

**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, JULY 14, 2022.**

11:50 AM – 1:57 PM

Board of Adjustment members in attendance: Tom Coombe  
Steve Filipovich (until 1:28 PM)  
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. Brad Davis, S32, T52N, R12W (Duluth)
- B. Sandra and Jay Rock, S8, T63N, R12W (Morse)
- C. Blaine Lilly (with Rick Viita), S22, T64N, R18W (Beatty)
- D. David Schnur, S27, T55N, R15W (Unorganized)
- E. David Stewart, S2, T62N, R16W (Greenwood)

**OTHER BUSINESS:**

**Motion by Skraba/Svatos** to approve the corrected minutes of the June 9, 2022 meeting.

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

**Opposed:** None – 0

**Motion carried 7-0**

**NEW BUSINESS:**

**Case 6315 – Brad Davis**

The first hearing item was for Brad Davis, subject property located in S32, T52N, R12W (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 proposing a replacement system for an existing noncompliant system at a reduced shoreline setback from a trout stream where a minimum of 150 feet is required.
- B. All components, sewage tanks and mound will be at least 100 feet from Big Sucker Creek, a designated trout stream.

- C. The parcel contains a dwelling, multiple accessory structures, well, landscaping, and an existing septic system.
- D. The parcel is mostly flat but varies in steepness towards the creek from the northern side of the dwelling.
- E. The location of the tanks is at a higher elevation to not worry about infiltration.
- F. There is an alternate site which would meet all setbacks. This location would require a new construction access, as well as clearing a half-acre or so of vegetation.

*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 MN Shoreland Rules. The required setback for Big Sucker Creek is 150 feet from shoreline as it is classified as a trout stream.
- 2. The applicant is requesting a reduced setback of 100 feet for all system components.

B. Practical Difficulty:

- 1. The existing On-Site wastewater system is noncompliant and needs to be replaced (surface soil at mound base occasionally nearly saturates as a result of underlying clay soil; not being configured to maximize dispersal across the slope, and 1970's vintage construction practices including placement on compacted loamy sand – sandy loam fill and clay berms that further reduce dispersal capability).
- 2. Lot physiographic features including topography; dwelling, building drain, (shallow) water supply well, and creek-shore locations; and dwelling foundation type (slab) would, to meet all relevant setback distances, require placement of new system tank and mound in locations resulting in the tank having six feet of cover, five feet below an intermittent water table that would have high probability of causing future failure due to groundwater inflow, and the mound on a wooded slope approximately 100 feet northwest of the dwelling and 400 feet from Bergquist Road.
- 3. For the system placement to meet the creek setback distance, it would necessitate building a 400 foot long access road to the site for materials delivery, installing an approximate 300 foot long deep-bury force main on a steep slope along northern side of the dwelling, and clearing nearly a half-acre of trees for these and building of the mound. Revising location of the building drain to northwestern corner of the dwelling is not feasible due to slab construction of the foundation.

C. Essential Character of the Locality:

- 1. The surrounding parcels have similar development.

*Jason Walsh* noted no items of correspondence.

**STAFF RECOMMENDATION**

Conditions that may mitigate the variance for a reduced shoreline setback of 100 feet for a septic system (tank and mound) 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 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.

*Brad Davis*, 5942 Bergquist Road, Duluth, the applicant, stated he wants to replace an aging system and has nothing further to add.

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

**DECISION:**

**Motion by Skraba/Svatos** to approve a variance for a reduced shoreline setback of 100 feet for a septic system (tank and mound), 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 MN Shoreland Rules. The required setback for Big Sucker Creek is 150 feet from shoreline as it is classified as a Trout Stream.
2. The applicant is requesting a reduced setback of 100 feet for all system components.
3. This is a reasonable request to replace an old, failing system. To get to the 150 foot setback would be very difficult.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The existing On-Site wastewater system is noncompliant and needs to be replaced (surface soil at mound base occasionally nearly saturates as a result of underlying clay soil; not being configured to maximize dispersal across the slope, and 1970's vintage construction practices including placement on compacted loamy sand – sandy loam fill and clay berms that further reduce dispersal capability).
2. Lot physiographic features including topography; dwelling, building drain, (shallow) water supply well, and creek-shore locations; and dwelling foundation type (slab) would, to meet all relevant setback distances, require placement of new system tank and mound in locations resulting in the tank having six feet of cover, five feet below an intermittent water table that would have high probability of causing future failure due to groundwater inflow, and the mound on a wooded slope approximately 100 feet northwest of the dwelling and 400 feet from Bergquist Road.
3. For the system placement to meet the creek setback distance, it would necessitate building a 400 foot long access road to the site for materials delivery, installing an approximate 300 foot long deep-bury force main on a steep slope along northern side of the dwelling, and clearing nearly a half-acre of trees for these and building of the mound. Revising location of the building drain to northwestern corner of the dwelling is not feasible due to slab construction of the foundation.
4. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The surrounding parcels have similar development.

