

**CHISAGO COUNTY
BOARD OF ADJUSTMENT
OFFICIAL PROCEEDINGS
October 28, 2021**

The Chisago County Board of Adjustment met in regular session at 7:00 p.m. on Thursday, October 28, 2021 in County Board Room of the Chisago County Government Center.

Staff Present: Beth Thorp, Land Services Coordinator; Patty Perreault, Office Manager; and, Diane Sander, Land Services & Parks Specialist.

Chair Strand called the meeting to order and led the assembly in the Pledge of Allegiance. A roll call of Board members was then taken. Board members present: Becky Strand, Doug Greene, Chip Yeager, John Sutcliffe and Gregg Carlson. A quorum was established with members present.

APPROVAL OF AGENDA – Motion to approve the agenda by John Sutcliffe. Second by Gregg Carlson. Roll call vote was taken and motion carried unanimously.

APPROVAL OF MINUTES – Chip Yeager identified a spelling correction to the September 30, 2021 meeting minutes, by changing que to queue. Motion by Gregg Carlson to approve the corrected September 30, 2021 minutes. Second by Chip Yeager. Roll call vote was taken and motion carried unanimously.

RECEIPT OF MATERIALS AND SUBMITTALS INTO THE RECORD – Motion by Chip Yeager to receive all applications, submittals, reports and other materials into the record by reference. Second by Doug Greene. Roll call vote was taken and motion carried unanimously. Meeting materials distributed in advance to the Board of Adjustment and Appeals for their review included the Public Hearing Staff Reports with Attachments. Copies of all correspondence, meeting materials, and Staff Reports were made available at the entrance to the hearing room and for electronic distribution.

PUBLIC HEARING

Denise Hibben – Jay Peterson, American Energy LLC, on behalf of property owner Denise Hibben are requesting a variance to allow an Accessory Solar Energy System to be closer to the centerline of a county road than the required setback of 135 feet (ft). The property is located at 17539 Pleasant Valley Road, Franconia Township; S. 17, T. 39, R. 19, (PID# 04.00187.70). Coordinator Thorp presented background information on the Hibben application. The property is 5 acres and located in the Agricultural (AG) Zoning District. The proposal is to install a 16kW (40 module) ground-mounted solar photovoltaic (PV) array for residential use. The Zoning Ordinance states that a system which is accessory to the principal use (single family dwelling) and designed to supply energy solely for the principal use shall be classified as Accessory Solar Energy Systems. These systems are considered a permitted use in the AG District, subject to minimum standards such as setbacks and height. The proposed array is situated at an angle to Pleasant Valley Road/County Road 26, with the east end of the array being 65 ft from the centerline and the west end of the array being 117 ft from the centerline. Franconia Township met on October 12, 2021 and recommended approval with a comment that the Board would like to see the solar array farther back from the County Road. Technical Review was held on October 14, 2021 and there were no impacts or concerns identified.

Mr. Peterson, Ms. Hibben and Mr. Carlson were present at the hearing and available to address questions and concerns. Mr. Peterson provided a brief review of the site with regards to productivity and efficiency of the solar

panels. Mr. Peterson requested flexibility of 10 – 20 ft for the array location, explaining that problems may arise with anchor hardware hitting subsurface rocks during installation. John Sutcliffe inquired if trees could be trimmed to lessen the variance request and Chip Yeager asked clarifying questions on the shading analysis provided by Mr. Peterson.

Gregg Carlson discussed repositioning the array and removing some trees to reduce shade impact on the array. Mr. Peterson reviewed the optimal array location, topography, and anchoring in low wet areas on the parcel. Doug Greene supported trimming or removing some trees. Chair Strand opened the public hearing and sought comment. No one was present to testify on the matter.

With no additional person wishing to speak, ***motion*** by Chip Yeager to close the public hearing. Second by John Sutcliffe. Roll call vote was taken and motion carried unanimously. Each board member was asked for additional questions and comments.

Motion by John Sutcliffe to adopt Resolution No. BOAA2021-1001, a resolution approving a Variance to allow the installation of an Accessory Solar Energy System with the east end of the array being no closer than 65 ft and the west end of the array being no closer than 97 ft from the centerline of County Road 26 on property located at 17539 Pleasant Valley Road (PID#04.00187.70) in Franconia Township. Second by Chip Yeager. Roll call vote was taken and motion carried unanimously.

