

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
December 29, 2022**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, December 29, 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: Chip Yeager, Doug Greene, Gregg Carlson, John Sutcliffe, and Becky Strand. Absent: None. A quorum was established with all members present.

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

APPROVAL OF MINUTES – Motion to approve the September 29, 2022 meeting minutes as presented by Gregg Carlson; second by Doug Greene. The motion passed and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECORD – Motion to receive all applications, submittals, reports, and other materials into the record by Becky Strand; second by John Sutcliffe. The motion passed and carried unanimously. Meeting materials distributed in advance to the Board of Adjustment and Appeals for their review included: 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

Todd & Julie Dosch, Brandon Dosch and Tyler Sherden – Property owners Todd & Julie Dosch, Brandon Dosch and Tyler Sherden requested Variances to Subdivision Ordinance Section 1.06 and Zoning Ordinance Sections 4.08.2 and 5.15 in order to split a platted lot into two parcels without having it replatted; allow construction on both proposed parcels which encroaches on required roadway and rear yard setbacks; and, to exceed the maximum amount of accessory storage space. The .95-acre property is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 51109 Rush Lake Way, Nessel Township, S14, T37, R22 (PID# 06.01172.00).

Coordinator Gervais presented background information on the Dosch / Sherden application, explaining that the property owners were proposing to develop the .95-acre property located at 51109 Rush Lake Way and were requesting nine Variances to the Subdivision and Zoning Ordinances, including:

- Variance #1 - allowing the split of a legal non-conforming platted lot into two parcels without being required to replat the property.
- Variances #2 & #3 - to exceed the maximum amount of accessory storage space in the Rural Residential I (RRI) District.
 - o (#2) A 553.62 sf Variance for the northern proposed parcel allowing for a total of 2,100 sf of accessory storage space, including a 2,100 sf detached accessory structure

- o (#3) A 455.4 sf Variance for the southern proposed parcel allowing for a total of 1,980 sf of accessory storage space, including a 1,260 sf (30' x 42') attached garage and 720 sf (24' x 30') detached accessory structure
- Variances #4 - #9 Setback Variances for the northern proposed parcel.
 - o (#4) A 30' township road Variance allowing the structure to be 10' from township Right-of-Way (north).
 - o (#5) A 27' township road Variance allowing the structure to be 13' from township Right-of-Way (west).
 - o (#6) A 15' Variance allowing the structure to be 10' from rear property boundary (south).
 - o (#7) A 19' county road Variance allowing the structure to be 116' from the centerline of Rush Lake Trail / CSAH 1 (east).
- Variances #8 - #9 Setback Variances for the southern proposed parcel.
 - o (#8) A 19' county road Variance allowing the structures to be 116' from the centerline of Rush Lake Trail / CSAH 1 (east).
 - o (#9) A 25' township road Variance allowing the structures to be 15' from township Right-of-Way (west).

The property is currently zoned Rural Residential I (RRI) District / Shoreland Management District. The property, not being located immediately adjacent to Rush Lake, is considered a non-riparian lot and is therefore subject to the RRI District dimensional requirements. The property was platted as Lois Acres in 1978 and was part of the former Petersons Rush Lake Resort. Since 1978, the property has changed ownership multiple times as well as the use / intentions for development. In 2019, all existing campground structures were demolished and the site was re-established as a vacant lot. In August 2020, the Board of Adjustment and Appeals approved two setback Variances to allow a dwelling to be no closer than 14' to township Right-of-Way (west side only) and no closer than 116' to the centerline of a county road (east) where the minimum setbacks were 40' and 135' respectively. The property was sold in July 2021 without the property being developed or utilization of the approved setback Variances. The property is part of the Shorewood Park Sanitary District and the site will connect to a community septic system; therefore, it is considered a sewered lot with an individual well to be installed for water services.

The parcel is bordered by a public road and public Right-of-Way on three sides, including Rush Lake Trail / CSAH 1 to the east and unimproved township Right-of-Way to the north and west. Access to the parcel and neighboring properties is gained by a private road, Rush Lake Way, which is located immediately west of the township Right-of-Way. It is staff's understanding that the township wishes to maintain the public Right-of-Way for utility and/or other purposes. Any new structures adjacent to the township Right-of-Way are subject to a 40' setback and there are no setback requirements from the private road.