2. The essential character of the locality will not change.
3. The variance request will not alter the essential character of the locality.

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 the system installation, an inspection shall be performed by a qualified inspector to ensure setbacks are met prior to issuing 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 6316 – Sandra and Jay Rock**

The second hearing item was for Sandra and Jay Rock, subject property located in S8, T63N, R12W (Morse). 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. *Emily Anderson*, St. Louis County Environmental Specialist, reviewed the staff report as follows:

- A. The applicant is proposing a subsurface sewage treatment system installation at a reduced shoreline setback.
- B. The proposed ISTS replacement design would consist of a grinder/lift station at a proposed location of 25 feet from the lake to a holding tank that meets shoreline setback.
- C. The required shoreline setback for a system and components is 75 feet.
- D. The property is currently developed with dwellings, one of which is at the shoreline and has pressurized water.
- E. There is an existing nonpermitted grinder station on the property.

*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 of 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 25 feet to the lake.
- B. Practical Difficulty:
  1. The existing cabin was built at the lake shore with pressurized water. The homeowners want to use this dwelling for short term rentals and, in order to do so, On-Site Wastewater SSTS standards must be met prior to the issuance of the short term rental permit.
- C. Essential Character of the Locality:
  1. The area is characterized by development.

D. Other Factor:

1. An alternative is to remove pressurized water from the accessory dwelling and to rely on the principal dwelling for water.

*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 25 feet as proposed include, but are not limited to:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure the setback of 25 feet from the lift station to the ordinary high water level was met prior to issuing the Certificate of Compliance.
3. All other local, county, state and federal regulations shall be met.

*Sandra Rock*, 2080 Mollywood Lane, Ely, the applicant, stated their current system is not up to code. They want a new system installed to make everything compliant. The sauna does not have water.

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 the sauna has pressurized water. *Emily Anderson* stated that is unknown. If the sauna has pressurized water, it would be required to be hooked into the proposed septic system.
- B. Board member *Pollock* asked about a recreational vehicle (RV) that would be utilizing the holding tank. *Emily Anderson* stated the applicant will be applying for a short term rental permit for both the accessory dwelling at the shoreline and the dwelling. The landowners would stay in the RV. The holding tank should be large enough to accompany the dwelling, the accessory dwelling, and the RV.
- C. Board member *Pollock* asked if the 2,000 gallon holding tank would be over capacity. *Jenny Bourbonais*, Acting Secretary, clarified if the holding tank could accompany the expanded use of the sauna if it were pressurized. *Emily Anderson* stated it could. The system is sized for residential use. There is no difference in flow usage between residential use and short term rental use. Short term rentals may have a higher flow rate, but that is not reflected in current laws and ordinances as written as short term rentals are still new. If there is a concern about capacity, the Board of Adjustment could propose a one year operating permit. Operating permits for new systems are typically for five years. For an operating permit, the landowner would send in their pumping records and water meter readings. Staff would make sure there is no discrepancy between the two.
- D. Board member *Pollock* asked what a RV would produce for the 2,000 gallon holding tank. *Emily Anderson* stated that is determined in Technical Standards 7081 for the flow rate and could be 100 gallons per day per RV for a hook-up. It could also be sized off of a two

bedroom dwelling. This would still meet capacity. Holding tanks are sized at 400 gallons per day per bedroom or 1,000 gallons minimum, whichever is larger.

