

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 BUILDING, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, JULY 8, 2021.

10:30 AM – 1:33 PM

Board of Adjustment members in attendance: Steve Filipovich
James McKenzie
Dave Pollock
Roger Skraba, Vice Chair
Ray Svatos
Diana Werschay, Chair (until 11:25 AM)

Board of Adjustment members absent: None - 0

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

NEW BUSINESS:

- A. Joseph Benchina, S13, T59N, R21W (Unorganized)
- B. Scott Myran, S9, T64N, R20W (Leiding)
- C. Paul Fadden, S5, T68N, R19W (Unorganized)
- D. Pike Lake Golf and Beach LLC, S31, T51N, R15W (Canosia)

OTHER BUSINESS:

Motion by Skraba/McKenzie to approve the minutes of the June 10, 2021 meeting.

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

Opposed: None – 0

Motion carried 6-0

NEW BUSINESS:

Case 6262 – Joseph Benchina

The first hearing item was for Joseph Benchina, property located in S13, T59N, R21W (Unorganized). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 and adopted Technical Standards 7080.2150 Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system at reduced property line and road right-of-way setback requirements. *Tyler Lampella*, St. Louis County Environmental Specialist Senior, reviewed the staff report as follows:

- A. The applicant is proposing to construct a new home with a subsurface sewage treatment system (SSTS).
- B. The proposed dwelling is replacing a nonconforming dwelling and the front of the new structure will be located where the rear of the current structure is now.
- C. Because of limited area on the subject parcel, the applicant is requesting relief from property line and road right-of-way setbacks.

- D. The road that provides access to the subject parcel is a private, platted road. The driveway is in the middle of the subject parcel which reduces the amount of area suitable for the SSTS.
- E. There is approximately 75 feet between the west property line and the driveway. The edge of the platted road is approximately 18 feet from the south property line. That road serves as access to three additional dwellings.
- F. There is approximately 139 feet between the back of the existing dwelling and the south property line, which is also the boundary of the private, platted road.
- G. The proposed dwelling must meet the 20 foot setback to the proposed mound and 10 foot setback to the septic tank.
- H. The subject parcel is relatively flat in the area proposed for the new dwelling and SSTS. There is steep slope between the existing dwelling at the lake.

Tyler Lampella 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. The applicant is requesting a zero (0) foot setback from the property lines where 10 feet is required.

B. Practical Difficulty:

- 1. There are no unique physical circumstances identified that prevent conformance with ordinance requirements.
- 2. An alternative to a variance includes reducing the size of the proposed dwelling which could eliminate or minimize the degree of the variance.

C. Essential Character of the Locality:

- 1. Parcel sizes vary between 0.6 and 2.6 acres in the neighborhood. All of the parcels on the lake side of the road are developed with no development on the nonriparian side of the road.

D. Other Factors:

- 1. The road is privately maintained and has a driving surface width of approximately 15 feet. The nearest structure on the adjoining parcel to the west is 29 feet from the property line and is an unoccupied structure.
- 2. There is practical difficulty due to the size of the parcel and location of the driveway but some of the difficulty is imposed by the size of the proposed replacement dwelling.

Tyler Lampella noted no items of correspondence.

STAFF RECOMMENDATION

Conditions that may mitigate the variance to allow a subsurface sewage treatment system at a zero foot property line and road right-of-way setback requirements as proposed, include but are not limited to:

- 1. A survey shall be conducted and submitted to the Planning and Community Development Department to verify a zero foot setback.

2. All other local, county, state and federal regulations shall be followed.

Joseph Benchina, the applicant, stated he is trying to do what he can with what space he has. The new dwelling will be located 100 feet from the shoreline and will meet the 20 foot property line setback.

Jim Benchina, 518 12th Street NW, Chisholm, stated he is the applicant's father. He stated the lot is 25 feet above the lake level and is 250 feet deep.

