that location. He just wants the structure to look the way it has for the last 100 years. This was built by the grandfather of the original landowner they purchased the property from.
- M. Board member *McKenzie* stated this is a two part variance request for the new structure and for allowing the second water oriented accessory structure. He can support a new dwelling but not a second water oriented accessory structure. A denial without prejudice might be necessary because more acreage was acquired and a variance for a second water oriented accessory structure may not be necessary. Board member *Werschay* stated that because both requests were submitted as one, they have to be acted upon as one. *Jenny Bourbonais* stated that they can be split and voted upon.
- N. Board member *Coombe* stated that this should be voted on as one variance request. He has faith that the landowner will remove the cabin and move the bunkhouse to that location. Board member *Werschay* agreed and added that the Board of Adjustment could limit the size and height of that structure.
- O. Board member *Skraba* agreed with a 12 foot water oriented accessory structure height.

MOTION

Motion by Coombe/Svatos to approve a variance for a 2,557 square foot principal dwelling located 75 feet from the shoreline and a 525 square foot second water oriented accessory structure located 25 feet from the shoreline and with a height of 20 feet, based on the following facts and findings:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.4, requires a 100 foot shoreline setback, the applicant is requesting 75 feet.
 - 2. Zoning Ordinance 62, Article VI, Section 6.10, allows only one water oriented accessory structure per minimum lot area and width requirements. The applicant is requesting an additional water oriented accessory structure on a property that is approximately 2 acres where 2.5 acres is required under the Residential (RES)-5 zone district.
 - 3. Zoning Ordinance 62, Article VI, Section 6.10 C., allows a maximum structure size of 250 square feet, 12 feet in height, and a 30 foot shoreline setback. The applicant is requesting a 20 foot high structure, 525 square feet in size located 25 feet from the shoreline.

4. The proposed dwelling will be built further back from the shoreline than the existing cabin but cannot meet the shoreline setback due to the width of the peninsula. The structure will be built on the widest part of the peninsula. The new structure will be in earth-tone colors as well as siding, trim and roof. This construction will be hooked up into a new septic system.
5. The second water oriented accessory structure may not be in harmony with the official controls. However, the landowner is removing other water oriented accessory structures that are very close to the shoreline including an old privy, three sheds, a garage and possibly a bunkhouse. This will encourage the most appropriate use of the land and lakeshore parcel.
6. The 525 square foot water oriented accessory structure will be well-screened from the lake.
7. The variance request both is and is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. Lot width limits a principal structure from meeting the required 100 foot shoreline setback.
2. Almost, if not all of this 2.3 acre parcel is located within the shoreline setback area. There is a very small building area as this is a peninsula.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The proposed dwelling will be moved further back from the point as the existing dwelling. The applicant is also removing other water oriented accessory structures that are very close to the shoreline including an old privy, three sheds, a garage and possibly a bunkhouse. The existing cabin will be converted into a dining porch with plumbing and will be the second water oriented accessory structure on this property.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. This is a peninsula and there is not much area to build a structure without a variance. There is 1,300 feet of shoreline with 2.3 acres of land.
2. The proposed dwelling and the second water oriented accessory structure are well screened from the shoreline.

DISCUSSION ON MOTION

- A. Board member *Skraba* asked how critical the 20 foot height is when the landowner was willing to utilize a structure that is 12 feet in height.
- B. Board member *Pollock* asked what the structure height is of the bunkhouse that may be moved into the location of the proposed second water oriented accessory structure. There has also been an acreage change that would allow for more than one water oriented accessory structure. It should be part of the record that more acreage was acquired. Board member *Coombe* stated while this was said, there was no proof that additional acreage was acquired. *Jenny Bourbonais* stated that in the event additional acreage has been added, this

was discussed by the Board of Adjustment and is part of the record but does not need to be a part of the motion.

