



Chisago County, MN
BOARD OF ADJUSTMENT AND APPEALS
Meeting Agenda
April 27, 2023 | 7:00 pm

Chisago County Government Center | 313 N. Main Street | Center City, MN 55012

Tour Time and Date: Wednesday, April 26, 2023 at 8:15 am
Departing Chisago County Highway Department, 31325 Oasis Road, Center City, MN

- 1. Call to Order – Pledge of Allegiance**
- 2. Roll Call: Determination of a Quorum**
- 3. Approval of Agenda**
- 4. Approval of Minutes**
 - a. March 30, 2023
- 5. Receive all Materials and Submittals into Record**

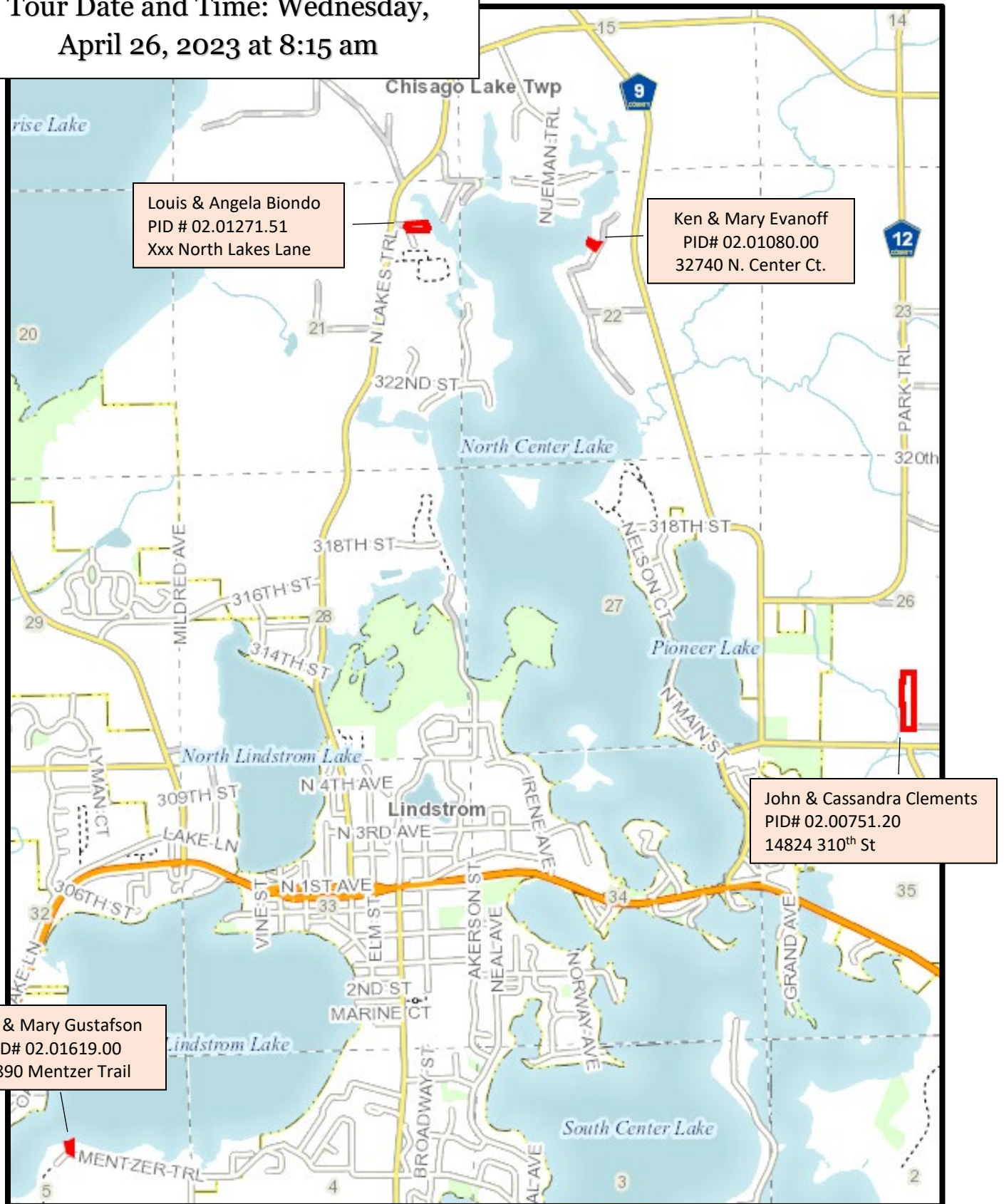
Previously Distributed Materials:

 - a. Meeting packet including staff reports with attachments for agenda item(s) 6a, 6b, 6c and 6d
- 6. Public Hearings – New Applications**
 - a. **Max & Mary Gustafson** – Property owners Max & Mary Gustafson are requesting Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a legal non-conforming structure which is closer to the Ordinary High Water Level (OHWL) than required, to allow the placement of a detached accessory structure closer to the OHWL than required, and to exceed the maximum allowable amount of impervious surface coverage. The .25-acre property, platted as Lot 8, South Beach, is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 11890 Mentzer Trail, Chisago Lake Township, S5, T33, R20 (PID 02.01619.00).
 - b. **Kenneth & Mary Evanoff** – Property owners Kenneth & Mary Evanoff are requesting Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21 in order to expand a legal non-conforming structure which is closer to the Ordinary High Water Level (OHWL) than required. The .21-acre property, platted as Lot 10, Chi-Gak-Wa Shores, is located at 32740 N. Center Court, Chisago Lake Township, S22, T34, R20 (PID 02.01080.00).
 - c. **John & Cassandra Clements** – Applicants John & Cassandra Clements are requesting a Variance to Zoning Ordinance Section 4.08.2 in order to exceed the maximum allowable amount of accessory storage space. The 4.90-acre property is zoned Rural Residential II (RRII) District and located at 14824 310th Street, Chisago Lake Township, S26, T34, R20 (PID 02.00751.20).
 - d. **Louis & Angela Biondo** – Property owners Louis & Angela Biondo are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to construct a dwelling with attached garage closer to the township Right-of-Way and Top of Bluff than required and to install a septic system closer to the Top of Bluff than required. The 1.09-acre property, platted as Lot 2, Block 1, Hillcrest Estates, is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 13xxx North Lakes Lane, Chisago Lake Township, S21, T34, R20 (PID 02.01271.51).
- 7. Public Hearings – Continued Hearings**

None
- 8. Old Business**
- 9. New Business**
- 10. Miscellaneous**
- 11. Adjourn Meeting**

The next meeting is scheduled for Thursday, May 25, 2023 at 7:00 pm.

Tour Date and Time: Wednesday,
April 26, 2023 at 8:15 am



**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
March 30, 2023 - DRAFT**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, March 30, 2023 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator; and, Diane Sander, Support Specialist.

Chair Carlson 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 Chip Yeager. The motion passed and carried unanimously.

APPROVAL OF MINUTES – Motion to approve the January 26, 2023 meeting minutes as presented by Chip Yeager; 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 & Appeals for their review included: staff report 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 – None

PUBLIC HEARINGS – CONTINUED HEARINGS – None

OLD BUSINESS – None

NEW BUSINESS

Brad & Tessa Nelson – Coordinator Gervais provided background information on Brad & Tessa Nelson's second Variance extension request for property located at 13380 322nd Street in Chisago Lake Township (PID 02.01316.26), explaining that the Nelsons requested and received a Variance in March 2021 allowing them to build an addition onto the rear of their house closer to the OHWL than allowed by the Shoreland Management Ordinance. As was customary with all Variance approvals, the property owners were required to make use of the Variance within one year of approval in order to keep the approval valid. Gervais explained that Zoning Ordinance Section 8.06 I. stated that "any Variance approved but not utilized within twelve (12) months of the date of approval may become null and void, unless the applicant requests a one year extension in writing, prior to the one year anniversary date of approval, and states a valid reason for non-use of the Variance." The Nelsons submitted a written request for extension, dated received March 8, 2022, for which the Board granted approval on March 31, 2022. The extension expired on March 25, 2023 (two years from original date of approval). On February 28, 2023, prior to the expiration of the one-year extension, the Nelsons submitted a second written request for

extension of their original Variance approval.

Coordinator Gervais explained that because Zoning Ordinance Section 8.06, I. was not entirely clear on how many requests for extension may be considered for a single Variance approval, staff allowed submission of the Nelson's second request. However, following submission of the request and upon closer review of Section 8.06, I., staff found that the Board could interpret ".... prior to the *one* year anniversary date of approval," as an indication that only one extension could be considered being that any further extension requests would be submitted beyond the "one year anniversary" timeframe. Staff requested that the Board consider the Nelson's current request for extension and, additionally, provide clarification to staff on Zoning Ordinance Section 8.06, I. for future similar requests. Gervais concluded by reviewing staff's recommendation, options available to the Board, and action requested of the Board.

Chair Carlson invited the applicant to address the Board. Brad Nelson, property owner, stepped forward. Mr. Nelson stated reasons for the previous and current extension requests. Sutcliffe inquired if the Nelsons intended to construct the proposed addition in 2023. Nelson responded to the affirmative, stating he was planning to obtain the building permit before the Variance extension, if granted, expired. Carlson commented that, if granted, the Nelsons must obtain a building permit within one year. Nelson commented that if they didn't obtain the building permit within one year, they would not request another extension. The Board discussed the Nelson's request.

Motion by Chip Yeager to adopt Resolution No. BOAA2023-0301, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving the second extension of a Variance allowing a reduced OHWL setback on property located at 13380 322nd Street in Chisago Lake Township, as presented; second by John Sutcliffe. The motion passed and carried unanimously.