Old Business

Joseph Stein – The Board of Adjustment and Appeals conducted a public hearing on September 30, 2021 to consider Mr. Stein's request for variance to be exempted from the 300 feet of road frontage required for platted lots in the Agricultural Zoning District. The Board tabled the request in order to review additional information pertaining to a Conditional Use Permit (CUP) granted in 2015 allowing a Community Solar Garden on the subject property. The property is located at 495 Herberg Road, Shafer Township; S. 35, T. 34, R. 19, (PID# 08.00370.10). Coordinator Thorp explained that the 2015 CUP was granted for the entire 43.88-acre parcel, as is common practice for land use requests, and not just the ground on which the solar array is located. Coordinator Thorp explained that if the land were to be platted, it would require that the property owner obtain a CUP Amendment in order to reassign the CUP to a smaller area of land. Staff recommended denial of the variance based on findings that the request was inconsistent with the intent and goals of the Chisago County Zoning Ordinance and Comprehensive Plan. Mr. Stein was available to address questions and concerns. Mr. Stein provided a brief overview of his hardship and motivation to assist a young family building a home. A robust discussion followed on the CUP Amendment process, the County's updated solar ordinance setback requirements, easement documentation, and the platting process. Chair Strand sought for any new or additional information.

Angie Houman – 11939 Stacy Trail, identified herself as the potential buyer and recapped her support of granting approval of the request.

With no one else wishing to speak, motion by Chip Yeager to close the statement period. Second by Gregg Carlson. Roll call vote was taken and motion carried unanimously. Each board member was asked for additional questions and comments. ***Motion*** by Chip Yeager to adopt Resolution No. BOAA2021-1002, a resolution denying a Variance allowing 30 ft of road frontage, or the use of an access easement in lieu of road frontage, for the creation of a new lot, rather than the required 300 ft of road frontage as required by the Chisago County Zoning Ordinance, for property located at 495 Herberg Road (PID#08.00370.10) in Shafer Township based on the following Findings of Fact:

1. The Variance application, as presented, is not consistent with the Chisago County Zoning Ordinance and Comprehensive Plan. The minimum road frontage requirement for new lots in the Agricultural District has not been met, and the property is currently being utilized in a reasonable and practical manner (Community Solar Garden).
2. The Variance application is based largely upon economic circumstance / gain. The applicant wishes to sell the proposed 13.78-acre parcel for a new home site.
3. The Variance application, as presented, does not meet the threshold for practical difficulty as required by MN Statute 397.27 and Chisago County Zoning Ordinance Section 8.06, D. due to the self-created hardship. The self-created hardship was established by prior development decisions made by the current property owners.
4. The current property owners have entered into or caused existing development of the subject property to obstruct road frontage required for the creation of a second parcel.

Second by Becky Strand. Discussion followed on clarification of denial of the variance and CUP Amendment process. Doug Greene commented that Mr. Stein could sell the entire parcel to the potential buyer. Board members restated the CUP Amendment process and uncertainty of an outcome with current solar array setbacks. The motion was approved 3-1-1 with a roll call vote. Ayes: Yeager, Sutcliffe, and Strand. Nays: Carlson. Abstained: Greene.

Larry and Barb Emmerich – Mr. and Mrs. Emmerich have requested a variance to build a detached accessory structure closer to the road and side yard than the required setbacks and exceeding the maximum allowable impervious surface coverage. The property is located at 1410 Brunswick Road, Fish Lake Township; S. 22, T. 36, R. 22, (PID# 03.00296.00). Coordinator Thorp indicated staff was not able to provide a recommendation at this time and had requested that the applicant provide additional information to determine if the construction site is located in a bluff or bluff impact zone. The variance request will be further considered by the Board when sufficient information is available. The extended review period expires on December 27, 2021.

Miscellaneous

Keith Johnson

At the September 30, 2021 Board of Adjustment meeting, a motion was made and passed approving the Keith Johnson/Gordian Energy Systems variance request concerning roadway setbacks on PID# 09.00303.10. In review of the record materials and action of the Board, the County Attorney's office has advised the approval to be formally affirmed to clarify the recorded act. **Motion** by John Sutcliffe to adopt Resolution No. BOAA2021-901, a resolution approving a variance to allow the construction of a Community Solar Garden closer to the centerlines of County Roads 11 and 9 (375th St. / Oasis Rd.) than allowed by the Chisago County Zoning Ordinance on property located at 12737 375th Street in Sunrise Township. Second by Gregg Carlson. The motion was approved 4-1 with a roll call vote. Ayes: Greene, Carlson, Sutcliffe, and Strand. Nays: Yeager.

Motion by Gregg Carlson to adjourn. Second by John Sutcliffe. Roll call vote was taken and motion carried unanimously. With no further business the meeting was adjourned at 8:02 p.m.