MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD **TUESDAY JUNE 14, 2011,** NORTHLAND OFFICE CENTER, VIRGINIA, MN, 9:00 a.m. – 10:30 a.m.

Board of Adjustment members in attendance:

Diana Werschay – Chair
Tom Coombe
Steve Filipovich
Kelly Klun (at 9:15 a.m.)
David Peterson
David Pollock

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

NEW BUSINESS:

A. James Rowe, S30, T62N, R15W (Breitung).
B. Timothy Riley, S12, T63N, R13W (Morse).
C. John Moxness, S17, T66N, R19W (Camp Five).
D. Nicholas Berg, S26, T55N, R15W (unorganized).

OTHER BUSINESS:

A. **Motion by Coombe/Filipovich** to approve the minutes of the May 17, 2011 meeting.
In favor: Werschay, Coombe, Filipovich, Klun, Peterson, Pollock – 6
Opposed: None - 0 **Motion carried 6-0**

B. The board members received copies of proposed ordinance revisions with their packets. They were also handed copies of mitigation point worksheets for Burntside Lake, Fayal Township and Lake Vermilion at the meeting.

PUBLIC HEARING:

The first hearing item was for James Rowe, S30, T62N, R15W (Breitung) at 3461 NW 46th Street, Owatonna. *Tyler Lampella*, St. Louis County Planner, reviewed the staff report as follows:

A. In 2006, the Rowes applied for a variance which the Board of Adjustment denied without prejudice. The applicant was advised to work with Planning Department staff to maximize the road setback distance by relocating the road.
B. The road has since been relocated.
C. The Rowes have accomplished what was asked of them by the previous Board of Adjustment.
D. There has never been a road built in the platted road right-of-way.
E. The current request is for a 45 foot road centerline setback.

Donna O'Connor, Environmental Services, via report, stated that the Rowe dwelling is served by a 1,500 gallon holding tank installed on August 24, 2000 for a seasonal, one-bedroom cabin. In 2006, Environmental Health recommended denial of a permit to construct a new home on this lot served by only a holding tank. The only possible septic area on the lot has been eliminated by the road being moved. The Rowes have just renewed the Operating Permit on their holding tank.

Tyler Lampella reviewed staff's conclusions as follows:

1. The request of the applicant is substantial because the applicant is asking for variance(s) of a 45 foot road centerline setback where St. Louis County Ordinance 46 allows structures of this type to be no closer than 68 feet to the centerline.
2. The variance will not have an effect on government services for the following reasons: 1) the lot was developed with a dwelling prior to the construction of the new dwelling, 2) no additional services are required.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because there are several structures along Puncher Point road that do not meet road setback. The structure itself changes the character of the neighborhood as it is much larger than the typical house on Puncher Point.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: the only way to eliminate the need for a variance is to construct the road within the platted right-of-way and to vacate the existing road. The applicant has reduced the degree of the variance by moving the road approximately 20 feet farther from the house.
5. The practical difficulty occurred because the owner built the house too close to the road.
6. The construction was substantially completed between 2005 and 2006.
7. There are similar structures in the area; however, this large of a structure is not typical for the neighborhood.
8. The county would benefit by the enforcement of the ordinance if compliance were required because not placing structures at the proper setback is a safety issue. When large structures are too close to a road, visibility is reduced.
9. Staff does not know if the violation was intentional.

Tyler Lampella noted two items of correspondence from Robert C. Pearson in opposition to this variance request.

James Rowe, the applicant, stated that they went through proper procedures and approached the Breitung Town Board, attending three meetings. He stated he agrees with the correspondent, Mr. Pearson, when he stated that all landowners would benefit if the road were to be moved to where it was originally platted, rather than where it currently exists. He read the minutes and decision made by the Breitung Town Board, dated October 28, 2009.

The *Board of Adjustment* discussed the following:

A. Board member *Pollock* asked if Breitung Township is on board with what happened to the road. *Tyler Lampella* stated that they are aware of the road moving and are okay with it.