Since all setback and accessory storage space Variance requests for the northern proposed parcel are contingent on approval of the proposed Variance for subdivision, staff suggested that the Board first consider the Variance request to split the property without being required to replat. If the request to split the property is approved, the Board should then consider all other Variance requests specific to the northern proposed parcel and the Variance request for accessory storage space for the southern proposed parcel. The setback Variance requests for the southern proposed parcel could be considered independently as the proposed split will not impact the proposed setbacks.

The Nessel Town Board recommended approval on December 13, 2022 with no conditions. The Technical Review Committee met on December 14, 2022 with Todd Dosch and neighboring property owner Craig Wilson. Discussion covered the multiple Variance requests, staff's belief that the property can be developed for residential purposes without need for Variance, that State mandated practical difficulties standard, and

proposed development of the Wilsons' lakeshore property (PID 06.00280.04) based on the outcome of the current request for Variances.

Chair Yeager asked each board member for additional questions and comments. Todd Dosch and Craig Wilson were present and available to address questions and concerns. T. Dosch questioned and clarified the road name of Rush Lake Way (private road) and Erin Avenue (platted right-of-Way) and related setbacks. Discussion was held on required setbacks from the platted Right-of-Way and private road.

Chair Yeager sought public comment.

Craig Wilson – xxx Rush Lake Way, Nessel Township. I am the neighbor that has planned to build on the northern portion of the property if the Board allows the split. Todd has worked very hard to make sure the proposal is everything we requested. My intent is to build the house on the parcel located by the lake and build a detached garage on the parcel across the road (proposed northern portion of the request) at the same time.

With no other members of the audience wishing to speak, ***motion*** to close the public hearing by Gregg Carlson; second by Becky Strand. The motion passed and carried unanimously.

Each Board member was asked for additional questions and comments. Gregg Carlson asked C. Wilson if he understood the concerns of the proposal and exceeding the maximum amount of accessory storage space. C. Wilson acknowledged staff concerns, indicated he would also need a Variance if constructing any accessory storage space on his lakeshore property, and indicated that he would like to build how other neighbors have done. Coordinator Gervais indicated the Board had approved a similar Variance to split a lot for Truskolaski and Schellbachs (immediately south of the subject site). In that scenario, each property owner had to combine the new parcel with their nonconforming lake lot to bring the nonconforming lake lot closer to compliance. Gregg Carlson pointed out that C. Wilson had reduced his options for accessory storage on the lake lot, if the Variance was approved. C. Wilson indicated he had delayed finalizing the house plans until this process was finished and acknowledged that he would not be able to build the accessory structure until the house was started. Wilson indicated he was planning on a similar project as others had done in the neighborhood and acknowledged the need for a separate Variance to exceed the maximum amount of accessory storage space on his lake lot. Coordinator Gervais explained that Zoning Ordinance Section 4.08.2, F. states, "...RRI district shall not exceed one thousand (1,000) square feet or five (5) percent of the total lot area, whichever is greater, but in no case shall the building exceed a maximum of two thousand (2,000) square feet...", adding that if the Board does not approve the property split, she anticipated without reviewing the parcel information, that the lake lot would be restricted to 1,000 square feet of accessory storage space. Discussion and clarification continued on the regulations pertaining to accessory storage space. Gervais restated that the August 2020 Variances approved for the subject site allowed a dwelling to be no closer than 14' to township Right-of-Way (west side only) and no closer than 116' to the centerline of a county road (east) and were consistent with T. Dosch's southern proposed parcel setback Variance requests. Gervais stated that the property is challenging but can be developed; however, the applicants are creating their own need for several of the Variances by proposing the subdivision. Gervais concluded that the intent to help a neighbor is great, but in itself does not satisfy the State mandated practical difficulties standard.