- E. *Jenny Bourbonais* added that the occupancy limit would be determined at the time of short term rental permitting.
- F. Board member *Svatos* asked if the proposed lift station would be in the same location as the existing lift station. *Emily Anderson* confirmed that is what is proposed. Board member *Svatos* asked if it is appropriate to cover with rock. *Emily Anderson* stated that would depend on the type of rock and the depth. Typically, these are covered in dirt.
- G. Board member *Pollock* asked how the main cabin is used. *Sandra Rock* stated the main cabin and accessory dwelling would combine for the short term rental. *Jenny Bourbonais* clarified that the property as a whole would be rented, including the main dwelling and the accessory dwelling. The landowners would utilize a RV on site for their own personal use. Only the property owner utilize a RV on the property when rented other structures are rented out.
- H. Board member *Pollock* stated that with the condition “All other Onsite Wastewater SSTS standards shall be met” that includes the barrel sauna. If the sauna were to have pressurized water, it must be hooked into the existing septic system.

**DECISION:**

**Motion by Skraba/Svatos** to approve a variance to allow a subsurface sewage treatment system installation at a reduced shoreline setback of 25 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 of 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 25 feet to the lake.
- 3. This is the best location with the land available and the applicant is replacing an existing system.
- 4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. The existing cabin was built at the lake shore with pressurized water. The homeowners want to use this dwelling for short term rentals and, in order to do so, On-Site Wastewater SSTS standards must be met prior to the issuance of the Short Term Rental permit.
- 2. This is a sealed system.
- 3. Moving the system back is not practical with the location of ledgerrock.
- 4. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

- 1. The area is characterized by development.
- 2. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The applicant will fix a failing system to the best of their ability.
2. Staff and the designer have used their knowledge to correct this situation.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. Following the system installation, an inspection shall be performed by a qualified inspector to ensure the setback of 25 feet from the lift station to the ordinary high water level was met prior to issuing the Certificate of Compliance.
3. 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 6317 – Blaine Lilly**

The third hearing item was for Blaine Lilly (with Rick Viita), subject property located in S22, T64N, R18W (Beatty). 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 principal dwelling structure setback. *Emily Anderson*, St. Louis County Environmental Specialist, reviewed the staff report as follows:

- A. The replaced ISTS consists of a septic tank located nine feet from a dwelling where 10 feet is required, going to a pump tank, and then to a mound with the rest of the system components meeting all other setbacks.
- B. The required shoreline setback for a system and components is 75 feet.
- C. The property is currently developed with a dwelling and garage.

*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 on the MN Shoreland Rules. The required setback is 75 feet from the shoreline for this Recreational Development classification.
2. The 75 foot lake setback will be met.
3. The required setback from a tank to a dwelling is 10 feet.
4. The applicant is requesting a reduced setback of nine feet from the septic tank to the dwelling.

B. Practical Difficulty:

1. The area where the tank was proposed to be placed has ledge rock and would require blasting due to lack of soil. Upon the switch to a bow boy tank (shorter but longer), the setback to the dwelling could not be met while also meeting property line and lake setbacks.

C. Essential Character of the Locality:

1. The area is characterized by development.

D. Other Factors:

1. This is an after-the-fact variance.
2. This system replaced a failing septic system.
3. The applicant has a change in use permit for the bunkhouse to a work shed with no living area or pressurized water that has been issued. The only living area on the property is within the main dwelling.

*Emily Anderson* noted one item of correspondence received from the applicant stating the reason why they were unable to be present at the hearing along with additional information.

**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 principal dwelling structure setback of nine feet as proposed include, but are not limited to:

1. All other Onsite Wastewater SSTS standards shall be met.
2. 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.
3. All other local, county, state and federal regulations shall be met.

*Blaine Lilly*, the applicant, was not present.

*Rick Viita*, 10520 Bubholz Road, Cook, the contractor, stated he installed the septic system. They had a 1,500 gallon two compartment tank available on site. They went to dig and hit ledge rock. They had to change the tank and were only able to meet nine feet, four inches. There were no other options to meet the other setbacks.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked about the second condition because the system was already installed. *Emily Anderson* stated that the system's setback was checked in order to issue the Certificate of Compliance. This cannot be issued unless a 10 foot setback is met.
- B. Board member *Coombe* asked if the variance is because the applicant switched to a low boy tank or because the setback distance was nine inches short. *Emily Anderson* stated the variance is because the 10 foot setback cannot be met. The low boy tanks could be used anywhere. The different style was used because of ledge rock. The alternative was to blast, which is expensive and there is a steep driveway down to move equipment. The low boy tank was cost effective. The applicant chose to meet the property line and shoreline setbacks while not being able to meet the setback from the system to the dwelling.