- C. Board member *McKenzie* stated that if the landowner is removing buildings, there is a possibility that the landowner could also meet setback. If the landowner is placing a structure at the same location of the existing cabin, it could be moved to a more conforming setback.
- D. Board member *Coombe* stated he does not want to limit the landowner to the size of the bunkhouse in the event the structure cannot be moved. He does not want to limit the height of the structure because if the landowner has to lower the height of the existing structure and the roof collapses after a heavy snow load, it would be because the Board told him that he had to decrease the height of the roof. This structure may not be seen from the shoreline as it is well-screened in that location. Board member *Werschay* stated if the original structure is left there, there would be more demolition if the structure is downsized. Is the existing cabin 20 feet in height? Board member *Skraba* stated the existing cabin is not 20 feet in height. It may not be much more than 12 feet in height. The height allowed could be the existing height of the cabin or the bunkhouse and nothing more.
- E. Board member *Pollock* asked for clarification that the existing cabin height is not 20 feet currently, but is there a change being made to this structure that would raise it to 20 feet in height? *Will Spencer* stated whatever height is already there will remain. They are removing parts of the building and they are not adding onto it.
- F. Board member *McKenzie* stated there is no practical difficulty for the second water oriented accessory structure. He supports the new dwelling but cannot support a second water oriented accessory structure because there is nothing to justify keeping this structure. Board member *Werschay* stated this could be justified as the landowner bought more acreage. Board member *Pollock* stated the only size allowed is 250 square feet. The larger size is not justified. Board member *Coombe* stated that financial consideration is not a standalone reason. The structure is already in this location. The cabin will be downsized to meet the 525 square foot size requested.

AMENDMENT

Motion by *Skraba/Coombe* to change the language so that the structure height shall not exceed the height of the current cabin.

DECISION

Motion by *Coombe/Svatos* to approve a variance for a 2,557 square foot principal dwelling located 75 feet from the shoreline and a 525 square foot second water oriented accessory structure located 25 feet from the shoreline and with a height to not exceed that of the existing cabin that will be reduced in square footage to 525 square feet in size, based on the following facts and findings:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.4, requires a 100 foot shoreline setback, the applicant is requesting 75 feet.
 - 2. Zoning Ordinance 62, Article VI, Section 6.10, allows only one water oriented accessory structure per minimum lot area and width requirements. The applicant is requesting an additional water oriented accessory structure on a property that is

approximately 2 acres where 2.5 acres is required under the Residential (RES)-5 zone district.

3. Zoning Ordinance 62, Article VI, Section 6.10 C., allows a maximum structure size of 250 square feet, 12 feet in height, and a 30 foot shoreline setback. The applicant is requesting a 20 foot high structure, 525 square feet in size located 25 feet from the shoreline.
4. The proposed dwelling will be built further back from the shoreline than the existing cabin but cannot meet the shoreline setback due to the width of the peninsula. The structure will be built on the widest part of the peninsula. The new structure will be in earth-tone colors as well as siding, trim and roof. This construction will be hooked up into a new septic system.
5. The second water oriented accessory structure may not be in harmony with the official controls. However, the landowner is removing other water oriented accessory structures that are very close to the shoreline including an old privy, three sheds, a garage and possibly a bunkhouse. This will encourage the most appropriate use of the land and lakeshore parcel.
6. The 525 square foot water oriented accessory structure will be well-screened from the lake.
7. The variance request both is and is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. Lot width limits a principal structure from meeting the required 100 foot shoreline setback.
2. Almost, if not all of this 2.3 acre parcel is located within the shoreline setback area. There is a very small building area as this is a peninsula.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The proposed dwelling will be moved further back from the point as the existing dwelling. The applicant is also removing other water oriented accessory structures that are very close to the shoreline including an old privy, three sheds, a garage and possibly a bunkhouse. The existing cabin will be converted into a dining porch with plumbing and will be the second water oriented accessory structure on this property.
2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. This is a peninsula and there is not much area to build a structure without a variance. There is 1,300 feet of shoreline with 2.3 acres of land.
2. The proposed dwelling and the second water oriented accessory structure are well screened from the shoreline.

The following conditions shall apply:

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

3. The shore protection zone shall be preserved in a natural state and screening shall be retained.
4. St. Louis County On-Site sewage treatment standards shall be met.
5. The requirements of the St. Louis County Solid Waste Ordinance 45 shall be met.