B. Board member *Filipovich* asked if the Rowes are aware of the conditions with the holding tank. *Tyler Lampella* stated that the Rowes are aware and that the issues have been resolved.
C. Board member *Coombe* stated that the concern with the road is not between the correspondent, Mr. Pearson, and the Board of Adjustment; but between the applicant and Breitung Township.

No audience members spoke on the proposal.

DECISION:
Motion by Coombe/Peterson, to approve the proposal for a 45 foot road centerline setback with staff recommendation and conclusions. The following conditions shall apply:

1. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved by the county, and shall be implemented by the property owner no later than July 30, 2011.
2. The required Lake Vermilion Plan mitigations points shall be implemented.

In favor: Werschay, Coombe, Filipovich, Klun, Peterson, Pollock – 6
Opposed: None - 0 **Motion carried 6-0**

The second hearing item was Timothy and Annette Riley, S12, T63N, R13W (Morse), at 4701 Norwood Street, Duluth. *Tyler Lampella*, St. Louis County Planner, reviewed the staff report as follows:

A. The proposed garage will be located 48 feet from the centerline of Passi Road and 135 feet from Burntside Lake.
B. There is very little suitable building area on the property due to the steep topography.
C. The proposed building site is located on the top of a bluff on level ground above the existing house.
D. The proposed garage will not impact the septic area.
E. There is still an issue with the boathouse, which is not a part of this variance request.
F. There is a public landing across the road from the property.

Donna O'Connor, Environmental Services, via report, stated that the Riley dwelling is served by a 1,000 gallon holding tank installed in 1994. The holding tank was installed though a variance 45 feet from the shoreline where 75 feet is required. Conditions of the 1985 variance included: (1) installation of water-saving features, and (2) the use was to remain seasonal. The holding tank is on an operating permit due for renewal on November 16, 2011. Two small areas for peat filter systems have been identified near the garage. The proposed garage will not impact these areas.

On June 13, 2011, per conversation with the applicant, Tim Riley, the owner stated he has not installed the water meter that is required with a holding tank operating permit and was notified of this on November 16, 2010. Environmental Services recommends that all conditions of the SSTS operating permit be met before any land use permits are issued.

Tyler Lampella reviewed staff's conclusions as follows:

1. The request of the applicant is substantial because the applicant is asking for variance(s) of 20 feet from the required road setback and 15 feet from the required lake setback.
2. The variance will not have an effect on government services for the following reasons: The variance is for a garage. The lot is already developed with a dwelling and boat house. No additional government services will be required.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the lot would be developed in a manner similar to other properties in the neighborhood.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: by constructing a garage that is no more than 800 square feet, the lake setback variance could be eliminated. Reducing the size of the garage would also increase the road setback.
5. The practical difficulty occurred because of the steep topography and the location where the road was constructed. The Passi Road cuts through the northern portion of the subject parcel. The size of the garage also adds to the difficulty.

STAFF RECOMMENDATION:

Based on the aforementioned findings of fact, staff makes the following recommendation. Approval of a garage that is less than 800 square feet would be appropriate for this parcel. The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The setback for the proposed structure shall be maximized to the greatest extent possible, and shall be no closer than 48 feet to the road centerline.
3. The required mitigations points shall be implemented.

Tyler Lampella noted no items of correspondence.

Timothy Riley, the applicant, stated that the doors on the boathouse are shed-style sliding doors that cover French-style doors and were an option listed in the boathouse standards. He stated that the boathouse is being used for boat storage. He stated that the 30 foot by 36 foot garage will fit on the level area and within the boundaries he has requested. There is a substantial amount of screening from the lake and the garage will not be an issue. He has spoken with a contractor to get a rail system installed and was informed because of the steep slope it would not be possible. His large boat is put into the lake from the public access across the road from his property. He presented the Board of Adjustment with several photos of his boat and boathouse.

No audience members spoke on the proposal.

The *Board of Adjustment* discussed the following:

A. Board member *Coombe* inquired about the holding tank; specifically, the water meter. *Mr. Riley* stated that he was not aware of the condition about the water meter. He added that he has records from the company that pumps the tank, but has no signed contract.