**DECISION:**

**Motion by McKenzie/Pollock** to approve a variance to allow a subsurface sewage treatment system installation at a reduced principal dwelling structure setback of nine 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 on the MN Shoreland Rules. The required setback is 75 feet from the shoreline for this Recreational Development classification.
2. The 75 foot lake setback will be met.
3. The required setback from a tank to a dwelling is 10 feet.
4. The applicant is requesting a reduced setback of nine feet from the septic tank to the dwelling.
5. The general purpose and intent of official controls is to regulate such things that affect the safety and welfare of inhabitants while also allowing for reasonable situations that might fall outside of ordinance requirements as it did for the applicant's setback variance request.
6. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The area where the tank was proposed to be placed has ledge rock and would require blasting due to lack of soil. Upon the switch to a bow boy tank (shorter but longer), the setback to the dwelling could not be met while also meeting property line and lake setbacks.
2. The presence of ledge rock has created a situation in which the standard septic tank would have required blasting of the ledge rock or placing the tank within the shoreline setback at a much greater cost. This has placed the tank seven inches closer to the structure than what is normally allowed.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area is characterized by development.
2. The character of the locality is seasonal cabins and appears well-screened. The applicant's project should have no effect on the character of the locality.
3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. This is an after-the-fact variance.
2. This system replaced a failing septic system.
3. The applicant has a change in use permit for the bunkhouse to a work shed with no living area or pressurized water that has been issued. The only living area on the property is within the main dwelling.
4. The contractor made a reasonable choice in the placement of the tanks while installing the SSTS using two smaller tanks to minimize the destruction to the parcel and minimize a setback violation.

The following conditions shall apply:

1. All other Onsite Wastewater SSTS standards shall be met.
2. 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.
3. 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 6318 – David Schnur**

The fourth hearing item was for David Schnur, subject property located in S27, T55N, R15W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D, to allow an addition to an existing principal dwelling that is located within the shore impact zone and encroaches upon a property line. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval for an addition to a nonconforming principal structure currently located approximately 15 feet from the shoreline where 100 feet is required
- B. The structure is also located at a reduced property line setback of approximately four feet where 20 feet is required.
- C. The request includes removing 90 square feet of a bump out of the structure and adding 200 square feet to the rear and side of the structure.
- D. This will increase the shoreline setback to approximately 25 feet
- E. The property line setback will also be increased to approximately eight to nine feet.
- F. The net expansion of the structure is 110 square feet when factoring the removal of 90 square feet from the existing structure.
- G. The development on the property consists of a seasonal dwelling and a holding tank. There is also a well proposed on the site.

*Jared Ecklund* reviewed staff facts and findings as follows:

- A. Official Controls:
  1. Zoning Ordinance 62 states that a nonconforming principal structure that is located within the shore impact zone may be expanded if the structure also meets the required property line and road setbacks; the structure is located within the shore impact zone and does not meet the required 20 foot property line setback.
  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 Statue 394.22 Subd. 10.

B. Practical Difficulty:

1. Due to the fact that the dwelling does not meet the required property line setback and the principal structure is located within the shore impact zone, any addition would require variance.
2. The only alternative that does not require a variance would require the structure to be relocated or rebuilt at a conforming location.
  - a. There does appear to be area on the property for a dwelling to meet the required setbacks.
3. The proposed addition meets the size requirements that would be allowed with a performance standard permit if the structure met the required 20 foot property line setback.
4. The proposal will increase the size of the dwelling, but it will also increase the property line and shoreline setback of the structure.
  - a. The current property line setback is approximately four feet; the proposal will increase the setback to approximately 8.5 feet.
  - b. The current shoreline setback is approximately 15 feet; the proposal will increase the setback to approximately 25 feet.