Coordinator Gervais then requested that the Board provide clarification on how the Zoning Ordinance read regarding the number of extensions allowed on a single Variance approval. The Board discussed various circumstances which would be out of the control of property owners and would warrant providing more than one extension, and the possibility of Amending the Zoning Ordinance to provide more clarity. Gervais commented that the Planning Commission was in the process of updating the Zoning Ordinance and any recommended Amendment could be incorporated into the Ordinance update.

Motion by Becky Strand; second by Chip Yeager to recommend that Zoning Ordinance Section 8.06, I. be Amended as follows:

- I. Reapplication for the same or substantially same variance shall not be accepted within six (6) months of denial by the Board of Adjustment and Appeals. Any variance approved but not utilized within twelve (12) months of the date of approval ~~may shall~~ become null and void, unless the applicant requests ~~a one year extension in writing, prior to the one year anniversary date of approval~~ an extension in writing prior to the expiration, and states a valid reason for non-use of the variance.

The motion passed and carried unanimously.

MISCELLANEOUS –

Planning Commission and Board of Adjustment and Appeals Policy on Commission / Board Structure, Meeting Order and General Procedure (County Board Resolution No. 23/0215-5) - Coordinator Gervais provided the Board with a copy of the policy which was adopted by the Board of Commissioners on

February 15, 2023, commenting that the adopted policy incorporated all of the suggested changes provided by the Board of Adjustment and Appeals and Planning Commission.

ADJOURN MEETING – *Motion* to adjourn by Chip Yeager; second by John Sutcliffe. The motion passed and carried unanimously. With no further business the meeting was adjourned at 7:42 p.m.

Gregg Carlson
Chair

ATTEST: _____

Beth Gervais
Land Services Coordinator

DRAFT



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variances to Expand a Legal Non-Conforming Structure, to Encroach on the Required OHWL Setback, and to Exceed the Maximum Allowable Amount of Impervious Surface Coverage
 11890 Mentzer Trail, Chisago Lake Township
 DATE: April 27, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a legal non-conforming structure which is closer to the Ordinary High Water Level (OHWL) than required, to allow the placement of a detached accessory structure closer to the OHWL than required, and to exceed the maximum allowable amount of impervious surface coverage.

SITE & APPLICATION INFORMATION

Applicant(s):	Max & Mary Gustafson
Property Owner(s):	Max & Mary Gustafson
Property Address:	11890 Mentzer Trail Chisago Lake Township
General Location:	Section 5, Township 33, Range 20
PID:	02.01619.00
Property Area:	.25± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	South Lindstrom Lake
South:	Rural Residential I (RRI) District / Shoreland Management District
East:	Rural Residential I (RRI) District / Shoreland Management District
West:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	March 20, 2023
Date Application Complete:	March 30, 2023
60-Day Review Period:	May 29, 2023



BACKGROUND

Property owners Max & Mary Gustafson are proposing to expand their existing dwelling by constructing a 32' x 11'6" (368 sf) addition onto their legal non-conforming dwelling and replacing an existing 10' x 12' (120 sf) detached accessory structure with a 6' x 8' (48 sf) detached accessory structure. The existing dwelling, proposed addition, existing detached accessory structure and proposed replacement accessory structure are all located closer to the OHWL than required by the Chisago County Shoreland

Management Ordinance. Additionally, the property owners are proposing to reduce the existing amount of impervious surface coverage from 28.6% to 27%, bringing it closer to the required maximum allowable amount of 25% but still exceeding the maximum allowable amount by 2%.

The requested Variances include:

- A Variance allowing the expansion of a legal non-conforming structure by constructing a 368 sf addition;
- A Variance to allow the existing dwelling and proposed addition to encroach on the required OHWL setback;
- A Variance to allow a 48 sf detached accessory structure to encroach on the required OHWL setback; and
- A Variance to allow more than 25% impervious surface coverage.

SITE ANALYSIS

The .25-acre subject site is zoned Rural Residential I (RRI) / Shoreland Management District and located on the south side of South Lindstrom Lake. Properties to the west, east and south are similarly zoned. Topography of the site includes fairly level elevations ranging from 903' near the south property boundary / roadway to 898' near the shore of South Lindstrom Lake (the OHWL is 900.2'). Neighboring properties are similarly sized and have been developed with seasonal cabins / dwellings and related accessory structures.

The applicants report that the subject site is currently developed with an 888 sf dwelling , 10' x 12' (120 sf) detached accessory structure, and 22' x 23' (506 sf) detached accessory structure (garage). The existing and proposed detached accessory structures – both the total number of structures and the total amount of accessory storage space – comply with the Zoning Ordinance.

PROPOSAL ANALYSIS

As stated above, the applicants are requesting four Variances to the Zoning and Shoreland Management Ordinances as follows:

- A Variance allowing the expansion of a legal non-conforming structure by constructing a 368 sf addition.
 - The exact age of the dwelling is unknown; however, the property was platted in 1952 and it's presumed that the dwelling was constructed prior to 1970 when the County adopted its first Zoning Ordinance and Subdivision Ordinance and 1971 when the County adopted its first Shoreland Management Ordinance. As a legal non-conforming use, expansion is prohibited unless approved by Variance.
 - The attached written narrative explains that the proposed addition will allow space for a full-size washer and dryer, serve as a mud room, allow space for the addition of a ½ bathroom, and allow space for more storage.
- A Variance to allow the existing dwelling and proposed addition to encroach on the required OHWL setback.
 - Based on the attached site plan and the County's GIS Viewer, the existing dwelling appears to be situated 16' from the OHWL of South Lindstrom Lake where the required setback is 75'. The addition is proposed to be constructed on the west side of the dwelling, located 28' from the OHWL.

- A Variance to allow a detached accessory structure to encroach on the required OHWL setback.
 - The site currently has a 10' x 12' (120 sf) detached accessory structure located near the west property boundary and the property owners are proposing to replace this structure with a 6' x 8' (48 sf) detached accessory structure. The site plan shows that the existing detached accessory structure is located 50' from the OHWL and the property owners are proposing to place the replacement structure in generally the same location. Again, the required OHWL setback is 75'.
 - The site plan shows that the proposed replacement structure will meet all other required setbacks, including the side yard setback of 5' (west property boundary).
- A Variance to allow more than 25% impervious surface coverage.
 - The property owners have reported – via the attached impervious surface calculations worksheets – an existing amount of impervious surface at 28.6%, which exceeds the maximum allowable amount of 25%. By placing the proposed addition on an area that is already impervious and through replacement of the existing detached accessory structure, the property owners are proposing to reduce the overall amount of impervious surface from 28.6% to 27%, bringing it closer to compliance.

The written narrative addresses the State mandated practical difficulties standard by offering the following:

- The existing dwelling was built in the 1950s, before the County's adoption of official land use controls. In other words, the property owners are citing "pre-existing development" as a practical difficulty.
- The property owners have tried to find other options for the proposed expansion; however, location of the septic system presents challenges.
- The proposed dwelling addition "would not overwhelm or distract from [the] neighbors, but rather freshen the look and perhaps add some value to [the] lakeside community in a respectful and tasteful way".

REVIEW PROCESS

The Technical Review Committee met with property owner Mary Gustafson on April 12, 2023. The group discussed the various Variance requests, but no concerns were identified. Staff acknowledged that the proposed addition would bring the dwelling size into compliance and the project will bring the amount of impervious surface closer to compliance.

The Chisago Lake Town Board considered the request on April 18, 2023 and recommended approval with the condition that structures are no closer to the lake than current conditions. The Town Board also noted that the property owners are "taking out concrete – will be less after construction".

The state mandated 60-day review period expires on May 29, 2023.

VARIANCE ANALYSIS

A Variance to the provisions of the Zoning Ordinance may be issued to provide relief to the landowner in those cases where the application of the strict letter of the Ordinance imposes particular hardship or practical difficulties to the property owner in the use of the land. No Variance may be granted that would allow any use that is prohibited in the zoning district in which the property is located. A Variance may be granted only in the event that the following circumstances exist. Staff has provided notes (shown in *italics*) for each of the circumstances for the Board's consideration.

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control;

The written narrative alludes to pre-existing development as an exceptional or extraordinary circumstance. The property owners have had no control over this circumstance.

2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;

Literal interpretation of the Zoning Ordinance would not deprive the applicants of rights commonly enjoyed by other Rural Residential I (RRI) District / Shoreland Management District properties. Properties in the Rural Residential I (RRI) District / Shoreland Management District have the right to be developed for single family dwelling purposes, in addition to other uses identified by the Zoning Ordinance, and the subject site is presently developed with a single family dwelling and related detached accessory structures.

3. That the special conditions or circumstances do not result from the actions of the owner(s) or under previous owner(s) under the current law;

Neither the applicants nor the previous owner(s) created the special circumstances of pre-existing development. The subject site was platted in 1952 and it's presumed that the dwelling was constructed prior to 1970 when the County adopted its first Zoning Ordinance and Subdivision Ordinance and 1971 when the County adopted its first Shoreland Management Ordinance.

4. That granting the Variance requested will not result in allowing a use otherwise not permitted in the same district;

All proposed uses, including a dwelling addition and detached accessory structure, are permitted uses in the Rural Residential I (RRI) District / Shoreland Management District; therefore, none of the proposed Variances would be considered use Variances.

5. The Variance requested is the minimum Variance which would alleviate the hardship;

The application materials cite pre-existing development as a practical difficulty. There is no feasible way to expand the existing dwelling in a manner that meets all setback requirements. However, an important consideration is that the property owners are not proposing to exacerbate existing non-conformities. In fact, the proposed addition will have a greater setback from OHWL than the existing dwelling and the overall amount of impervious surface is proposed to be reduced.

6. The Variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone;

Staff does not believe that the Variances, if approved, would be detrimental to the purposes or intent of the Zoning Ordinance or to other properties in the Rural Residential I (RRI) District / Shoreland Management District. The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. Further, the County has granted similar Variances in the distant and recent past.