Discussion was held on the ramifications of denial for the split of a legal non-conforming platted lot into two parcels. T. Dosch indicated there were a variety of reasons for splitting the property, including: neighbors had done similar projects, he wanted to help C. Wilson to have a detached storage building, and the lot is intended for his retirement home and he does not want to maintain an acre of land. C. Wilson indicated the lake lot would have his retirement home which has restrictions on for building. T. Dosch and C. Wilson stated that the

proposed development would enhance the neighborhood instead of creating an eye sore. Discussion continued on the proposed property split and how it would create a larger nonconforming issue and criteria to support denial.

Motion by Becky Strand to deny the Variance to split the lot and all setback and accessory storage space Variances related to the northern proposed parcel (Variances #1 - #7); second by Gregg Carlson. The motion passed and carried unanimously.

T. Dosch questioned if he could retain the proposed setbacks for the northern portion of the property since the Board did not support the property split. John Sutcliffe questioned if the remaining Variance requests could be tabled to provide the applicant time to adjust his request due to the motion of denial. Coordinator Gervais indicated any adjustment to the request would need to be readvertised since it would be considered a new request for different setbacks due to the change in parcel size (keeping original lot size of .95-acre). T. Dosch indicated the dynamics have changed with the denial of the property split and he would like to consider changing the location of the proposed dwelling on the lot. Coordinator Gervais understood Dosch's intent; however, she commented that the parcel has room to be developed in compliance with required setbacks without the need for reduced setbacks on the northern end of the site. Gervais added that the request was based on personal preference, which does not satisfy the State mandated practical difficulties standard. Coordinator Gervais indicated a new request could be submitted, and the process would include a new public hearing notice and meetings with the Township and Board of Adjustment and Appeals. T. Dosch indicated he may adjust the house location with the idea of keeping an area for an accessory structure and adjust the future pool location. Discussion followed on the need for Variances to be granted when there are difficulties with parcels / situations complying with County Zoning regulations and the belief that Dosch's proposed development is based on personal preference.

Motion by Gregg Carlson to approve Resolution No. BOAA2022-1201, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, denying certain Variances to Subdivision Ordinance Section 1.06 and Zoning Ordinance Sections 4.08.2 and 5.15 and approving certain Variances to Zoning Ordinance Section 5.15 for property located at 51109 Rush Lake Way (PID 06.01172.00) in Nessel Township, with Findings of Fact and conditions as amended; second by John Sutcliffe. The motion passed and carried unanimously.

Approved Conditions:

1. This approval grants the following Variances and the subject site shall otherwise be developed in accordance with all applicable land use controls:
 - a. A 19' Variance allowing structures to be no closer than 116' to the centerline of Rush Lake Trail / CSAH 1 (east side only).
 - b. A 25' Variance allowing structures to be no closer than 15' to the undeveloped Township Right-of-Way platted as Erin Avenue (west side only).
2. The property owner shall obtain a building permit prior to construction of any structure requiring a building permit and, further, the structure(s) shall comply with all applicable codes and regulations except as permitted by this Variance.
3. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Motion by Becky Strand to base the Findings of Fact for the approved setback Variances (described in condition no. 1 above) on Findings of Fact established by the Board of Adjustment and Appeals for the subject site in 2020; second by Gregg Carlson. The motion passed and carried unanimously.

OLD BUSINESS - None

NEW BUSINESS - None

MISCELLANEOUS

2023 Meeting Schedule – Coordinator Gervais reported that staff had prepared a draft 2023 meeting schedule with regular meetings held on the last Thursday of the month and tours on the Wednesday prior to regular meetings. Gervais added that the draft schedule also included application deadline dates. **Motion** by Gregg Carlson; second by Doug Greene to adopt the 2023 Board of Adjustment and Appeals Meeting Schedule as presented. The motion passed and carried unanimously.

Coordinator Gervais indicated that Assistant County Attorney Fuge would provide a legal opinion pertaining to the Board's ability to negotiate Variance requests at the January 26, 2023 meeting. Discussion followed on the Board's ability to table requests or work with applicants on amended requests.

ADJOURN MEETING – **Motion** to adjourn by Gregg Carlson; second by Becky Strand. The motion passed and carried unanimously. With no further business the meeting was adjourned at 8:14 p.m.