C. Essential Character of the Locality:

1. There have not been any similar variance requests in this plat.
2. There are several dwellings in this area that are nonconforming to the shoreline; however, the applicant's dwelling appears to be one of the closest to the shoreline in the area.
3. The neighboring dwelling to the west appears to be located approximately 35 feet from the shoreline.
4. The neighboring dwelling to the east appears to be located at or beyond the required shoreline setback.

D. Other Factors:

1. Planning Department staff have discussed recommending changes to the ordinance language that requires a variance in this situation and potentially allow as a performance standard permit.
2. The SSTS record review failed on the property because the privy has been abandoned and there has not been an application submitted for a new system, holding tank, or privy on site.
  - a. The applicant is proposing a holding tank but has not yet submitted an application.
  - b. A permit to construct will need to be issued before a permit application is processed for an addition if the variance request is approved.

*Jared Ecklund* noted no items of correspondence.

## STAFF RECOMMENDATION

Conditions that may mitigate the variance for an addition to an existing principal structure that is located within the shore impact zone and encroaches upon a property line include, but are not limited to:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
2. The shoreline setback of the structure shall be maximized to the greatest extent possible.
3. In the event that it is determined that the structure is not structurally sound to be added onto, a replacement structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
4. St. Louis County Onsite Wastewater SSTS standards shall be followed.

*David Schnur*, 1922 Valhalla Drive, Duluth, the applicant, was present and did not speak.

*Larry Erickson*, 6398 Church Road, Duluth, the contractor, stated they are removing the 90 square foot bump-out to bring the structure more into compliance as well as squaring off the structure. They will put in a 1,500 gallon holding tank. This will be seasonal use only. If someone wanted a septic system further back in the lot, that space will be available.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Skraba* stated that the applicant is removing square footage and the addition will not go closer to the shoreline or the property line. The applicant is improving the structure's location. *Jared Ecklund* stated had the property line setback been met, a performance standard permit could have been issued.
- B. Board member *Filipovich* asked what the terrain is like moving away from the lake. *Larry Erickson* stated the building area is fairly flat and then starts to increase in elevation.
- C. Board member *McKenzie* asked if this structure was built on a slab. *Larry Erickson* stated the foundation is concrete block and will be kept that way. The soil is gravel/rock and not clay from what he has seen on site and they will reinforce what is there. The structure will be earth-tone when complete. There will be no basement.
- D. Board member *McKenzie* asked if the proposed addition will include a bathroom. *Larry Erickson* stated that the bathroom will be within the existing house. The addition will be a bedroom.
- E. Board member *Skraba* asked if the applicant is aware of the height standards. *Larry Erickson* stated he is aware they are limited to 20 feet in height.

## DECISION:

**Motion by McKenzie/Coombe** to approve a variance for an addition to an existing principal structure that is located within the shore impact zone and encroaches upon a property line, based on the following facts and findings:

- A. Official Controls:
  1. Zoning Ordinance 62 states that a nonconforming principal structure that is located within the shore impact zone may be expanded if the structure also meets the required property line and road setbacks; the structure is located within the shore impact zone and does not meet the required 20 foot property line setback.

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. The applicant's proposal to remodel a 1950s cabin located within the shore impact zone will result in an increased shoreline setback and an increased property line setback.
4. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The staff report indicates the only alternative to the applicant's proposal is to relocate the structure because the existing structure is within the shore impact zone and within the property line setback.
2. Other alternatives may be to leave the structure as-is with a decreased shoreline setback or to remove the 90 square foot addition and not add anything else which would likely reduce the applicant's reasonable use of the property. The proposal appears to be the most reasonable solution.
3. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. There have not been any similar variance requests in this plat.
2. There are several dwellings in this area that are nonconforming to the shoreline; however, the applicant's dwelling appears to be one of the closest to the shoreline in the area.
3. The neighboring dwelling to the west appears to be located approximately 35 feet from the shoreline.
4. The neighboring dwelling to the east appears to be located at or beyond the required shoreline setback.
5. The proposal will actually enhance the character of the locality being the structure will be located further from the lake than before.
6. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The structure has existed in its present location for 72 years without indoor plumbing. The applicant's plan is to add a bathroom to the structure.