No other audience members spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

The *Board of Adjustment* discussed the following:

- A. Board member *Skraba* asked if there would be a physical distance between the edge of the road and the mound. *Tyler Lampella* stated there would be.
- B. Board member *McKenzie* asked how far the absorption area would be from the property line. *Tyler Lampella* stated that if the mound goes to the property line, there would only be a few feet. The property gradually slopes towards the road and not towards the neighboring property. The actual absorption area will depend upon the soil in that area. Board member *McKenzie* asked if the compacted driveway surface impacts where the absorption area can go. *Tyler Lampella* stated that the mound has a tapering berm which can go onto the driveway because that would not be part of the absorption area.
- C. Board member *Skraba* asked how large the new dwelling will be. *Joseph Benchina* stated the proposed dwelling would be 50 feet by 40 feet with a small attached garage to be 50 feet by 88 feet and will be located further from the lake. *Jim Benchina* added the existing nonconforming dwelling is 25 feet by 30 feet. The entire cabin will be removed because it is too close to the lake. *Tyler Lampella* added the dwelling would be limited to 2,400 square feet because the septic system is designed for gallons of use based on the size of a dwelling.
- D. Board member *Pollock* asked if an attached garage is considered part of the dwelling space. *Jenny Bourbonais* added that an attached garage could be included with the dwelling on any land use permit, but On-Site Wastewater may look at the use differently than Land Use.

DECISION

Motion by *Skraba/McKenzie* to approve a variance to allow a subsurface sewage treatment system at a zero foot property line and road right-of-way setback requirements, 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. The applicant is requesting a zero (0) foot setback from the property lines where 10 feet is required.
 2. The variance is in harmony with the general purpose and intent of official controls due to the physical impediments of the land, steep slope and the driveway that precludes from using normal controls. The size of the building is not unreasonable to move the system to the proposed location.

B. Practical Difficulty:

1. The subject property is approximately 0.8 acres and is currently developed. The parcel consists of two platted lots with a driveway dividing the two lots. Because the driveway is disturbed/compacted soil, it is not suitable for sewage treatment/disposal. The suitable area on the parcel is reduced because of the driveway.
2. The applicant is proposing to construct a new dwelling that meets the required lake setback. The area for the proposed dwelling conflicts with the area needed for the septic system. Part of the conflict may be due to the size of the proposed structure.
3. There is no additional property available for sewage treatment.
4. The structure would not be unreasonable to make this fit. The applicant is moving the structure away from the lake.

C. Essential Character of the Locality:

1. Parcel sizes vary between 0.6 and 2.6 acres in the neighborhood. All of the parcels on the lake side of the road are developed with no development on the nonriparian side of the road.
2. The neighborhood is residential in nature with a mix of homestead and non-homestead property.
3. The variance will not alter the essential character of the locality.

D. Other Factors:

1. The road is privately maintained and has a driving surface width of approximately 15 feet. The nearest structure on the adjoining parcel to the west is 29 feet from the property line and is an unoccupied structure.
2. There is practical difficulty due to the size of the parcel and location of the driveway but some of the difficulty is imposed by the size of the proposed replacement dwelling.
3. The size of the lot and the bluff need to be looked at. The property also slopes towards the road. Drainage will protect the watershed.

The following conditions shall apply:

1. A survey shall be conducted and submitted to the Planning and Community Development Department to verify a zero foot setback.
2. All other local, county, state and federal regulations shall be followed.

In Favor: Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay - 6

Opposed: None - 0

Motion carried 6-0

Case 6263 – Scott Myran

The second hearing item was for Scott Myran, property located in S9, T64N, R20W (Leiding). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a replacement principal structure at a reduced shoreline setback where a minimum 100 foot shoreline setback is required. *Mark Lindhorst*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to replace an existing nonconforming dwelling located 75 feet from the shoreline where 100 feet is required.
- B. There is adequate vegetation within the shore impact zone.
- C. The proposed structure will be placed on a gradual slope that turns to a steep slope within 30 feet of the shoreline.

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 on a Department of Natural Resources (DNR) classified Recreational Development lakes. The applicant is proposing 75 feet.
- 2. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 3. 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. Due to the location of the well, garage and driveway, the proposed structure placed at 100 feet would only leave approximately 22 feet to enter the existing garage and block a portion of the driveway.
- 2. Shifting the structure to the east to provide enough room for the driveway and garage would encroach into the property line setback and would be placed in a small drainage that flows to the shoreline.
- 3. A performance standard permit would be allowed for a replacement structure up to 1,200 square feet, if all ordinance requirements are met. The applicant is requesting a 1,624 square foot structure.

C. Essential Character of the Locality:

- 1. The applicant is not proposing a new use to the area as there are other residential properties in the area.
- 2. No similar variances have been approved in the neighborhood.

