

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
March 31, 2022**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, March 31, 2022 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator and Diane Sander, Land Services & Parks Specialist.

Chair Yeager 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: Doug Greene, Becky Strand, John Sutcliffe, Chip Yeager and Gregg Carlson. A quorum was established with all members present.

APPROVAL OF AGENDA – Motion to approve the agenda by John Sutcliffe, second by Becky Strand. The motion passed and carried unanimously.

APPROVAL OF MINUTES – Motion to approve the January 27, 2022 meeting minutes by Gregg Carlson, second by John Sutcliffe. The motion passed and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECORD – Motion by Becky Strand to receive all applications, submittals, reports, and other materials into the record by reference, second by Doug Greene. Motion carried unanimously. Meeting materials distributed in advance to the Board of Adjustment and Appeals for their review included: public hearing staff reports with attachments. Copies of all correspondence and meeting materials were made available at the entrance to the hearing room and for electronic distribution.

PUBLIC HEARINGS – NEW APPLICATIONS

David Pary – Pary was present at the hearing to request a 15' side yard setback Variance to construct a 28' x 40' accessory structure 5' from the southeasterly property boundary where the minimum required side yard setback is 20'. The property is zoned Agricultural (AG) District and located at 16860 244th Road, Franconia Township, S31, T33, R19 (PID# 04.00595.01).

Coordinator Gervais presented background information on the Pary application. Pary constructed a single family home on the 2.66-acre parcel in 2021 in the Falcon Ridge subdivision. The subdivision was platted in 2003. When the subdivision was initially proposed, the Planning Commission spent several meetings in 2003 discussing the unique topography and challenges associated with development (steep slopes, drainage, erosion). The topography of the subject site varies drastically, with elevations as low as 819' on the western boundary to elevations as high as 873' in the northwesterly corner. The subject site also includes a drainage easement measuring 15' x 118.57' in the northcentral portion of the parcel. Due to location of the septic system, well, drainage easement and topography, Gervais stated that it's staff's opinion that the proposal to locate the accessory structure near the southeasterly property boundary is a reasonable request. Franconia Township recommended approval on March 16, 2022 with no conditions. Technical review was held on March 9, 2022 and no concerns were identified.

Pary was present and available to address questions and concerns. Pary confirmed there is really no other area to place the building. Chair Yeager sought public comment; no one was present to testify on the matter. With no additional person wishing to speak, **motion** by Gregg Carlson to close the public hearing, second by Becky

Strand. The motion passed and carried unanimously. Each board member was asked for additional questions and comments. John Sutcliffe inquired about the secondary septic site location. Pary provided location details. **Motion** by John Sutcliffe to approve Resolution BOAA2022-0301, a resolution approving a Variance allowing a reduced side yard setback on property located at 16860 244th Road (PID# 04.00595.01) in Franconia Township, with Findings of Fact and conditions as presented, second by Doug Greene. The motion passed and carried unanimously.

Approved Conditions:

1. This approval grants a 15' Variance to the side yard setback requirement (southeasterly property boundary only) allowing the accessory structure to be no closer than 5' from the property boundary. The structure shall comply with all other setback requirements.
2. The accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received February 24, 2022. Any deviation from the approved request and site plan shall require review and approval from the Board of Adjustment and Appeals at the property owner's expense.
3. The property owner shall obtain a building permit prior to construction and, further, the accessory structure shall comply with all applicable codes and regulations.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Minnesota Holding Company LLC – Mr. and Mrs. Kolde were present at the hearing to request a Variance to the Ordinary High Water Level (OHWL) setback requirement for the construction of a dwelling addition and deck at 1650 Goose Lake Lane, Fish Lake Township, S3, T36, R22 (PID# 03.01144.00).

Coordinator Gervais presented background information on the Kolde application. Minnesota Holding Company LLC, property owner, and James Kolde, owner/applicant, wish to expand an existing non-conforming structure by constructing an addition approximately 68.9' from the Goose Lake OHWL and constructing a deck approximately 60.9' from the OHWL where the minimum required setback is 75'. Ultimately, the property owner and applicant are requesting an approximate 14.1' Variance to the OHWL setback requirement.

The lot is located on the north side of Goose Lake Narrows in the Goose Lake Pass subdivision, platted in 1957. The site includes an existing dwelling and two accessory structures. The dates of construction are unknown; however, all existing structure sizes comply with the Zoning Ordinance. The applicant has provided a survey, dated prepared February 9, 2022, showing that the existing dwelling is located as close as 69.1' from the OHWL. The applicant's narrative explains and the building plans show that intent to "square off" the existing dwelling at the northeast corner to create space for an additional bedroom and bathroom and add 8' to the west side to expand the kitchen and living room. The north wall of the dwelling, as proposed, will not extend any closer to the OHWL than it does currently. The applicant also wishes to construct an 8' x 46' deck. The proposed deck would be located approximately 60.9' from the OHWL.