The following conditions shall apply:

1. The structure shall be unobtrusive earth-toned colors, including siding, trim and roof.
2. The shoreline setback of the structure shall be maximized to the greatest extent possible.
3. In the event that it is determined that the structure is not structurally sound to be added onto, a replacement structure may be allowed on the parcel with a land use permit, provided all setback and ordinance requirements are met.
4. St. Louis County Onsite Wastewater SSTS standards shall be followed.

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

**Opposed:** None - 0

**Case 6319 – David Stewart**

The fifth hearing item was for David Stewart, subject property located in S2, T62N, R16W (Greenwood). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.4D, to allow a single lot as buildable where 0.5 acres is required, and St. Louis County Zoning Ordinance 62, Article III, Section 3.2 to allow a principal dwelling at a reduced property line setback where 20 feet is required. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting to allow a dwelling on a parcel that is 0.25 acres in size where 0.5 acres is required to be considered buildable for a lot of record.
- B. The applicant is requesting to allow a dwelling located 12 feet from the property line where 20 feet is required. This would allow for a 26 foot wide structure on a 50 foot wide lot.
- C. The dwelling would meet all other ordinance requirements.
- D. The parcel is undeveloped.
- E. The applicant is not currently applying for or requesting water.

*Mark Lindhorst* reviewed staff facts and findings as follows:

- A. Official Controls:
  1. Zoning Ordinance 62, Article IV, Section 4.4 D., requires a 0.5 acre lot as buildable. The proposed undeveloped lot is 0.25 acre.
  2. Zoning Ordinance 62, Article III, Section 3.2, requires a 20 foot property line setback in a Residential (RES)-8 zone district. The applicant is proposing 12 feet.
  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. Lot size and width limit building potential without variance. A structure width of 10 feet would allow a structure to meet property line setbacks.
  2. The structure will meet all other ordinance requirements.
- C. Essential Character of the Locality:
  1. The area consists of developed lakeshore lots with mostly conforming principal structures.
  2. There have been no similar variance requests within the plat.
- D. Other Factor:
  1. The parcel is a platted lot of record. The applicant has no alternatives for development due to lot size.

*Mark Lindhorst* noted five items of correspondence and a petition signed by 28 area landowners, all opposed to the variance request. These items were received from Barbara Ferguson Parsons, Kevin Milligan, Michael W. Fay, Julie Ferguson Milligan and Carol Ferguson. These items were provided to the Board of Adjustment prior to the hearing.

### **STAFF RECOMMENDATION**

Conditions that may mitigate the variance to allow a dwelling on a 0.25 acre parcel and 12 feet from the property line include, but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. A certificate of survey shall be completed prior to issuance of a permit to ensure setbacks are being met.
3. All other ordinance requirements shall be met.
4. St. Louis County On-Site Wastewater SSTS standards shall be followed.

*David Stewart*, 76 3<sup>rd</sup> Street, Spreckels, CA, the applicant, stated this property belongs to his father who inherited the property from his grandfather. His father is a disabled Vietnam veteran. He has talked about this property for years. They visited this property about six years ago for the first time. They want to hand the property down. His great-grandfather bought the property in 1916 and, at the time, there were no restrictions. The intent was to build a cabin or something on the property. He is trying to right a wrong for his father. This is a piece of property that could have some value that has been held onto for all of these years. Both properties to the north and south are owned by families that have had enjoyment of their properties for 100 years plus and he would not want to take away from them. These people had the right to build on 0.25 acre properties and could build inches from the property line and had the right to take down trees. Both structures would be larger than what he is proposing. These people are now corresponding against what he is proposing to do as they had once done. He wants to build a reasonable-sized structure 12 feet away from the property line. He did not think the spirit and intent of these ordinances was to take away a landowner's right to build a structure on their property, especially when that right existed when the property was originally sold and for decades after. Without these variances, the ability to reasonably use the land his family purchased 100 years ago will be unfairly restricted. The circumstances they find themselves in is solely due to the size of the lot. As owners of the land over the last 100 years, they have paid taxes every year. Nothing their family has done has contributed to our current inability to build on the lot.

*William Stewart*, 2934 A SW 30 Court, Miami FL, property owner, stated he had nothing to add.