D. Other Factor:

- 1. The applicant has worked with staff to ensure adherence to ordinance requirements. However, the size of the structure exceeds what is allowed under a performance standard permit. Existing development and a drainage located on the property reduces building area at a conforming setback.

Mark Lindhorst noted one item from Barry and Emily Johnson in support of the variance. This correspondence was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate a variance for a 1,624 square foot replacement dwelling 75 feet from the shoreline as proposed include but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
2. The shore protection zone shall be preserved in a natural state and screening shall be retained.

Scott Myran, the applicant, stated this new dwelling is intended to be their retirement home. This is the most equitable way to put a functional house and garage on the property.

One member of the audience spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

Board member *Skraba* asked if the new dwelling will be moved further back from the hill and the lake. *Mark Lindhorst* stated the new dwelling will be moved back away from the hill. The existing structure is on top of the hill. The new structure will also be located away from the drainage.

DECISION

Motion by McKenzie/Skraba to approve a variance for a 1,624 square foot replacement dwelling 75 feet from the shoreline, as proposed, 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 on a Department of Natural Resources (DNR) classified Recreational Development lakes. The applicant is proposing 75 feet.
2. The variance request is in harmony with the general purpose and intent of official controls. This is honored while the strict standards are varied from by articulating valid reasons found in state statutes and county ordinances.

B. Practical Difficulty:

1. Due to the location of the well, garage and driveway, the proposed structure placed at 100 feet would only leave approximately 22 feet to enter the existing garage and block a portion of the driveway.
2. Shifting the structure to the east to provide enough room for the driveway and garage would encroach into the property line setback and would be placed in a small drainage that flows to the shoreline.
3. The primary practical difficulty is the location of the large garage. A 100 foot shoreline setback would restrict access to a new garage.

C. Essential Character of the Locality:

1. The variance will not alter the essential character of the locality. This area was likely developed before variances and shoreline setbacks existed judging by the age of the neighboring cabins.
2. The applicant is not proposing a new use to the area as there are other residential properties in the area.
3. No similar variances have been approved in the neighborhood.

D. Other Factors:

1. The applicant has worked with staff to ensure adherence to ordinance requirements. However, the size of the structure exceeds what is allowed under a performance standard permit. Existing development and a drainage located on the property reduces building area at a conforming setback.
2. The neighbor's letter explains reasons for the variance. An older two-story home is being replaced by a one story home further back from the shoreline. Shifting the proposed dwelling would encroach on the property line setback, which could impact the small drainage.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
2. The shore protection zone shall be preserved in a natural state and screening shall be retained.

In Favor: Filipovich, McKenzie, Pollock, Skraba, Svatos, Werschay - 6

Opposed: None - 0

Motion carried 6-0

Case 6264 – Paul Fadden

The third hearing item was for Paul Fadden, property located in S5, T68N, R19W (Unorganized). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., to allow a principal structure to exceed the structure width facing the water where a maximum 40 percent is allowed; and Article III, Section 3.2, to allow an addition to a principal structure at a reduced property line setback where a minimum 15 feet is required; and Article IV, Section 4.3 D., to allow an addition to an existing principal structure that is located within 25 feet of the shoreline where no addition is allowed.

Mark Lindhorst, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is proposing to add a 120 square foot addition to the side of an existing structure.
- B. The structure width facing the lake would be 65 percent where 40 percent is allowed.
- C. The structure would be located 8 feet from the property line where 15 feet is required.
- D. The structure is currently located 22 feet from the shoreline and no additions are allowed.
- E. There is limited screening between the cabin and the shoreline.
- F. The property has a gradual slope to the shoreline.

Mark Lindhorst reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a structure width facing the water at 40 percent; the applicant is requesting 65 percent.
 2. Zoning Ordinance 62, Article III, Section 3.2, requires a 15 foot property line setback in a Shoreland Multiple Use (SMU)-11 zone district; the applicant is requesting 8 feet.

3. Zoning Ordinance 62, Article IV, Section 4.3 D., states that a nonconforming structure may be expanded once if the existing principal structure is setback from the shoreline a minimum of 25 feet; the existing structure is 22 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 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.
6. The variance request is in harmony with the general purpose and intents of official controls.