Fish Lake Township recommended approval on March 14, 2022 with no conditions. Technical review was held on March 9, 2022 and two concerns were discussed: size of the existing septic system and location of site in relation to Goose Lake. The County Sanitarian indicated the existing septic system is designed for two bedrooms and the addition of a third bedroom will require that the system to be expanded. The committee discussed the possibility of bluff or bluff impact zone conditions and was satisfied after reviewing topography that no bluff or bluff impact zone conditions apply to the site. For this particular request the applicant is not proposing to exceed the impervious surface coverage limit. Coordinator Gervais reviewed Shoreland Management Ordinance

Section 5.92 Deck Additions to Nonconforming Structures, explaining that a deck addition not meeting the required setback from the OHWL may be allowed on a structure which does not meet the setback, without a Variance, if all three criterion and standards have been met. Staff indicates the deck meets two criterion and suggested that the Board determine, during the course of the public hearing, if the third criterion has been met. During the Variance analysis, staff did indicate that the applicants did not establish practical difficulties for their Variance request. Gervais explained that practical difficulties is a legal standard that the County must apply when considering applications for Variances. It is a three-factor test, including: reasonableness, uniqueness, and essential character.

Mr. and Mrs. Kolde were present and available to address questions and concerns. Chair Yeager inquired about the construction materials proposed for the deck, in order to determine if the third criterion could be satisfied to be exempt from a Variance for the deck addition. Mr. Kolde indicated the decking materials would be wood and the deck would not be roofed or screened. Gregg Carlson asked Coordinator Gervais if composite materials could be used. Coordinator Gervais indicated the ordinance states, "The deck is constructed primarily of wood, and is not roofed or screened.", and her opinion is that the deck must be constructed of wood – rather than composite materials – in order to be exempt from a Variance. However, an inquiry on composite materials could be made with the building inspector, if necessary. Mr. Kolde indicated the deck would be constructed of wood. The Board indicated satisfaction that all three criteria were met and a Variance was not needed for the construction of the 8' x 46' deck. John Sutcliffe asked about the septic system and if there was additional room for expansion. Mr. Kolde indicated there was adequate room for an additional tank once a tree was removed. Gregg Carlson asked staff to expand on the three-factor test for considering Variance applications in regard to uniqueness. Coordinator Gervais reviewed different considerations that included: elevation, tree preservation, bodies of water, or something unique to the parcel that was not found on other parcels within the same zoning district. Gervais explained that, in the past, the Board has used pre-existing development as a "uniqueness" factor, adding that some may consider purchasing a property "as is" is not a practical difficulty and the owners created their own hardship by purchasing a property that does not meet their standard of living. A different consideration/point of view is that the practical difficulty was created by the house being constructed prior to the County's adoption of Zoning and Subdivision Ordinances. Gregg Carlson asked when the house was built; Gervais stated that the parcel was platted in 1957 and estimated that construction occurred in the 1960's. Gregg Carlson indicated that the house being constructed prior to adoption of zoning and subdivision regulations established pre-existing development as a practical difficulty, adding that he supported the applicants desire to square off the house so long as the addition would not encroach any closer toward the lake.

Chair Yeager sought public comment; no one was present to testify on the matter. With no additional person wishing to speak, ***motion*** by John Sutcliffe to close the public hearing, second by Gregg Carlson. The motion passed and carried unanimously. Each board member was asked for additional questions and comments. Gregg Carlson suggested a minor text correction to condition #2, changing "accessory structure" to "dwelling addition". ***Motion*** by Gregg Carlson to approve Resolution BOAA2022-0302, a resolution approving a Variance allowing a reduced ordinary high water level (OHWL) setback on property located at 1650 Goose Lake Lane (PID# 03.01144.00) in Fish Lake Township, with Findings of Fact and conditions as modified, second by John Sutcliffe. The motion passed and carried unanimously.

Approved Conditions:

1. This approval grants a 6.1' Variance to the OHWL setback requirement allowing the property owner and applicant to construct a dwelling addition 68.9' from the OHWL in a manner that the north wall of the addition will be flush with the existing north wall. The structure shall comply with all other setback requirements.

2. The dwelling addition shall be constructed in general conformance with the applicant's written narrative dated received March 1, 2022 and building plans dated received February 28, 2022. Any deviation from the approved request shall require review and approval from the Board of Adjustment and Appeals at the property owner's expense.
3. The property owner shall obtain a building permit prior to construction and, further, the dwelling addition shall comply with all applicable codes and regulations.
4. The dwelling addition as proposed includes the addition of a third bedroom. Being that the existing septic system is designed for two bedrooms, the property owner shall submit a new septic design for County approval and install the system as part of the proposed dwelling expansion.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

NEW BUSINESS

Brad Nelson – Nelson was present at the hearing to request a one year extension of a Variance allowing a dwelling addition 68 feet from the OHWL at 13380 322nd Street, Chisago Lake Township, S22, T36, R22 (PID# 02.01316.26). Coordinator Gervais reviewed the March 8, 2022 communication from Nelson, explaining delays with architect and engineering availability, delays in receiving estimates from suppliers and subcontractors, increased costs for labor and materials and ongoing supply chain issues have compounded in completing the final construction plan.

Gregg Carlson inquired if all other aspects of the application and previous Variance approval will remain the same; Gervais stated that there were no changes proposed to the Variance and Nelson would be subject to all previously approved conditions. **Motion** by Becky Strand to approve the Variance extension as requested, making the Variance valid until March 25, 2023 at 13380 322nd Street (PID#02.01316.26), second by John Sutcliffe. The motion passed and carried unanimously.

ADJOURN MEETING – **Motion** by Doug Greene to adjourn, second by Gregg Carlson. The motion passed and carried unanimously. With no further business the meeting was adjourned at 7:29 p.m.