Four members of the audience spoke in opposition.

*Mark Young*, 25 Coe Court, Bluffton SC, stated he has four parcels that are 0.25 acres. These 0.25 acre 50 foot wide lots were sold as tenting lots originally which his relatives did use as for years before building a cabin. He read from Ordinance 62: A single lot of record may be permitted as a buildable lot if all of the following criteria can be met. The lot is a minimum of one-half acre in size with no public sewer or water. The lot is a minimum of 0.33 acre in size with public sewer only. The lot is a minimum of 0.16 acre in size with public sewer and water. The lot shall meet the definition of a lot of record. The impervious surface coverage does not exceed that which is allowed under this ordinance. The lot, when created, complied with official controls in effect at

the time. All structure and septic system setback requirements are met. St. Louis County sewage treatment standards are met. For contiguous lots of record, it is required to have 100 feet of width and be 0.5 acres in size. He does not know why this variance is even being considered. The word 'shall' is for actions amendatory and not permissible. The applicant has a lot of uses for this property.

*Carol Horsman*, 3674 Winton Way, Eagan MN, stated her family purchased the property in 1916. Her great-great grandfather purchased three separate 50 foot lots and one half lot. She is very concerned about squeezing a structure into this space. They are on the lake for the space. To squeeze a structure in if its not conforming to the rules, it may set a future precedent. Being on the property for over 100 years, there have been a lot of changes. She wants the applicant to be able to use their land but does not want to take the character of the land away from the others.

*Phil Moessner*, representing the Trustee Brookston Family Trust, 3543 21st Avenue South, St. Cloud MN, stated he is part of a group that owns multiple shoreland and non-shoreland parcels north and west of the applicants. This property has been owned for 55 years. The character of the lake for those who reside on this property during the summer is the wilderness nature of the lake, commune with the lake, fishing, and how it rejuvenates their spirit. The building code helps to preserve that experience with the required lot size and property setback requirements to ensure the wilderness feel. While they do not want to take away that opportunity for other landowners, variances to those code requirements do provide an encroachment of some sort on those closest properties where the variance was received. They are concerned about the privacy and infringement of those neighbors. The parcels are now compliant with the code as it was written then. That code has been modified since then. The experience of those on the lake and in the communities here support visitors to the lake area. The codes are there for a reason. The other concern is the health and safety of the inhabitants. The variance indicated there would be no water for the structure. He would be concerned with any non-pressurized water system as it could be a fire concern and they are on an island.

*Julie Baxley*, 2045 Payne Chapel Road, Lookout Mountain GA, stated she is opposed as it goes against the property line setbacks and the property is less than a half-acre in size.

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

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* stated the request is to be able to build on the lot. There is not a proposal for a structure to be built on the lot. *David Stewart* stated it is. Board member *Pollock* stated this would make the property marketable. *David Stewart* stated that could be argued. He is representing his father who wants to bequeath this property to his children and grandchildren. There is no real pride and ownership to a property that cannot be built on.
- B. Board member *Pollock* stated if there was a concrete plan on this property, it might be easier to act on. This property is too small a property to build on and there is no set plan for what to do with the property.
- C. Board member *Coombe* stated that if the variance request is approved as-is, the 26 foot wide structure would be what is allowed and would go with the property.