7. Economic conditions or circumstances alone shall not be considered in the granting of a Variance request if a reasonable use of the property exists under the terms of this Ordinance; and

The applicants did not cite economic conditions as a practical difficulty.

8. In the Flood Plain District, no Variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by State law.

While a portion of the subject site is located in a flood zone, the proposed dwelling addition and replacement accessory structure will be located outside of the flood zone.

The Board is tasked with determining whether or not a “practical difficulty” exists prohibiting the property owner from using the land in a manner consistent with the Zoning Ordinance. Minnesota Statute 394.27 offers the following guidance:

*The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a **reasonable** manner not permitted by an official control; the plight of the landowner is due to circumstances **unique** to the property not created by the landowner; and the variance, if granted, will not alter the **essential character** of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.*

As indicated above, “practical difficulties” is a legal standard that the County must apply when considering applications for Variances. It’s a three-factor test, including: reasonableness, uniqueness, and essential character. In order to constitute practical difficulties, all three factors of the test must be satisfied. Descriptions of the three factors are offered below for the Board’s consideration:

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the Variance. For example, if the Variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the Variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

3. Essential Character

The third factor is that the Variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the Variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

FINDINGS OF FACT

Zoning Ordinance Section 8.06 Variances, E. states that in considering all requests for a Variance, the Board of Adjustment and Appeals shall make certain Findings of Fact. Staff has provided proposed findings, shown in *italics* below, for the Board's consideration.

Criteria #1	The proposed action will not impair an adequate supply of light and air to adjacent property;
<i>Finding #1</i>	<i>Given that the proposed dwelling addition and replacement accessory structure will meet all required setbacks with the exception of the OHWL setback, the County finds that the proposed action will not impair supply of light or air to adjacent properties.</i>
Criteria #2	The proposed action will not unreasonably increase the congestion in the public right-of-way;
<i>Finding #2</i>	<i>The County finds that the proposed use of the property has not changed and should therefore not increase the amount of traffic generated at the subject site.</i>
Criteria #3	The proposed action will not increase the danger of fire or endanger the public safety;
<i>Finding #3</i>	<i>The property owners will be required to obtain building permits prior to construction of the proposed dwelling addition, and it will, therefore, be constructed in compliance with all applicable building and fire codes. Being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.</i>
Criteria #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties;
<i>Finding #4</i>	<i>Being that the subject site is currently developed with a single family dwelling and related detached accessory structures and the proposed action will not change how the property is being used or encroach on side yard setbacks / neighboring properties, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.</i>
Criteria #5	The proposed action will not cause an unreasonable strain upon existing facilities and services;
<i>Finding #5</i>	<i>The proposed action will not change the use of the subject site; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.</i>
Criteria #6	The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
<i>Finding #6</i>	<i>The proposed action will not change the use of the subject site; therefore, the County finds that there will be no negative fiscal impact upon the County or school district.</i>

- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The subject site is zoned Rural Residential I (RRI) District and Zoning Ordinance Section 5.08 allows dwellings as a permitted use in the RRI District. The Zoning Ordinance and Shoreland Management Ordinance do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance and satisfies the three-factor test of uniqueness, reasonableness and essential character.*

STAFF RECOMMENDATION

Staff believes that the requested Variances are reasonable based on the following considerations:

- The property and existing dwelling constitute pre-existing development for which the property owners had no control.
- The proposed addition will not encroach on roadway or side yard setbacks and will not exacerbate the OHWL setback encroachment.
- The proposed addition will bring the dwelling size into compliance with the Zoning Ordinance.
- The replacement accessory structure will not encroach on roadway or side yard setbacks and will not exacerbate the OHWL setback encroachment.
- The project will bring the overall amount of impervious surface closer to compliance with the Shoreland Management Ordinance.

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff supports the request for Variances** with recommended Findings of Fact (see above) and conditions (see below) and has prepared a resolution for the Board's consideration.

Recommended condition(s):

1. This approval grants the following Variances:
 - a. A 47' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling addition to be no closer than 28' from the OHWL of South Lindstrom Lake. The addition shall comply with all other required setbacks.
 - b. A 25' Variance to the OHWL setback requirement allowing the proposed detached accessory structure to be no closer than 50' from the OHWL of South Lindstrom Lake. The structure shall not be located any closer to the OHWL of South Lindstrom Lake than the existing 10' x 12' detached accessory structure which its replacing. The structure shall comply with all other setback requirements.
 - c. A 2% Variance to the impervious surface coverage requirement allowing the total amount of impervious surface to be no greater than 27%.
2. The sizes and locations of the dwelling addition and detached accessory structure shall be in general conformance with the application materials, including site plan, dated received March 20, 2023. Any significant deviation from the approved request and site plan, as determined by Department of Environmental Services staff, shall require further 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 of the dwelling addition and, further, the addition 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.

OPTIONS

1. **Approve** the Variances based on the Findings of Fact and conditions as presented or amended.
2. **Deny** the Variances based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
 - a. The request for Variances, as presented, is not consistent with the Chisago County Zoning Ordinance due to _____.
 - b. The proposed Variances will have a negative impact to surrounding properties due to _____.
 - c. The request for Variances, as presented, does not meet the threshold for “practical difficulty” as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.
3. **Table** action to allow for further review and consideration. The current review period expires on May 29, 2023, allowing the Board to continue its review at the May 25, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0401, a resolution approving Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a legal non-conforming structure which is closer to the OHWL than required, to allow the placement of a detached accessory structure closer to the OHWL than required, and to exceed the maximum allowable amount of impervious surface coverage on property located at 11890 Mentzer Trail in Chisago Lake Township, as presented or amended.

If the Board chooses to deny the request for Variances, staff will prepare a revised resolution based on the Findings of Fact established by the Board.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plan
 - d. Impervious surface calculations (existing and proposed)
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0401

CC: Max & Mary Gustafson, property owners
County file

Permit #

23-00239

PLANNING ADMINISTRATIVE FORM

Chisago County Department of Environmental Services

Recording Fee

\$46-

Base Fee

\$500-

Wetland or Septic Fees

Plat Compliance Fee

TOTAL FEE

\$546-

Street Location

11890 Mentzer Trl

Tax Parcel #

02.01619.00

Legal Description

Chisago Lakes, sec 05, Twp 033E, Range 020

E-Mail Address:

Owner:

Max and Mary Gustafson

Day Phone

Address

11890 Mentzer Trl LINDSTROM, MN 55045

Applicant (if other than owner)

Same

Day Phone

Address

LOT 8, SOUTH BEACH

Type of Request:

Variance

☒

S5, T33, R20 Preliminary Plat

Administrative Appeal

☐

Administrative Permit

☐

Conditional Use Permit

☐

Ordinance Amendment

☐

Interim Use Permit

☐

Rezoning

☐

Applicable section of ordinance:

Shoreline setback and exceed impervious surface coverage.

Description of request:

Add 32' x 11'6" (368 sq. ft) to existing (888 sq ft)

home. Replace existing 10' x 12' shed with smaller 6' x 8' shed within existing footprint and no closer to high water mark than current shed.

If Variance Application, Brief

Description of Practical

Difficulty

See Attachment 1

Signature of Applicant

Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

3-20-23

Date Received

3-30-23

Date Complete

5-29-23

60 120 Day Review Period

Date of Public Hearing:

APRIL 27, 2023

PLANNING ADMINISTRATIVE FORM-Attachment 1

Brief Description of Practical Difficulty:

First, I would like to preface this with the acknowledgement that we believe in the ordinances that preserve our land, lakes and air. As long-time farmers in Chisago County, it behooves us to be stewards of the environment and have implemented many soil conservation practices on our farms and water conservation improvements that mitigate run-off from farmland into the lakes.

The variance we are pursuing here is for our *primary residence* on **11890 Mentzer Trl, Lindstrom, tax parcel # 02.01619.00 (South Lindstrom Lake)**.

We purchased our home on South Lindstrom Lake a little less than 2 years ago. It is an 888 sq. ft, 2-bedroom, 1 bath home. What we are asking to do is to extend a portion of the existing home out 11 feet, 6 inches to allow us to have room to put in a full-size washer and dryer; have a space to drop our dirty (lots of manure) farm clothes after working with the cattle, and give us a bit more bathroom and storage. We believe this request to be reasonable as the total addition would be no more than 368 sq. ft. with the final structure not to exceed 1,257 sq. ft.