B. Practical Difficulty:

1. The size of the lot and location of the existing structure limits the potential for expanding the structure without variance.
2. The applicant has reasonable use of the property with the existing structure without applying for a variance.

C. Essential Character of the Locality:

1. The variance will not alter the essential character of the locality.
2. The neighborhood consists of small riparian parcels that are developed with cabins. There are also several commercial businesses located within 700 feet of the request.

D. Other Factor:

1. The applicant owns additional property across the road that could be used for additional building space.

Mark Lindhorst noted one item of correspondence from Arne and Gina Wuorinen in support of this variance. This correspondence was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance for a 120 square foot addition to a nonconforming principal dwelling with a 65 percent structure width facing the water where 40 percent is allowed, an 8 foot property line setback where 15 feet is required and an addition to a structure that is located 22 feet from the shoreline where no addition is allowed, 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 into the lake or on adjacent lots.
3. A plan to enhance vegetation and protect the shore impact zone shall be submitted and approved by the county prior to issuance of a land use permit.
4. No further variances shall be allowed.
5. In the event the structure is determined to not be structurally sound to add on to, it shall be moved to a more conforming setback.

Paul Fadden, the applicant, stated there is a State campground to the west and there are campsites about 500 feet down the road. They are adding a screen porch that will be screened on three sides and then the wall would be matched with the existing siding. It will not be an addition for anything else. His parents are elderly and he is adding a screen porch so they can sit outside

No audience members spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked if the applicant would require a variance even for a deck. *Mark Lindhorst* stated yes. However, the applicant would have been allowed a 4 foot by 8 foot platform. The platform would not require a permit and would not need to meet the 15 foot setback. The proposed deck extends beyond 4 feet and will need to meet the 15 foot setback.
- B. Board member *Pollock* asked if the applicant could expand the structure and enclose the deck if approved for a variance. *Jenny Bourbonais* stated that if the variance is approved as just a deck, it can only remain a deck. If the variance is approved as an addition, they can expand into the deck as a screen porch or include it as part of living space.
- C. Board member *Pollock* asked if there is a neighboring property to the west. *Mark Lindhorst* stated there is no structure on the property to the west. The land is very narrow between the road and the river. The applicant owns the property on the other side of the road. There is a structure located to the east, which is located away from where the proposed addition will go. It is possible that these cabins were once resort cabins. Board member *McKenzie* added the property to the west is State-owned.
- D. Board member *Svatos* commented that there does not appear to be any vegetation between the cabin and the shoreline. Board member *Skraba* stated there is strange topography on this side of the river. There is slope up from the shoreline.
- E. Board member *Filipovich* asked if these lots are the same size in this area. *Mark Lindhorst* stated that there are a few lots close to the same size before the lots become commercial resorts.
- F. Board member *Pollock* asked where the septic system is located. *Mark Lindhorst* stated the septic is on the property across the road.
- G. Board member *Svatos* asked if both docks belong to the applicant. *Paul Fadden* stated both docks are his.
- H. Board member *Skraba* asked if the State would ever develop the narrow parcel to the west of the applicant's. *Mark Lindhorst* stated the State would make that decision, but the property is narrow.
- I. Board member *Skraba* asked for an explanation on the 25 foot and 50 foot setback difference as far as what additions can be built. *Mark Lindhorst* stated that no structure additions are allowed when the structure is located less than 25 feet from the shoreline. At 50 feet from the shoreline, a 200 square foot addition would be allowed. Between 50 and 100 feet from the shoreline, they would be allowed a 400 square foot addition.

DECISION

Motion by McKenzie/Svatos to approve a variance for a 120 square foot addition to a nonconforming principal dwelling with a 65 percent structure width facing the water where 40

percent is allowed, an 8 foot property line setback where 15 feet is required and an addition to a structure that is located 22 feet from the shoreline where no addition is allowed, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article IV, Section 4.3 D., allows a structure width facing the water at 40 percent; the applicant is requesting 65 percent.
2. Zoning Ordinance 62, Article III, Section 3.2, requires a 15 foot property line setback in a SMU-11 zone district; the applicant is requesting 8 feet.
3. Zoning Ordinance 62, Article IV, Section 4.3 D., states that a nonconforming structure may be expanded once if the existing principal structure is setback from the shoreline a minimum of 25 feet; the existing structure is 22 feet from the shoreline.
4. The variance request is in harmony with the general purpose and intent of official controls. An addition to the structure would allow reasonable use of the property.