- D. Board member *Skraba* stated the application feels incomplete. While a size was proposed, there were no other details provided. Board member *Werschay* stated that the other rules would still need to be followed. *Mark Lindhorst* stated that the variance request is for lot size and for property line setback. The potential structure would meet a 75 foot shoreline setback, would be allowed a structure height of 35 feet at that setback and would be allowed 15 percent building coverage. Staff would never limit the square footage unless it was for a reduced shoreline setback.
- E. Board member *Skraba* asked how many accessory structures would be allowed on this property. *Mark Lindhorst* stated the applicant would be allowed 15 percent building coverage, which would include any accessory structures.
- F. Board member *McKenzie* asked if the applicant is aware they can use the property without needing a variance and there is value in that. *David Stewart* stated he understands that.
- G. Board member *Werschay* asked if the property could be used with a recreational vehicle (RV). *Mark Lindhorst* stated no.
- H. Board member *Pollock* asked if this property is considered non-buildable and non-permittable. *Jenny Bourbonais*, Acting Secretary, stated this is a nonconforming lot of record that does not meet minimum acreage requirements. This lot was properly created at the time of its creation.
- I. Board member *Coombe* stated the applicant would be allowed about 1,500 square feet of building to stay under the 15 percent building coverage. The applicant could be allowed a ten foot wide structure. *Mark Lindhorst* stated that a variance would still be required. *Jenny Bourbonais* added there is not enough acreage, and a variance is required to build anything on this property. Board member *Werschay* stated a variance could be approved to make the property buildable. The applicant could then build a structure based on the property line setbacks allowed by Ordinance.
- J. Board member *Pollock* stated that justification is required for exceptional circumstances. This is not an automatic granting of a variance.
- K. Board member *Pollock* stated landowners do not need to worry about overlapping structures on lots. Board member *Werschay* stated that each lot with its own parcel code could be sold off. *Jenny Bourbonais* stated that is not possible as contiguous lots of record need to be under common ownership. If each lot has a separate structure, they could be sold off. As these lots are together, they need to remain contiguous to be conforming. That is both a state and county rule.
- L. Board member *Skraba* asked if this is a lot of record even if it is only 50 feet wide. *Mark Lindhorst* stated that any lot could be a lot of record if they are properly created. If it does not meet zoning requirements now, it is a nonconforming lot of record. There are a lot of properties out there that have been developed that are nonconforming lots of record. There had to be a standard of how small a lot could be to be built upon and that was set at 0.5 acre. Board member *Skraba* asked if there are more than a few lots together, could a dwelling be placed on one and the rest of the lots sold off. *Mark Lindhorst* stated that state shoreland rules require contiguous lots to remain together. If someone wanted to subdivide contiguous lots, they would need to meet zoning minimum requirements. If someone purchased a lot that was not properly subdivided, they might need a variance for a lot to be buildable if it does not meet zoning minimum requirements.
- M. *Jenny Bourbonais* read the following from Ordinance 62: If in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the minimum

lot size requirements of this ordinance, the lot must not be considered as a separate parcel of land for the purpose of sale or development. The lots must be combined with one or more parcels of land, each meeting the requirements of this ordinance.

- N. Board member *Werschay* stated the correspondents wrote in saying that their properties have been in their families for over a hundred years. The applicant should have the same opportunity because their neighbors have been able to. This lot was created in 1912 and was a lot of record that just happens to be too small.
- O. Board member *Coombe* stated this variance feels incomplete. The applicant needed a better proposal to say where the building lot coverage would go.

**DECISION:**

**Motion by Pollock/Svatos** to deny a variance to allow a dwelling on a 0.25 acre parcel and located 12 feet from the property line, based on the following facts and findings:

A. Official Controls:

- 1. Zoning Ordinance 62, Article IV, Section 4.4 D., requires a 0.5 acre lot as buildable. The proposed undeveloped lot is 0.25 acre.
- 2. Zoning Ordinance 62, Article III, Section 3.2, requires a 20 foot property line setback in a Residential (RES)-8 zone district. The applicant is proposing 12 feet.
- 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.
- 5. The variance request is not in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

- 1. Lot size and width limit building potential without variance. A structure width of 10 feet would allow a structure to meet property line setbacks.
- 2. The structure will meet all other ordinance requirements.
- 3. There is nothing to justify granting this variance.
- 4. Practical difficulty has not been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

- 1. The area consists of developed lakeshore lots with mostly conforming principal structures.
- 2. There have been no similar variance requests within the plat.
- 3. Neighbors have met the requirements to build on their property. The applicant's proposal does not meet zoning requirements.
- 4. The variance request will alter the essential character of the locality.

D. Other Factors:

- 1. The parcel is a platted lot of record. The applicant has no alternatives for development due to lot size.

2. The applicant will have reasonable use of the property. They will be able to keep this property in the family and pass it down. The property can still be used.

**In Favor:** McKenzie, Pollock, Skraba, Svatos – 4

**Opposed:** Werschay - 1

**Abstained:** Coombe - 1

**Motion carried 4-1-1**

**Motion to adjourn by Skraba. The meeting was adjourned at 1:57 p.m.**