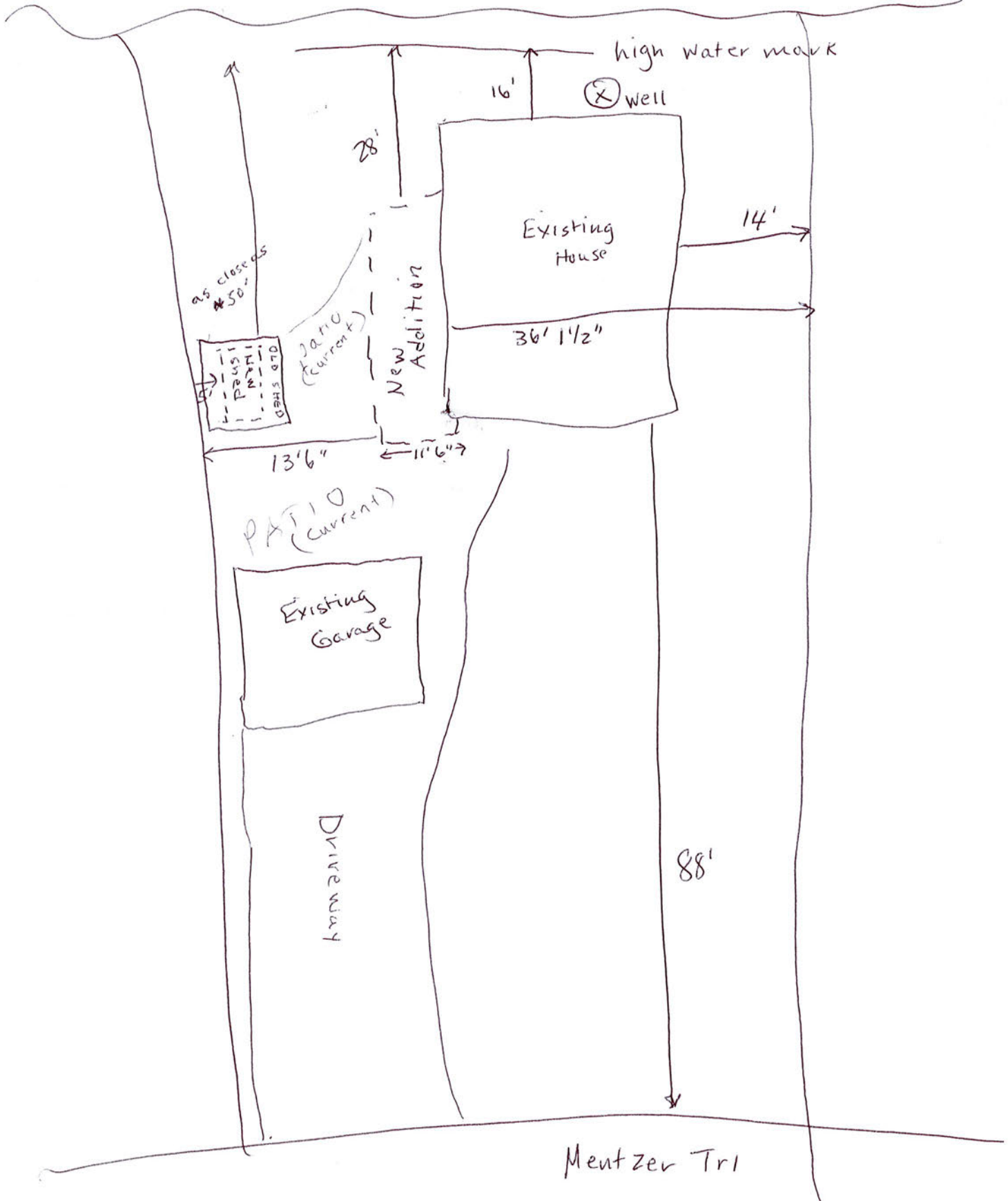
Our home was built in the early 1950's, before the set-back ordinances were in place, and therefore we are in the unique position of having to work with the existing structure as it stands in the location it was built-16 feet from the high-water line. The addition would be on the west side of the house starting 12 feet in from the north-west corner of the house. We have tried to think of any other configuration but due to location of septic system, this is the most logical and cost-effective solution.

The location of the proposed addition would be in an area that *is already paved over* with concrete patio. Because we will be taking out all that concrete and the 10' x 12' shed (replacing with a smaller 6' x 8' shed) ***it would actually decrease the amount of impervious surface already existing on the property.***

Lastly, we love the "essential character" of our neighborhood- a quiet little street with quaint smaller homes. We are not seeking to add a structure that would overwhelm or distract from our neighbors, but rather to freshen the look and perhaps add some value to our lakeside community in a respectful and tasteful way.

We thank you for your consideration.

So Lindstrom Lake



IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

acres:	square feet per acre:	Total area of parcel in square feet
0.25	x 43,560	= 10,890

OR

Total area of parcel
in square feet

Impervious surface coverage of shoreland lots/parcels are limited to 25%. Impervious surface includes, but is not limited to decks, driveways (concrete, asphalt, or gravel), sidewalks (boardwalks, concrete, rock, landscape block, etc.), plastic-lined landscaping and structures. Anything located upon, within or above the ground that would prohibit water from percolating into the soils below and create an increased rate of runoff than the natural landscaping.

IMPERVIOUS SURFACE CALCULATION

Residential structures:	length X width	=	square foot of structure
(example)	(20 x 40)	=	(800)
dwelling	22'-1 1/2" x 40'-2"	=	888 sq ft
garage	22 x 23	=	506
deck	N/A	=	—
patio	19 x 22' + 15' x 28'	=	420 + 418 = 838 sq ft
sidewalk	23 x 3	=	63
driveway	22 x 32	=	704
other; list:			
Shed	10 x 12	=	120
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3,119 sq ft

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:			
		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:			
		=	
		=	
TOTAL OTHER ITEMS			

Calculate:

Total from "Residential Structures": _____ +
 Total from "Agricultural Structures": _____ +
 Total from "Other Items": _____ +
Total square footage of coverage: 3,119 =
 (divide by total area of parcel, above) 10,890 /

signature _____

date _____

corresponding permit number _____

TOTAL IMPERVIOUS SURFACE 28.6 %

Existing

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

acres:	square feet per acre:	Total area of parcel in square feet
0.25	43,560	= 10,890

OR	Total area of parcel in square feet
-----------	-------------------------------------

Impervious surface coverage of shoreland lots/parcels are limited to 25%. Impervious surface includes, but is not limited to decks, driveways (concrete, asphalt, or gravel), sidewalks (boardwalks, concrete, rock, landscape block, etc.), plastic-lined landscaping and structures. Anything located upon, within or above the ground that would prohibit water from percolating into the soils below and create an increased rate of runoff than the natural landscaping.

IMPERVIOUS SURFACE CALCULATION

Residential structures:	length X width	=	square foot of structure
(example)	(20 x 40)	=	(800)
dwelling		=	1,256.7 sqft
garage	22 x 23	=	506
deck	N/A	=	—
patio		=	365.5
sidewalk		=	6.3
driveway	22 x 32	=	704
other; list:		=	
Shed	6 x 8	=	48
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2,943.2

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:		=	
		=	
TOTAL OTHER ITEMS			

Calculate:

Total from "Residential Structures":	_____	+
Total from "Agricultural Structures":	_____	+
Total from "Other Items":	_____	+
Total square footage of coverage:	2943.2	=
(divide by total area of parcel, above)	10,890	/
		=
TOTAL IMPERVIOUS SURFACE	27	%

signature _____

date _____ corresponding permit number _____

proposed (1.6% less than existing)

Max & Mary Gustafson - Aerial Photo

Property owners Max & Mary Gustafson are requesting Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a legal non-conforming structure which is closer to the Ordinary High Water Level (OHWL) than required, to allow the placement of a detached accessory structure closer to the OHWL than required, and to exceed the maximum allowable amount of impervious surface coverage. The .25-acre property, platted as Lot 8, South Beach, is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 11890 Mentzer Trail, Chisago Lake Township, S5, T33, R20 (PID 02.01619.00).

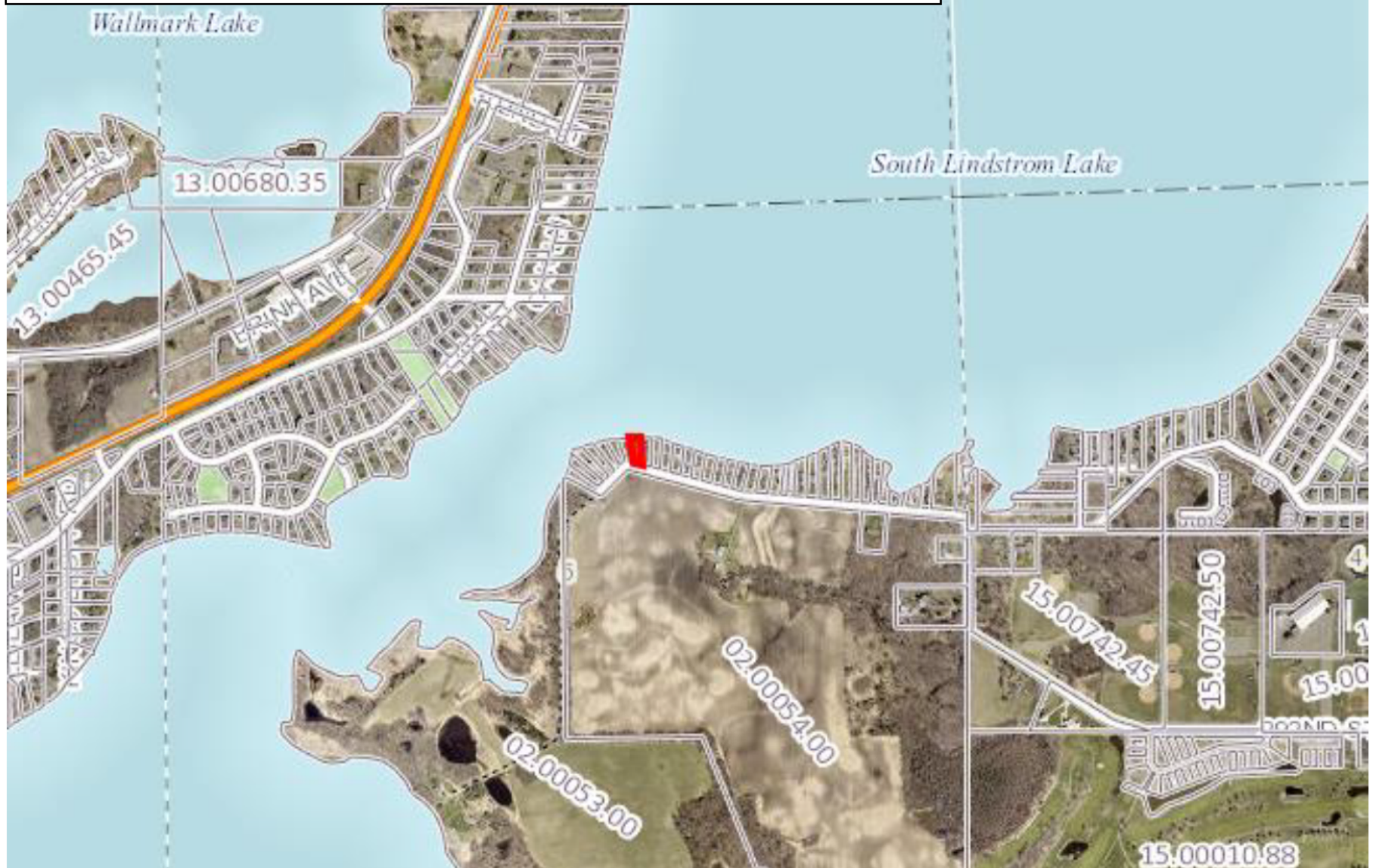
Gustafson property - 



Max & Mary Gustafson - Aerial Photo

Property owners Max & Mary Gustafson are requesting Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a legal non-conforming structure which is closer to the Ordinary High Water Level (OHWL) than required, to allow the placement of a detached accessory structure closer to the OHWL than required, and to exceed the maximum allowable amount of impervious surface coverage. The .25-acre property, platted as Lot 8, South Beach, is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 11890 Mentzer Trail, Chisago Lake Township, S5, T33, R20 (PID 02.01619.00).