B. Practical Difficulty:

1. The size and shape of the lot and location of the existing structure limits the potential for expanding the structure without variance.
2. The shape of the lot tapers considerably to the shoreline increasing the need of variances from lot width percentage and the property line setback.

C. Essential Character of the Locality:

1. The variance will not alter the essential character of the locality.
2. The neighborhood consists of small riparian parcels that are developed with cabins. There are also several commercial businesses located within 700 feet of the request.

D. Other Factor:

1. The density is not a new use to the area.

The following condition 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 into the lake or on adjacent lots.
3. A plan to enhance vegetation and protect the shore impact zone shall be submitted and approved by the county prior to issuance of a land use permit.
4. No further variances shall be allowed.
5. In the event the structure is determined to not be structurally sound to add on to, it shall be moved to a more conforming setback.

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

Opposed: None - 0

Motion carried 5-0

Case 6265 – Pike Lake Golf and Beach LLC

The fourth hearing item was for Pike Lake Golf and Beach LLC, property located in S31, T51N, R15W (Canosia). The applicant is requesting an after-the-fact relief from St. Louis County Zoning

Ordinance 62, Article III, Section 3.2, to allow a structure to be located at a reduced shoreline setback where a minimum 75 feet is required. *Jenny Bourbonais*, St. Louis County Land Use Manager, reviewed the staff report as follows:

- A. The applicant is requesting to allow after-the-fact approval for a structure located 50 feet from the shoreline where 75 feet is required.
- B. A foundation enclosure associated with a volleyball court use as part of the overall commercial use of the property is required to meet a 75 foot shoreline setback.
- C. In addition, a land alteration permit for any alteration of natural topography that exceeds 50 cubic yards of material per Zoning Ordinance 62 is also required.
- D. The applicant was granted a conditional use permit for a golf and beach club as a Commercial, Retail and Service Establishment-Class II on May 14, 2020.
- E. Included in the original request was an area designated for volleyball courts. The original concept depicted volleyball courts just to the north of the existing clubhouse.
- F. The map provided for the 2020 conditional use permit indicated two rectangular areas north of the existing clubhouse that according to correspondence from the applicant, were the subject volleyball courts. The two volleyball courts as proposed in 2020 conformed to required setbacks.
- G. After Planning Commission approval in 2020, the applicant chose to keep the existing clubhouse that was previously indicated would be removed. The applicant maintained the existing clubhouse in its current location and then changed the location, size and use of the volleyball courts.
- H. During correspondence between staff and the applicant's consultant and the applicant, the applicant began work on the court by constructing a foundation (structure) wall to enclose the volleyball courts and keep sand within the enclosure.
- I. It was also indicated by the applicant that the court size would allow for league volleyball tournaments where previously the courts were anticipated to be two courts much smaller in size.
- J. The increase in size and addition of the foundation enclosure was constructed without benefit of permit and is partially located within the shoreline setback.

Jenny Bourbonais reviewed staff facts and findings as follows:

- A. Official Controls:
 - 1. Zoning Ordinance 62, Article III, Section 3.2, requires a 75 foot shoreline setback on a DNR Classified General Development Lake. The applicant is requesting after-the-fact approval for 50 feet.
 - 2. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 - 3. 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. Through the Land Use Goals, Objectives and Implementation sections, the Land Use Plan is meant to provide ways of improving the variance process and encourages adherence to existing criteria to ultimately reduce the volume of variance applications received by the county.

B. Practical Difficulty:

1. There are no unique physical circumstances of the property.
2. The subject property conforms to the minimum zoning requirements for lot size and width.
3. A variance is not the only option as the original concept depicted volleyball courts just to the north of the existing clubhouse at a conforming location.
4. The property owner indicated several times during the administrative appeal hearing that the enclosure/structure foundation could meet the 75 foot required setback.
5. An alternative to the after-the-fact variance would be to remove the portion of the enclosure/structure foundation to meet the 75 foot required setback as indicated as possible by the property owner multiple times. The number of courts could also be reduced in order to meet the required setback.
6. Numerous renderings of site plans indicate the 75 foot shoreline setback for volleyball courts can be met in multiple locations.
7. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii, states:
 - a. "The plight of the landowner is due to circumstances unique to the property not created by the landowner."
 - b. "Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance."
8. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.vi, states:
 - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, section 394.27 subdivision 7 and all acts amendatory thereof.