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

Opposed: McKenzie, Pollock - 2

Motion carried 5-2

Case 6306 – Eric Ament

The fourth hearing item was for Eric Ament, subject property located in S36, T51N, R14W (City of Duluth). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback from a Trout Stream where a minimum of 150 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 with reduced shoreline setbacks.
- B. The proposed location of the proposed soil treatment area and all components would be located 60 feet from the shoreline. The septic tanks are proposed by the designer to meet a 100 foot shoreline setback.
- C. There is limited area on the property to meet the 150 foot shoreline setback with the location of the dwelling and well.
- D. All other required setbacks will be met.
- E. The existing septic system has not been inspected and is considered noncompliant.

Jason Walsh reviewed staff facts and findings as follows:

- A. Official Controls:
 1. SSTS Ordinance 61 states that all ISTS components must be set back in accordance with Table VII of SSTS Technical Standards and the setback requirements on the MN Shoreland Rules. The required setback is 150 feet from shoreline of the East Branch Amity Creek as it is classified as a Trout Stream.
 2. The applicant is requesting a reduced shoreline setback of 100 feet for sewage tanks and a reduced shoreline setback of 60 feet for the soil treatment area and its components.
- B. Practical Difficulty:
 1. The area which meets the 150 foot shoreline setback is not suitable for a septic system. The area is disturbed and would not follow proper design requirements.
- C. Essential Character of the Locality:
 1. The area is characterized by well-established development.
 2. The surrounding parcels have area for potential systems which would meet the 150 foot setback.

D. Other Factor:

1. The existing SSTS would be classified as noncompliant.

Jenny Bourbonais, Acting Secretary, noted one item of correspondence that was received anonymously. The Board of Adjustment elected to not include it in the record.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a reduced shoreline setback of 100 feet for sewage tanks and a reduced shoreline setback of 60 feet for the soil treatment area and components as proposed include, but are not limited to:

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

Eric Ament, the applicant, was not present. *Jim Orton*, 7182 North Dark Lake Road, Britt, was present on behalf of the applicant. He stated the applicant is trying to replace the system to get a building permit. He has been on the site many times, and this is the design they have come up with. This will be a standard mound system.

No audience members spoke. There were no virtual attendees in the audience.

Board member *McKenzie* asked if this parcel is located in the city. *Jason Walsh* stated this parcel is located in the city of Duluth. There is no city municipal line that runs in this area.

DECISION

Motion by McKenzie/Filipovich to approve a variance for a reduced shoreline setback of 100 feet for sewage tanks and a reduced shoreline setback of 60 feet for the soil treatment area and components, based on the following facts and findings:

A. Official Controls:

1. SSTS Ordinance 61 states that all ISTS components must be set back in accordance with Table VII of SSTS Technical Standards and the setback requirements on the MN Shoreland Rules. The required setback is 150 feet from shoreline of the East Branch Amity Creek as it is classified as a Trout Stream.
2. The applicant is requesting a reduced shoreline setback of 100 feet for sewage tanks and a reduced shoreline setback of 60 feet for the soil treatment area and its components.
3. One of the objectives of LU-6 of the St. Louis County Comprehensive Land Use Plan is to replace or repair individual sewage treatment systems. Official controls also state the need to preserve property values and allow for reasonable use of the property.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The area which meets the 150 foot shoreline setback is not suitable for a septic system. The area is disturbed and would not follow proper design requirements.
2. The shape of the parcel, the proximity of East Branch Amity Creek and the location of soils on the parcel not practical for a drainfield are all practical difficulties not created by the current landowner.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The surrounding parcels are developed.
2. The surrounding parcels have area for potential systems which would meet the 150 foot setback.
3. The area around the applicant's property is in the city of Duluth and was developed long before official controls existed. The applicant's project will not affect the area.
4. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant's existing SSTS is noncompliant.
2. Existing buildings on the parcel also limit suitable sites for a new SSTS.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Shoreline setbacks shall be maximized to greatest extent as possible.
3. Following the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing a 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

Motion to adjourn by Skraba. The meeting was adjourned at 2:46 p.m.