Gustafson property - 



RESOLUTION NO. BOAA2023-0401

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, APPROVING VARIANCES TO ZONING ORDINANCE SECTION 4.03 AND SHORELAND MANAGEMENT ORDINANCE SECTIONS 5.21 AND 5.52 IN ORDER TO EXPAND A LEGAL NON-CONFORMING STRUCTURE WHICH IS CLOSER TO THE OHWL THAN REQUIRED, TO ALLOW THE PLACEMENT OF A DETACHED ACCESSORY STRUCTURE CLOSER TO THE OHWL THAN REQUIRED, AND TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF IMPERVIOUS SURFACE COVERAGE ON PROPERTY LOCATED AT 11890 MENTZER TRAIL IN CHISAGO LAKE TOWNSHIP

WHEREAS, Max Gustafson and Mary Gustafson, property owners, submitted an application dated received March 20, 2023 and considered complete on March 30, 2023 for Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52; and

WHEREAS, the property owners desire to expand their legal non-conforming structure by constructing a 368 sf addition, replacing a 10' x 12' detached accessory structure with a 6' x 8' detached accessory structure, and exceed the maximum allowable amount of impervious surface coverage by 2%; and

WHEREAS, the subject site is legally described as:

PID 02.01619.00

Lot Eight (8) SOUTH BEACH, as per plat thereof on file and of record in the office of the Registrar of Titles, Chisago County, Minnesota

WHEREAS, notice was provided and on April 27, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, the applicant and/or property owner, and invited members of the public to comment; and

WHEREAS, the Board of Adjustment and Appeals considered several criteria for granting Variances and made the following findings per Zoning Ordinance Section 8.06 Variances:

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 Given that the proposed dwelling addition and replacement accessory structure will meet all required setbacks with the exception of the OHWL setback, the County finds that the proposed action will not impair supply of light or air to adjacent properties.

Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;

Finding #2 The County finds that the proposed use of the property has not changed and should therefore not increase the amount of traffic generated at the subject site.

Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;

Finding #3 The property owners will be required to obtain building permits prior to construction of the proposed dwelling addition, and it will, therefore, be constructed in compliance with all applicable building and fire codes. Being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.

- Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
- Finding #4 Being that the subject site is currently developed with a single family dwelling and related detached accessory structures and the proposed action will not change how the property is being used or encroach on side yard setbacks / neighboring properties, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 The proposed action will not change the use of the subject site; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.*
- Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
- Finding #6 The proposed action will not change the use of the subject site; therefore, the County finds that there will be no negative fiscal impact upon the County or school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 The subject site is zoned Rural Residential I (RRI) District and Zoning Ordinance Section 5.08 allows dwellings as a permitted use in the RRI District. The Zoning Ordinance and Shoreland Management Ordinance do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance and satisfies the three-factor test of uniqueness, reasonableness and essential character.*

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variances is hereby approved, subject to the following conditions:

1. This approval grants the following Variances:
 - a. A 47' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling addition to be no closer than 28' from the OHWL of South Lindstrom Lake. The addition shall comply with all other required setbacks.
 - b. A 25' Variance to the OHWL setback requirement allowing the proposed detached accessory structure to be no closer than 50' from the OHWL of South Lindstrom Lake. The structure shall not be located any closer to the OHWL of South Lindstrom Lake than the existing 10' x 12' detached accessory structure which its replacing. The structure shall comply with all other setback requirements.

- c. A 2% Variance to the impervious surface coverage requirement allowing the total amount of impervious surface to be no greater than 27%.
2. The sizes and locations of the dwelling addition and detached accessory structure shall be in general conformance with the application materials, including site plan, dated received March 20, 2023. Any significant deviation from the approved request and site plan, as determined by Department of Environmental Services staff, shall require further 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 of the dwelling addition and, further, the addition 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.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 27th day of April, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variances to Allow Expansion of Legal Non-Conforming Structure
 32740 N. Center Court, Chisago Lake Township
 DATE: April 27, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider Variances allowing the expansion of a legal non-conforming in the Rural Residential II (RRII) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s): Kenneth & Mary Evanoff
 Property Owner(s): Kenneth & Mary Evanoff
 Property Address: 32740 N. Center Court
 Chisago Lake Township
 General Location: Section 22, Township 34, Range 20
 PID: 02.01080.00
 Property Area: .21 Acres
 Current Zoning: Rural Residential II (RRII) District /
 Shoreland Management District
 Adjacent Zoning:
 North: Rural Residential II (RRII) District /
 Shoreland Management District
 South: Rural Residential II (RRII) District /
 Shoreland Management District
 East: Rural Residential II (RRII) District /
 Shoreland Management District
 West: North Center Lake
 Date Application Received: March 29, 2023
 Date Application Complete: March 30, 2023
 60-Day Review Period: May 29, 2023



BACKGROUND

Property owners Kenneth & Mary Evanoff were granted Variances in July 2022 for their property located at 32740 N. Center Court in Chisago Lake Township. The Variances allowed for a 422.5 sf addition to connect the existing dwelling and detached garage. Being that the existing dwelling and detached garage encroached on required setbacks, Variances were necessary to allow the proposed addition to encroach on the southerly side yard, township Right-of-Way, and Ordinary High Water Level (OHWL). In addition, the property owners requested and received a Variance to exceed the maximum allowable amount of impervious surface coverage by .7% (for a total of 25.7%).

The property owners are now requesting Variance approval to allow the expansion of their non-conforming structure by expanding the basement, which will result in a taller ceiling height in the basement and an overall increase in the height of the dwelling. The proposed expansion, similar to the existing dwelling, will be closer to the OHWL than allowed by the Shoreland Management Ordinance but will not encroach any closer than the existing dwelling.

SITE ANALYSIS

The subject site – PID 02.01080.00 – is .21 acres in size and located on the east side of North Center Lake in the Chi-Gak-Wa Shores subdivision. The property gently slopes with elevations ranging from 898' near the North Center Lake shoreline to 908' at the easterly property boundary (adjacent to township Right-of-Way). The site has been developed with a dwelling and detached garage. Based on the attached survey dated March 28, 2023, the dwelling is situated approximately 28' from OHWL, 4.5' from the south property boundary (side yard), approximately 35' from the north property boundary (side yard), and approximately 42' from township Right-of-Way. The exact age of the dwelling is unknown, but, based on when the property was platted, it's assumed that the dwelling pre-dates the County's adoption of land use controls and is considered a legal non-conforming structure. In addition to the 2022 Variances detailed above, the property owners were granted a Variance in 2014 allowing the detached garage to be situated approximately 23' from the improved roadway (approximately 5' from the township Right-of-Way).

Chi-Gak-Wa Shores was platted in 1955 prior to the County's adoption of Zoning and Subdivision Ordinances. Given that the parcel is 70' wide with an area of less than 10,000 square feet, the parcel is considered substandard by today's standards. Surrounding properties are similarly sized and have been developed with seasonal cabins or year-round dwellings and related accessory structures.

PROPOSAL ANALYSIS

The attached written narrative explains that the property owners are proposing to improve their existing basement by leveling the overall height of the basement and, therefore, the overall height of the dwelling. The ceiling height of the basement currently varies, with the greatest height being 6'6", and the property owners wish to increase the height of the basement to be in compliance with the Building Code. Being that the lowest floor elevation will need to be at least 3' above the highest known water level or 3' above OHWL, whichever is higher, this will likely mean that the basement floor cannot go any deeper and the overall height of the dwelling will need to increase. During the Technical Review Committee meeting, the Evanoffs explained that the dwelling will be lifted approximately 32" to accommodate the expanded basement and to bring the dwelling to the same elevation as the garage.

The stated purpose of improving the basement is to have an accessible area for safety and protection in bad weather and to have adequate dry space for a furnace, air conditioner, water heater, and possible extra storage area. The existing dirt floor will be improved with concrete. No additional bedrooms are proposed as part of the expansion.

The property owners have not yet acted on their 2022 Variances but are satisfied with all previously approved Variances and conditions of approval. Given that the current Variance request is directly tied to the project for which Variances were granted in July 2022, staff is recommending, if the request is approved, that the requirement for acting on the 2022 Variances be extended to be inline with the current Variance request. The Board will see this included as a recommended condition of approval (see condition no. 6).

The table below provides a comparison of Rural Residential II (RRII) District / Shoreland Management District dimensional standards and corresponding information for the proposed Variances.