C. Essential Character of the Locality:

1. The neighborhood consists of residential lakeshore homes and cabins. The Canosia Town Hall is located across Midway Road. The applicant was granted a conditional use permit for a golf and beach club as a Commercial, Retail and Service Establishments Use-Class II on May 14, 2020.

D. Other Factor:

1. The applicant has not met the burden of demonstrating practical difficulty to justify granting an after-the-fact variance for a nonconforming structure. Per St. Louis County Zoning Ordinance, Article VIII, Section 8.6 B(4)b.iv, absent a showing of practical difficulty as provided in Minnesota Statutes and Ordinance 62, the Board of Adjustment shall not approve any variance.

E. After-the-fact Considerations:

1. The construction was completed prior to applying for the after-the-fact variance.
2. February 23, 2021: Construction began on the volleyball court foundation enclosure along with the storage building. After further review of changes to the proposal, the storage building did not appear to reflect what was approved by permit. (Permit LU-003260)

3. March 9, 2021: St. Louis County received a summary of proposed changes and requested uses for the proposed property. As part of the request, a new site map was provided indicating the location of the volleyball courts. An email response was provided to the applicant stating that the volleyball courts would need to meet the shoreline setback as previously indicated in prior proposals.
 4. February-April 2021: The applicant was in contact with the Department on how to rectify the situation and proposed an after-the-fact variance. The Director determined that an after-the-fact variance was not allowed. The applicant was made aware of Ordinance requirements and confirmed that the requirements were not being met. Previously submitted plans met all Ordinance requirements.
 5. The property owner indicated several times during the administrative appeal hearing that the enclosure/structure could meet the 75 foot required setback.
 6. The construction led to the practical difficulty claimed by the landowner.
- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The county would benefit by enforcement of the Ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
 2. Approval of an after-the-fact variance for a foundation enclosure (structure) constructed without benefit of permit at a nonconforming location without sufficient practical difficulty is not keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

Jenny Bourbonais noted four items of correspondence, including a Town of Canosia resolution in support, Rob and Jennifer Sterling in support, Don Polo in opposition and Tom Slattengren in opposition. There was also a request for anonymous correspondence; the Board of Adjustment does not typically accept this type of correspondence. Other than the anonymous item, all correspondence was provided to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

Conditions that may mitigate the variance to allow a structure to be located at a 50-foot shoreline setback where a minimum 75 feet is required as proposed, include but are not limited to:

1. There shall be no further construction or land alterations within the shoreline setback or within the shore impact zone on the entire property.
2. The property owner shall submit all final plans to the St. Louis County Planning and Community Development Department for review prior to any construction and/or land alterations for all land use projects on the property to ensure all Ordinance requirements are met.
3. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
4. A plan to enhance vegetation and protect the shore impact zone shall be submitted and approved by the county prior to issuance of a land use permit.
5. All other local, county, state and federal regulations shall be met.

One member of a government agency spoke.

Kevin Connick, Canosia Town Board Supervisor, stated the Canosia Town Board meeting was July 7, 2021. Canosia Township is in full support of this project. He read through the documentation and the county continually refers to this as a structure. He has been on the site. This is not a structure. This will be a large sandbox that will be used as volleyball courts. It will be a wall that encloses a sandbox. The applicant has done positive work to enhance the area and will provide the community with recreational activities. Neither correspondent who replied against this variance had ever appeared at a township meeting where this project was discussed. This will be a wonderful place and it will provide opportunities for people old and young. This is just a wall for a big sandbox.

Roger Anderson, the applicant, stated he has studied Zoning Ordinance 62 to figure out what he could and could not do so as not to violate the rules. He has attended over 60 meetings with Canosia Township and with the Pike Lake Area Wastewater Collection System (PLAWCS) discussing this project. There is nothing in the Ordinance that addresses retaining walls. This would not be defined as a foundation as there is no structure above it. A structure is defined as anything 30 inches high placed or erected in a fixed location on the ground. He spoke with his engineer to determine if there was anything in the Ordinance that said he could or could not build a retaining wall within 50 feet of the shoreline. He has a brick crew that cannot be replaced. He is fully aware that they need to follow every rule. He knew he would need a permit for anything to fill behind the wall.