B. Board member *Pollock* asked who installed the holding tank. *Mr. Riley* stated the holding tank was installed in either 1978 or 1985 before he purchased the property and the peat filter was the most environmentally sensitive system.
C. Board member *Filipovich* asked the applicant about the larger garage than what staff recommends. *Mr. Riley* stated that the boat he wants to store is 9.5 feet tall and, with the trailer, 34 feet in length. He wants to accommodate the large boat as well as other outdoor equipment.
D. Board member *Pollock* asked if there are sleeping quarters in the boathouse. *Mr. Riley* stated that there are no sleeping quarters. *Pollock* asked what the outlet was for in the boathouse and *Mr. Riley* stated the outlet is for a clothes dryer.

MOTION:

Motion by Coombe/Peterson to approve the variance based on staff conclusions, and to allow a maximum of 1,080 square foot accessory building. The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The setback for the proposed structure shall be maximized to the greatest extent possible, and shall be no closer than 48 feet to the road centerline.
3. The required mitigations points shall be implemented.
4. A water meter shall be installed on the holding tank prior to any new permits being issued. All St. Louis County holding tank rules shall be followed and Mr. Riley shall be given a copy of all St. Louis County holding tank rules and they shall be followed or permits shall be null and void.

DISCUSSION ON THE MOTION:
Tyler Lampella stated that the condition regarding giving a copy of the holding tank rules to Mr. Riley places the responsibility of meeting the condition on staff, rather than on the applicant. Board member *Coombe* agreed.

Board member *Pollock* read from the staff report that 'no land use permit will be issued until the boathouse complies with requirements of Article VI, Section 13.04. He asked staff is anything needs to be done with the motion. Board member *Coombe* stated that compliance with boathouse rules is between staff and Mr. Riley.

A friendly amendment was then made and accepted to change condition number 4 to read as follows:

4. A water meter shall be installed on the holding tank prior to any new permits being issued. All St. Louis County holding tank rules shall be followed and the applicant shall make himself aware of all rules.

DECISION:
The motion with conditions 1, 2, 3, as stated above and the friendly amendment number 4 was approved as follows:

In favor: Werschay, Coombe, Filipovich, Peterson, Pollock – 5
Opposed: None – 0
Abstained: Klun - 1 **Motion carried 5-0-1**

The third hearing item was for John Moxness, S17, T66N, R19W (Camp Five), at 545 9th Street SW, Forest Lake. *Mark Lindhorst*, St. Louis County Planner, reviewed the staff report as follows:

A. The applicant is proposing to replace a dwelling that was destroyed by fire.
B. The old building site is located in a type 7 wetland.
C. Moving the structure back to 75 feet would allow the applicants to utilize existing fill and would place the structure out of the wetland.
D. The applicant would need to remove several trees, including those damaged by fire.
E. Because of the location of the septic system, the cabin will not meet the 100 foot lake setback.
F. There is good cedar screening to the lake.
G. The proposed cabin will be in line with neighboring cabins on either side of the property.

Donna O'Connor, Environmental Services, via report, stated that John and Carol Moxness have a permit to construct a septic system issued on May 3, 2011. The mound system will be on an operating permit as designed for very limited flow. Areas for the tanks, mound and replacement area have been designated.

Mark Lindhorst reviewed staff's conclusions as follows:

1. The request of the applicant is substantial because the applicant is asking variances from lot size of .49 acres and 125 feet of lot width and lakeshore setback of 75 feet. St. Louis County Ordinance 46 requires 1 acre and 150 feet and a shoreline setback of 100 feet.
2. The variance will not have an effect on government services for the following reasons: the lot is accessed off a public road and is serviced by a permitted septic system.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the use will not change from seasonal use which is what the majority of the neighboring properties are. Also, the structure will be moved out of the shore impact zone and in line with the neighboring cabins.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: lot size limits development without a variance. The structure was destroyed by fire requiring a variance to rebuild. In addition, the location of the new septic system limits lakeshore setback.
5. The practical difficulty occurred when the lot was created and the buildings were destroyed by fire.

Mark Lindhorst noted one item of correspondence from Andrew Aho, Mike Aho, Karl Aho, Jane Aho, Sara Lukkonen and Jo Emig in support of this variance request.