	RRII District / Shoreland Management District Standards	Proposed
Road Setback	40' to Township Right-of-Way	Approximately 42' to existing dwelling / proposed basement expansion
OHWL Setback	75' for Structures	28' to existing dwelling / proposed basement expansion
Side Yard Setback	10' for Dwelling + Attached Garage; 5' for Detached Non-Ag Accessory Structures	4.5' to existing dwelling and proposed addition (approved by 2022 Variance) / proposed basement expansion
Impervious Surface Coverage	25%	25.7% (approved by 2022 Variance)

REVIEW PROCESS

The Technical Review Committee met with property owners Kenneth & Mary Evanoff on April 12, 2023. The group discussed the proposed lowest floor elevation, lifting of the dwelling to accommodate the basement expansion and to bring the dwelling to the same elevation as the garage, and the possibility of extending the 2022 Variance approval to align with the 2023 Variance (if approved). The Evanoffs confirmed that no additional bedrooms will be added to the structure; therefore, the existing septic system is adequately sized. The committee did not identify any issues or concerns.

The Chisago Lake Town Board considered the request on April 18, 2023 and recommended approval with the condition that the basement is "to be built above high water level". The Town Board also commented that the property owners are not proposing to expand the footprint and that the Board supports extension of the 2022 Variance approval.

The state mandated 60-day review period expires on May 29, 2023.

VARIANCE ANALYSIS

A Variance to the provisions of the Zoning Ordinance may be issued to provide relief to the landowner in those cases where the application of the strict letter of the Ordinance imposes particular hardship or practical difficulties to the property owner in the use of the land. No Variance may be granted that would allow any use that is prohibited in the zoning district in which the property is located. A Variance may be granted only in the event that the following circumstances exist. Staff has provided notes (shown in *italics*) for each of the circumstances for the Board's consideration.

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control;

The fact that the subject site was platted and the existing dwelling was likely constructed prior to the County's adoption of official land use controls creates a circumstance (pre-existing development) for which the property owner had no control. Further, the Board of Adjustment and Appeals granted Variances in 2014 allowing the construction of a detached accessory structure (garage) closer to the township Right-of-Way than allowed, and in 2022 allowing the construction of an addition (connecting the dwelling and detached garage) closer to the south property boundary (side yard),

OHWL, and township Right-of-Way than allowed. The proposed basement / dwelling expansion will not exacerbate any existing or previously approved setback encroachments or previously approved impervious surface coverage.

2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;

Literal interpretation of the Zoning Ordinance would not deprive the property owners of rights commonly enjoyed by other Rural Residential II (RRII) District / Shoreland Management District properties. The Zoning Ordinance allows dwellings and accessory structures in the RRII District / Shoreland Management District and the subject site has been developed with both a dwelling and accessory structure. The property owners are choosing to expand the legal non-conforming dwelling by improving the basement and this can only be accomplished with approval of a Variance.

3. That the special conditions or circumstances do not result from the actions of the owner(s) or under previous owner(s) under the current law;

Staff suggests that pre-existing development of the subject site and prior Variance approvals (2014 and 2022) are the special conditions / circumstances that should be considered by the Board. Platting of the subject site and subsequent construction of the existing dwelling were not results of either the current or previous property owner.

4. That granting the Variance requested will not result in allowing a use otherwise not permitted in the same district;

Dwellings, including dwellings with basements, are a permitted use in the Rural Residential II (RRII) District / Shoreland Management District; therefore, this would not be considered a use Variance.

5. The Variance requested is the minimum Variance which would alleviate the hardship;

The hardship for this particular request is pre-existing development, meaning the subject site was developed prior to the County adopting Zoning or Subdivision Ordinances. While the property owners are requesting a Variance in order to expand the non-conforming structure, this proposed expansion will not exacerbate any existing non-conforming setback encroachments.

6. The Variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone;

Staff does not believe that the Variance, if approved, would be detrimental to the purposes or intent of the Zoning Ordinance or to other properties in the Rural Residential II (RRII) District / Shoreland Management District. The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. Being that the request will only alter the height and depth of an existing structure, there's no reason to believe that the expansion will have any detrimental impact to the surrounding area.

7. Economic conditions or circumstances alone shall not be considered in the granting of a Variance request if a reasonable use of the property exists under the terms of this Ordinance; and

The property owners did not cite economic conditions as a practical difficulty.

8. In the Flood Plain District, no Variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by State law.

The subject site is partially located in a flood district; however, the existing structures and proposed expansion are located outside of the flood district.

The Board is tasked with determining whether or not a “practical difficulty” exists prohibiting the property owner from using the land in a manner consistent with the Zoning Ordinance. Minnesota Statute 394.27 offers the following guidance:

*The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a **reasonable** manner not permitted by an official control; the plight of the landowner is due to circumstances **unique** to the property not created by the landowner; and the variance, if granted, will not alter the **essential character** of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.*

As indicated above, “practical difficulties” is a legal standard that the County must apply when considering applications for Variances. It’s a three-factor test, including: reasonableness, uniqueness, and essential character. In order to constitute practical difficulties, all three factors of the test must be satisfied. Descriptions of the three factors are offered below for the Board’s consideration:

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the Variance. For example, if the Variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the Variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

3. Essential Character

The third factor is that the Variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the Variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

FINDINGS OF FACT

Zoning Ordinance Section 8.06 Variances, E. states that in considering all requests for a Variance, the Board of Adjustment and Appeals shall make certain Findings of Fact. Staff has provided proposed findings, shown in *italics* below, for the Board's consideration.

- | | |
|-------------|--|
| Criteria #1 | The proposed action will not impair an adequate supply of light and air to adjacent property; |
| Finding #1 | <i>The proposed expansion of a non-conforming structure will occur in such a manner that it will not be situated any closer to adjacent properties than the existing structures. The County finds that the proposed addition will be situated in a location which is adequately separated by distance from adjacent properties so as not to impair an adequate supply of light and air to adjacent properties.</i> |
| Criteria #2 | The proposed action will not unreasonably increase the congestion in the public right-of-way; |
| Finding #2 | <i>The proposed addition will not increase the number of bedrooms or occupants; therefore, the County finds that the proposed action will not increase the amount of traffic generated at the subject site nor increase congestion on surrounding roadways.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| Finding #3 | <i>The property owners will be required to obtain a building permit prior to construction of the proposed expansion, and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.</i> |
| Criteria #4 | The proposed action will not unreasonably cause undue negative impact to surrounding properties; |
| Finding #4 | <i>Being that the subject site is currently developed with a dwelling and the proposed expansion will not change how the property is being used, the County finds that there is no evidence to suggest that there will be any negative impact to surrounding properties.</i> |
| Criteria #5 | The proposed action will not cause an unreasonable strain upon existing facilities and services; |
| Finding #5 | <i>The proposed expansion of a non-conforming structure will not create additional bedrooms and will not increase the number of occupants in the dwelling or the need for facilities and services; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.</i> |
| Criteria #6 | The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and |
| Finding #6 | <i>The County finds that the proposed expansion of a non-conforming structure will not have any negative fiscal impact on the County or school district.</i> |
| Criteria #7 | The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls. |
| Finding #7 | <i>The subject site is zoned Rural Residential II (RRII) District / Shoreland Management District. The existing dwelling is considered legal non-conforming due to setback encroachments created by development of the subject site prior to the County adopting</i> |

official land use controls. The proposed expansion is contrary to the intent of applicable land use controls; however, the Zoning Ordinance allows for Variances to expand legal non-conforming uses when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The Board of Adjustment and Appeals finds that the proposed action satisfies the three-factor test of uniqueness, reasonableness and essential character.

STAFF RECOMMENDATION

The proposed expansion will not exacerbate existing setback encroachments and will only impact the overall height and depth of the existing dwelling. Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff recommends approval** of the Variances with recommended Findings of Fact (see above) and conditions (see below) and has prepared a resolution for the Board's consideration.

1. This approval allows for the expansion of a legal non-conforming structure in the Rural Residential II (RRII) District / Shoreland Management District through improvement of the existing basement. This approval specifically grants the following Variances:
 - a. A Variance to allow the expansion of a legal non-conforming structure.
 - b. A 47' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the existing dwelling and proposed basement expansion to be situated 28' from the OHWL.
2. The County acknowledges that the following Variances were granted on July 28, 2022 and filed with the Chisago County Recorder as Document #A-661410 allowing for a 422.5 sf addition to connect the existing dwelling and detached garage:
 - a. A 5.5' Variance to the side yard setback requirement allowing the proposed dwelling with attached garage to be situated 4.5' from the southerly property boundary;
 - b. An approximate 25' Variance to the OHWL setback requirement allowing the proposed addition to be situated approximately 50' from the OHWL;
 - c. An approximate 14' Variance to the township road setback requirement allowing the proposed addition to be situated approximately 26' from the township road Right-of-Way; and
 - d. A .7% Variance to the maximum amount of impervious surface coverage allowing the subject site to have an impervious surface coverage of 25.7%.
3. The property owners shall comply with all conditions of approval included in the July 28, 2022 Variance approval (Document #A-661410) unless specifically noted otherwise by this approval.
4. The expansion shall be constructed in general conformance with the application materials, including site plan, dated received March 29, 2023. Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
5. The property owners shall obtain a building permit prior to construction and, further, the expansion shall comply with all applicable codes and regulations except as permitted by this Variance.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void. Additionally, this approval grants an extension to the July 28, 2022 Variance approval such

that the 2022 and 2023 approvals must be made use of within one year of the date of the 2023 approval or they shall both become null and void.

OPTIONS

1. **Approve** the Variances based on the Findings of Fact and conditions as presented or amended.
2. **Deny** the Variances based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
 - a. The request for Variances, as presented, is not consistent with the Chisago County Zoning Ordinance and/or Shoreland Management Ordinance due to _____.
 - b. The proposed Variances will have a negative impact to surrounding properties due to _____.
 - c. The request for Variances, as presented, does not meet the threshold for “practical difficulty” as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.
3. **Table** action to allow for further review and consideration. The current review period expires on May 29, 2023, allowing for further review and consideration at the Board’s May 25, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0402, a resolution approving Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21 in order to expand a legal non-conforming structure on property located at 32740 N. Center Court in Chisago Lake Township, as presented or amended.