This property was vacant for five years before they acquired it. The shoreline eroded three feet at that location. The Department of Natural Resources (DNR) may give him a permit to fill it, but he would need to prove erosion. This is a shallow end of the lake and a strong west wind would help erode the shoreline.

He sent a letter to the Planning Department that asked if there would be anything in the Ordinance saying he could not build a retaining wall 50 feet from the shoreline. The response he got was to send a sketch or a photograph. He built the wall, and he sent a sketch. Since then, he asked what he was applying for an after-the-fact variance. There was nothing in the ordinance to indicate he did anything wrong.

At the administrative appeal hearing, he did say that he could tear the wall down. He explained why the volleyball courts were placed in the proposed location. The storage building has a 110-foot road centerline setback to Midway Road and a 48-foot setback to the township road leading to the public boat landing. While there is an alternative location for the volleyball courts, he would prefer to leave them where they are as they fit in with the location. It would be impossible to have a volleyball league without four volleyball courts. In addition, he would have to take down a tree that people get married beneath and there would be more green space available if the site was left as is.

Jenny Bourbonais stated that the determination was made that this is a structure and the structure did not meet a 75 foot shoreline setback.

No audience members spoke. *Jenny Bourbonais*, Acting Secretary, checked with each of the virtual attendees to see if they had any comments to add.

Dianne Anderson, the applicant's wife, stated she has nothing to add.

The Board of Adjustment discussed the following:

- A. Board member *Pollock* asked if the condition to enhance vegetation and protect the shore impact zone is about the beach. *Jenny Bourbonais* stated that the beach is only part of this. This is a large piece of property with more shoreline than just a beach. Board member *Pollock* added that this is about the shore impact zone beyond the beach and asked how large the beach is.
- B. Board member *Filipovich* brought up the Town of Canosia resolution having the applicant's home address, not the business address, although the parcel ID numbers were correct. He added there has been some confusion about this proposal. Most jurisdictions do not have permits for retaining walls.
- C. Board member *McKenzie* asked about the height of undisturbed earth beyond the concrete wall.
- D. Board member *Svatos* asked about the slope away from the concrete wall. *Jenny Bourbonais* stated that work was stopped and not completed because of the administrative appeal and the variance request.
- E. Board member *Pollock* asked about the plan where the beach volleyball would be located. *Jenny Bourbonais* stated that it would depend on the Board's decision today but there are likely plans for both. Board member *Pollock* stated that if the plan is beyond where the concrete wall is, there could be issues within the shore impact zone. *Jenny Bourbonais* stated this is where a land alteration permit would be required.
- F. Board member *McKenzie* asked if this could be tapered towards the shoreline. *Jenny Bourbonais* stated the applicant would need to work with staff to meet ordinance requirements on land alteration to make sure there is no erosion or other stormwater issues.
- G. Board member *Pollock* asked if everything inside the concrete wall would be volleyball courts.
- H. Board member *Svatos* asked why the applicant did not send a sketch, but instead built the wall and then submitted a sketch. *Roger Anderson* stated that on February 23, 2021, he had brick layers that were going to leave which was the reason he started construction.
- I. Board member *Skraba* asked if this is public land or private land. *Roger Anderson* stated this is private land that is open to the public. The property used to be the AAA golf club, which required membership and an access fee. This property has always been used for this general type of recreation.
- J. Board member *Skraba* asked if the beach is sand. *Roger Anderson* stated there used to be a sandy beach and it eroded. There is a grass beach.
- K. Board member *Pollock* asked what the future plan is coming up to the wall. *Roger Anderson* stated that they have not worked on this. There will be a stormwater retention pond. The property slopes gently. There will be a fence up on the wall. The sand will be filled in up to the edge of the event center, which overlooks the volleyball courts.
- L. Board member *McKenzie* asked why Benchmark Engineering's sketches had changed the shoreline setback between a 2020 site sketch and a 2021 site sketch? *Roger Anderson* stated that Benchmark Engineering added four volleyball courts at his request just to see what they would look like. However, volleyball courts could not be placed in front of the storage

units because there needs to be at least 100 feet in front of the storage units to park a boat. He had asked Benchmark Engineering to update the site map.