John Moxness, the applicant, stated that he has a platted lot and the acreage on the plat map reads that he has 0.53 acres. *Mary Anderson*, Planning and Development, stated that staff has to go by what the Auditor's records show for acreage.

The *Board of Adjustment* discussed the following:

A. Inquired if Mr. Moxness was made aware of the Wetland Conservation Act. *Mark Lindhorst* stated that the contractor should be made aware of this. There are wetland issues to deal with if the applicant wants to fill more than what was filled before.
B. Board member *Coombe* asked if state statute would work with a structure burning down. *Mark Lindhorst* stated that the structure is larger than the original and there will be a septic system on the property.
C. Board member Filipovich asked when the fire was. *Mr. Moxness* stated March 17, 2011.

No audience members spoke regarding the proposal.

DECISION:
Motion by Coombe/Peterson, to approve the proposal for a principal structure located 75 feet from the shoreline based on staff's conclusions. The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The requirements of the Minnesota Wetland Conservation Act shall be followed.
3. Demolition debris from the destroyed structures shall be disposed of in a manner acceptable to the St. Louis County Environmental Services department.

In favor: Werschay, Coombe, Filipovich, Klun, Peterson, Pollock – 6
Opposed: None - 0 **Motion carried 6-0**

The fourth hearing item was for Nicholas Berg, S26, T55N, R15W (unorganized), at 4963 Comstock Lake Road, Cotton. *Mark Lindhorst*, St. Louis County Planner, reviewed the staff report as follows:

A. The request is to allow a garage five feet from the property line where ten feet is required. The side property line is at an angle.
B. The structure will be 150 feet from the lake.
C. The garage is limited in location because of where the septic area and replacement area are located.
D. If the garage was less than 800 square feet, the garage only needs to meet the 100 foot lake setback, but at that location there is little screening to the lake.

Ed Kerzinski, Environmental Services, via report, stated that permit 4745 was issued on September 23, 1999. The permit was issued for a 100 lineal feet of standard three foot wide trench addition to an existing drain field. The system consists of a total of 950 lineal feet of

standard three foot wide trench with a 2,000 gallon septic tank serving a five bedroom dwelling. A compliance inspection was performed on the system on October 7, 2005. The system was found to be non-conforming due to less than three feet of required vertical separation distance from drain field bottom to seasonally-saturated soils. System expansion area was identified near the existing drain field.

Amanda Jenny, the applicant's representative, asked the Board if there were questions and stated she had nothing to add.

Mark Lindhorst reviewed staff's conclusions as follows:

1. The request of the applicant is not substantial because the applicant is asking for variance of 5 feet from the side yard where 10 feet is required. The garage will meet all other setbacks and will be in line with his existing house.
2. The variance will not have an effect on government services for the following reasons: the parcel is accessed off a public road and is serviced by a private septic system.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because neighboring properties have buildings that currently do not meet setback requirements.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: the applicant could build a smaller garage; however, the garage will be placed 150 feet from the lake and there is no development on the neighbor's property that will be affected by reduced setback.
5. The practical difficulty occurred when the lot was developed.

Mark Lindhorst noted no items of correspondence.

Board member *Coombe* asked if the applicant will correct the issue with the septic. *Ms. Jenny* stated that when they redo the septic system and build the mound system, that will correct the issue.

Mark Lindhorst stated that typically when an oversized accessory building is allowed closer to the side lot line than 20 feet, staff recommends that a stormwater runoff prevention plan is included in the conditions; however, in this case because the property is topographically flat in the location of the proposed garage and there are no structures close by, staff did not include that recommendation in the proposed conditions. Should a problem arise with stormwater runoff, the applicant will have to address the issue at that time, per Ordinance 46 requirements.

No audience members spoke regarding the proposal.

DECISION:
Motion by Werschay/Peterson, to approve the proposal for an accessory structure with a reduced side yard setback based on staff's conclusions. The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. 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. The plan shall be implemented by the property owner no later than August 31, 2011.

In favor: Werschay, Coombe, Filipovich, Klun, Peterson, Pollock – 6
Opposed: None - 0 **Motion carried 6-0**