If the Board chooses to deny the request for Variances, staff will prepare a revised resolution based on the Findings of Fact established by the Board.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Photos of existing dwelling / basement
 - d. Lower floor plan
 - e. Survey dated March 28, 2023
 - f. Survey dated August 24, 2012
2. Resolution No. BOAA2022-0702 (2022 Variance approval document)
3. Aerial photo (1) – subject site
4. Aerial photo (2) – vicinity map
5. Draft Resolution No. BOAA2023-0402

CC: Kenneth & Mary Evanoff, property owners
County file



Chisago County Department of Environmental Services

Planning & Zoning Application

Permit # 2023-292

Township Chisago Lakes Township S/T/R S22, T34, R20 PID# 02.01080.00

Project Address 32740 No. Center Court (Chi Gak Wa Shores Lot 10)

Property Owner(s) Kenneth C. and Mary L. Evanoff

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) Kenneth & Mary Evanoff

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

☒ Variance

☐ Administrative Appeal

Planning Commission

☐ Conditional Use Permit (CUP)

☐ Interim Use Permit (IUP)

☐ Amendment to CUP or IUP

☐ Preliminary Plat

☐ Rezoning

☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary)

We are seeking a Variance for the existing full basement in order to add a floor, no lower than 903.2 which is 3 feet above the existing high watermark. This will also increase the height of the cabin within the required footprint of the existing structure on a non-conforming lot.

Required Attachments (Additional Attachments May Be Required Based On The Specific Request)

☒ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☐ Plat Drawings

Kenneth C. Evanoff & Mary L. Evanoff
Applicant Signature

3/29/2023
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Fees		Dates	
Base Fee	\$ <u>500</u>	Application Received	<u>3/29/23</u>
Recording Fee	\$ <u>46</u>	Application Complete	<u>3/30/23</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	<u>60</u> 120 Day Review Period	<u>5/29/23</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>546</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Chisago Lakes Township S/T/R S22 T34 R20 PID# 02,01080,00

Project Address 32740 No Center Court (Chisago Lakes Shores Lot 10)

Property Owner(s) Kenneth C. and Mary L. Evanoff

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) Kenneth & Mary Evanoff

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

☒ Variance

☐ Administrative Appeal

Planning Commission

☐ Conditional Use Permit (CUP)

☐ Interim Use Permit (IUP)

☐ Amendment to CUP or IUP

☐ Preliminary Plat

☐ Rezoning

☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary)

We are seeking a Variance for the existing full basement in order to add a floor, no lower than 903.2 which is 3 feet above the existing high watermark. This will also increase the height of the cabin within the required footprint of the existing structure on a non-conforming lot.

Kenneth & Mary L. Evanoff
Applicant Signature

3/29/2023
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Date of County Public Hearing APRIL 27, 2023 Date of Township Presentation APRIL 18, 2023

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

To be built above High Water Level
not changing footprint - OK to extend original
variance request

Signatures of Township Officials or Authorized Personnel

Sherry Stutz
Will J. Reed

Date: March 31, 2023

From: Kenneth and Mary Evanoff
To: Chisago County Environmental Services
Re: Description of Variance Request

In August 2022 we received variances which allow us to connect our existing cabin and garage with a 422.5 square-foot addition. What necessitates this new variance request is the need for an additional variance for the existing full basement.

The existing basement consists of a dirt floor of varying heights up to 6' 6". Two of the four walls have two windows each, one of which is the exterior/ interior access point.

At the time of our earlier Variance request, we did not understand the definition of a basement meeting the requirements that are expected by the County. It had been our intent to have an accessible area for safety and protection in bad weather and to have adequate dry space for a furnace/air conditioner/water heater and a possible extra storage area.

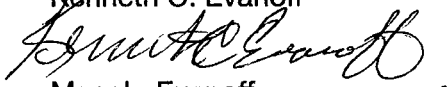
With the new variance we are seeking to add a concrete floor to the existing basement, to be no lower than 903.2', which is 3' above the existing High water mark. To facilitate the accuracy of this specification we have hired the previous survey company, now known as Widseth, to update the elevation measurements gained from the original survey. We understand that this will also increase the height of the cabin within the Required footprint of the existing building, on a non-conforming lot.

The newer basement with a concrete floor will have plumbing up to code and both a window and an exterior access door on the west wall.

We are following the requirements of the original granted variances and anticipate no negative impact on our neighbors.
Please review the enclosed materials and contact us if anything is missing or if there are questions.

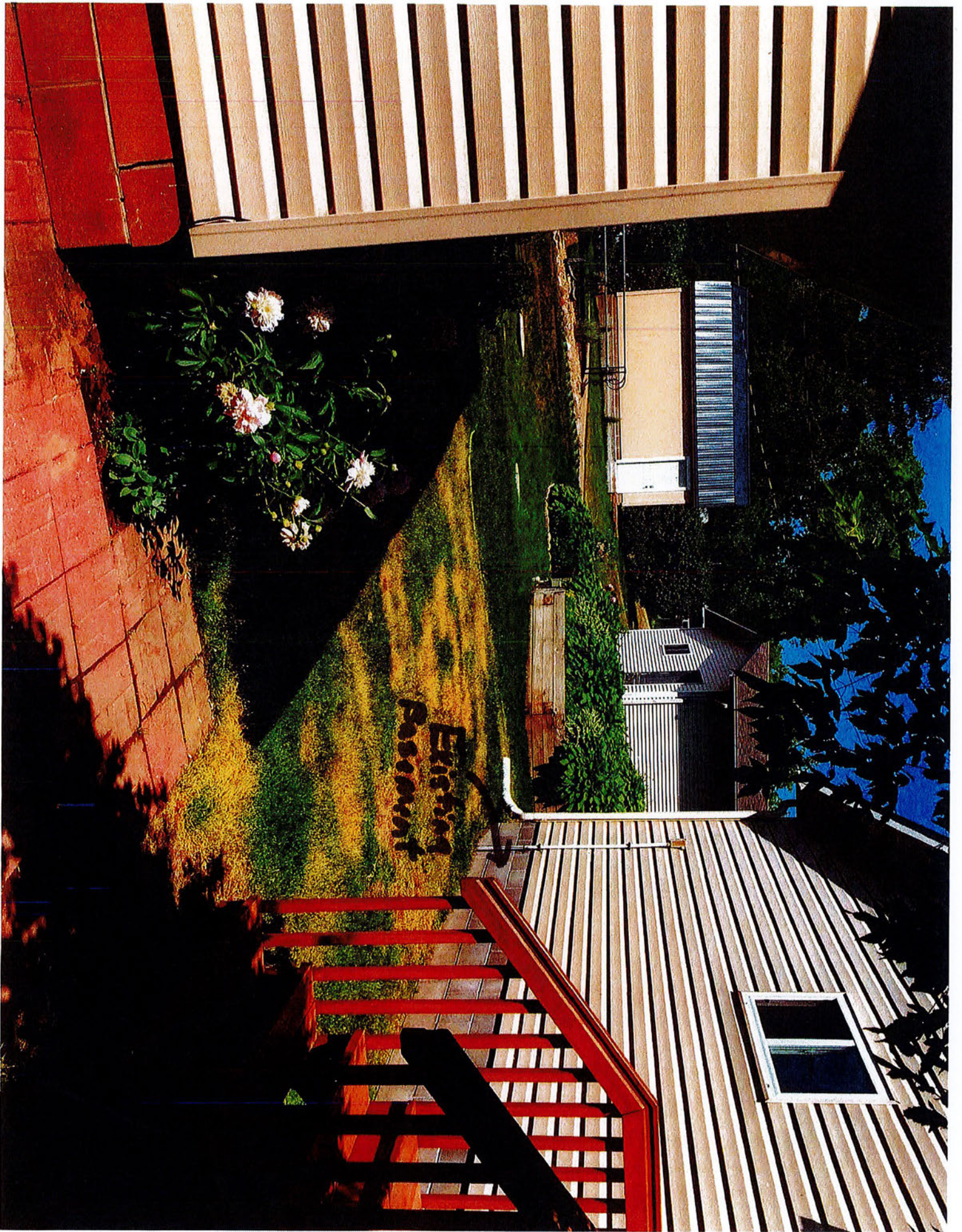
Enclosed: Planning & Zoning Application
Description of Request
Copy of Lower Floor Plan with measurements
Current photo of existing basement
Current Elevation Exhibit
Copy of Official granted variances document
Other photos and related documents