- M. Board member *Pollock* asked if shifting the storage units and the event center had been communicated back and forth with Planning Department staff. *Jenny Bourbonais* stated there was not great communication in regarding to changing plans and alterations. *Roger Anderson* added that no building plans are required with a land use permit. He shifted the storage building and made it smaller. *Jenny Bourbonais* clarified that the Department does not enforce the building code, but they do require site plans.
- N. Board member *McKenzie* asked how many Land Use Division staff members are available to answer questions. *Jenny Bourbonais* stated there are three Planners in the Duluth office and four, including herself, in the Virginia office.
- O. Board member *Pollock* stated this is an anomaly with staff saying that this is a structure and the applicant stating this sandbox is not. *Jenny Bourbonais* stated they might not come to an agreement on the definition, but the determination was made by staff with the Director in consultation with the St. Louis County Attorney's Office. There is connectivity with this because it is connected to the event center and is part of the overall complex.
- P. Board member *McKenzie* stated that Ordinance states anything more than 30 inches would be a structure. Based on the grade at the lower corner of the wall, it could easily be 30 inches as measured from undisturbed earth.
- Q. Board member *McKenzie* stated that during the May meeting, the applicant indicated he had made himself familiar with the Ordinance. There needs to be a practical difficulty to approve a variance. He asked what the practical difficulty/hardship is in this case. Board member *Skraba* added that financial hardship alone would not be enough. *Roger Anderson* stated the practical difficulty would be taking away the beach from the public.
- R. Board member *Pollock* stated that two courts could go next to the other two courts instead of all in a row. *Roger Anderson* stated there is a pavilion on the edge of the courts. They would not be able to do two volleyball courts side by side.
- S. Board member *Filipovich* added that having this use next to the boat landing, which is a busy spot that goes into the lake, is the least problematic.
- T. Board member *Pollock* stated this is a structure as defined. However, there is a situation where the applicant does not believe that this is a structure. The Board must vote on the decision on information before them at the present time.

DECISION

Motion by McKenzie/Pollock to deny an after-the-fact variance from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow a structure to be located at a reduced shoreline setback where a minimum 75 feet is required, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article III, Section 3.2, requires a 75 foot shoreline setback on a DNR Classified General Development Lake. The applicant is requesting after-the-fact approval for 50 feet.
2. The variance request is not in harmony with the general purpose and intent of official controls. The general purpose and intent of official controls preserve and protect the environment. Constructing any structure closer to the shoreline than allowed by Ordinance is in conflict with the official controls.

B. Practical Difficulty:

1. The applicant has a self-created practical difficulty in that he built a structure 28 feet closer to the shoreline than the conditional use permit allowed.
2. There are no unique physical circumstances of the property.
3. The applicant has not met the burden of demonstrating practical difficulty to justify granting an after-the-fact variance for a nonconforming structure. Per St. Louis County Zoning Ordinance, Article VIII, Section 8.6 B(4)b.iv, absent a showing of practical difficulty as provided in Minnesota Statutes and Ordinance 62, the Board of Adjustment shall not approve any variance.
4. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.vi, states:
 - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, section 394.27 subdivision 7 and all acts amendatory thereof.

C. Essential Character of the Locality:

1. This variance would not affect the essential character of the locality. The immediate area is heavily traveled.
2. The neighborhood consists of residential lakeshore homes and cabins. The Canosia Town Hall is located across Midway Road. The applicant was granted a conditional use permit for a golf and beach club as a Commercial, Retail and Service Establishments Use-Class II on May 14, 2020.

D. Other Factors:

1. The applicant has referred to the lakeside construction of a concrete block wall as a retaining wall or sand containment wall. The applicant said during the May 13, 2021, hearing that the wall was 30 inches high which would not qualify as a structure.
2. Staff images from April 2021 and May 10, 2021, clearly show a concrete block wall higher than 30 inches and fill has been piled up against it to a height even greater than the undisturbed area nearby and away from the wall in the direction of the lakeshore. Clearly visible are at least five rows of block on the southwest corner which is roughly 40 inches in height.
3. The applicant has indicated he could meet the 75 foot shoreline setback.

In Favor: McKenzie, Pollock, Svatos - 3

Opposed: Filipovich, Skraba - 2

Motion carries 3-2

Motion to adjourn by Svatos. The meeting was adjourned at 1:33 p.m.