Kenneth C. Evanoff



Mary L. Evanoff





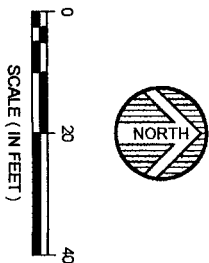
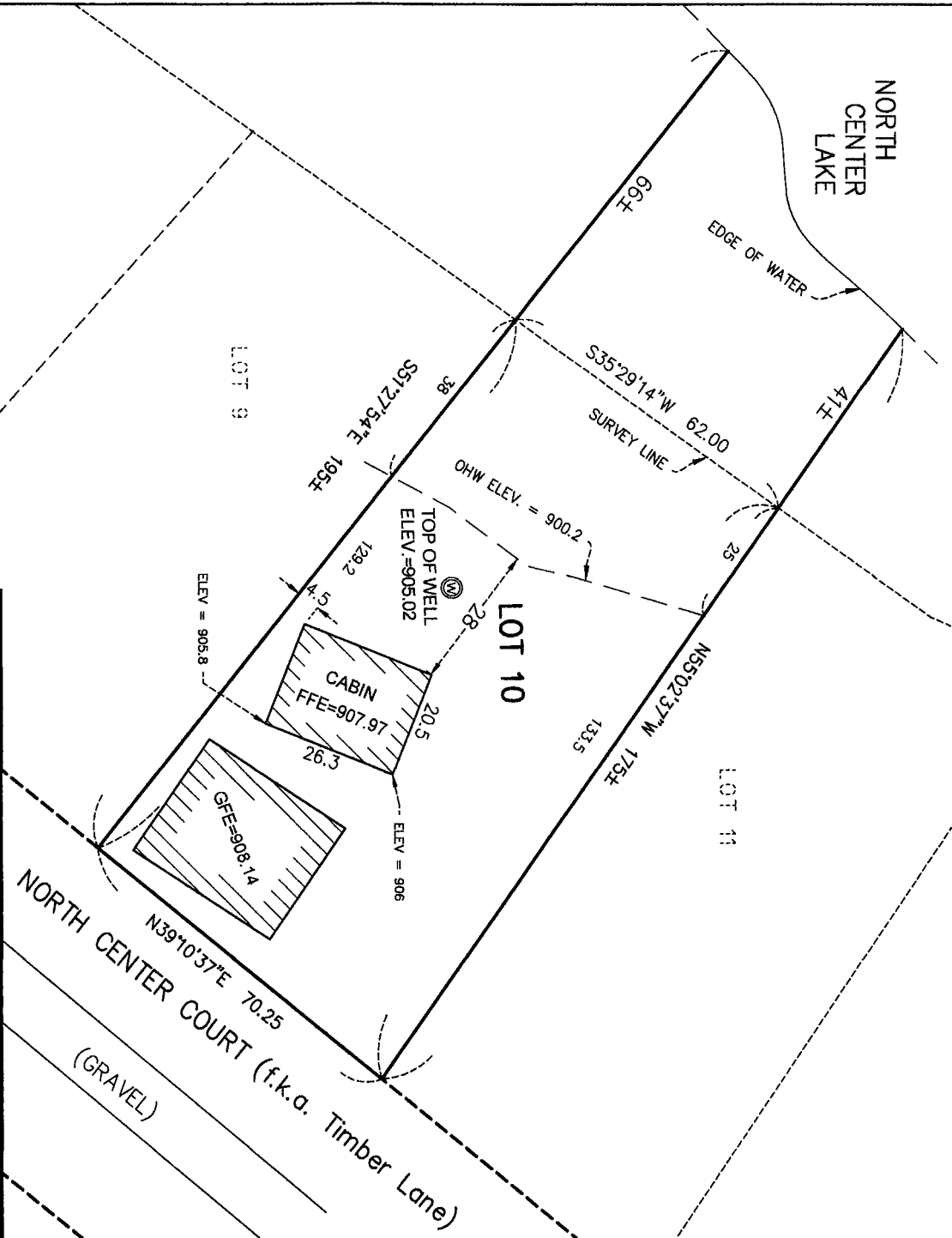
← 1st main electricity





NOTE:
FOUNDATION CONTRACTOR TO VERIFY W/
FOUNDATION CONTRACTOR FINAL NUMBER OF COLUMNS REQUIRED FOR NEW
GENERAL CONTRACTOR FINAL. NUMBER TO BE ADDED TO EXISTING FOUNDATION,
AND OLD CONNECTION AND CORRECTIONS TO BE ADDED TO EXISTING FOUNDATION.

ELEVATION EXHIBIT



SURVEY NOTES

1. Vertical Datum = N.G.V.D. 1929
2. The address of the property is 32740 N Center CT Center City, Minnesota, PID: 02.01080.00
3. The purpose of this drawing is to show three new elevations:
 - Top of Well
 - FFE or Finish Floor Elevation of the Cabin
 - GFE or Garage Floor Elevation

DATE	March 2023	DATE		BY	PREPARED FOR: KEN EVANOFF
SCALE	AS SHOWN				
DRAWN BY:	JAS				
CHECKED BY:	NJ				
FILE NUMBER	2023-104-13				

WIDSETH
ARCHITECTS • ENGINEERS • SCENARISTS • SURVEYORS

32740
N. CENTER
CT

NORTH
CENTER
LAKE



NOTES:

- NEW GARAGE (INCLUDING OVERHANG) IS 784 SQ. FT.
- APPROX. WILL BE APPROX. 1' x 24' BEYOND THE OVERHANG.

- 25% OF AVAILABLE LOT SIZE IS 1,632

1,632	(CABIN)
- 756	(DECK)
- 68	(GARAGE + APRON)
- 808	
- 0 -	

(CABIN)
(DECK)

(GARAGE + APRON)

Garage 1st calculated without driveway at 28x28 actual 24x28

Corrected + added to Cabin 1st calculated 27x26 Actual 25x20

DESCRIPTION (Certificate of Title No. 1830)

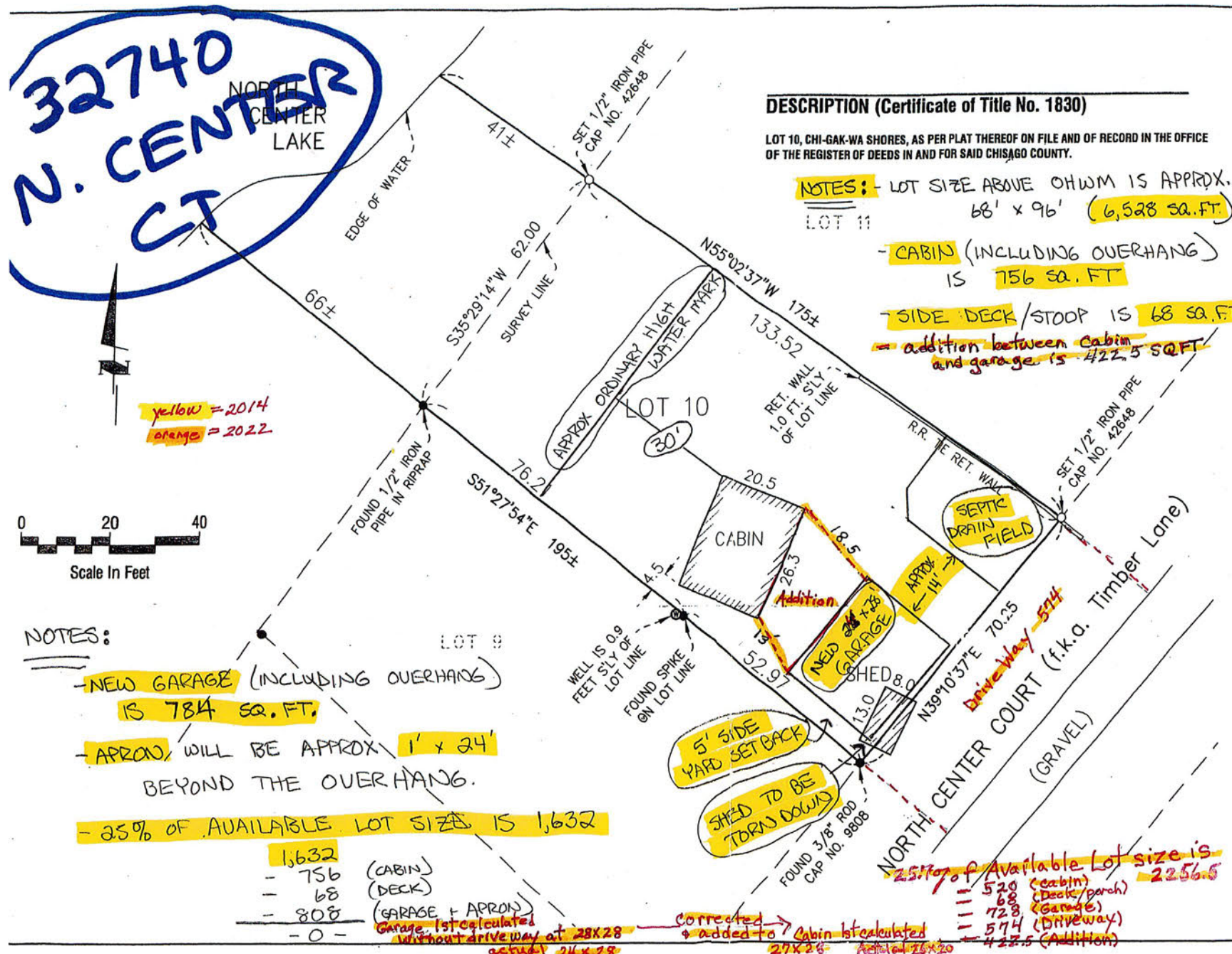
LOT 10, CHI-GAK-WA SHORES, AS PER PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR SAID CHISAGO COUNTY.

NOTES: - LOT SIZE ABOVE OHWM IS APPROX. 68' x 96' (6,528 SQ. FT.)

- CABIN (INCLUDING OVERHANG) IS 756 SQ. FT.

- SIDE DECK/STOOP IS 68 SQ. FT.

- addition between cabin and garage is 422.5 SQ. FT.



HULT &
HEBEISEN, P.A.

PO Box 37
Forest Lake, MN 55025

ph: (651) 464-3130
fax: (651) 464-4822
www.hultmn.com

Surveyors + Engineers + Wetland Specialists

Client

Pam Salak (former)
Kenneth + Mary
Evanoff (New owner)

Project

32740 N. Center
Court, Center City

Location

22-34-20 Chisago
County, MN

Certification

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed LAND SURVEYOR under the laws of the State of Minnesota.

Kelly L. Jordan
Registration No. 42648 Date: 08/24/12

This certification is not valid unless wet signed in blue ink. If applicable, contact us for a wet signed copy of this survey which is available upon request at Hult and Hebeisen, P.A., Forest Lake, MN.

Summary

Approved: KLJ Drawn: KLJ

Revision History

No. Date By Submittal / Revision

Sheet Title

CERTIFICATE OF
SURVEY

Sheet Number Revision

1 of 1

Project No.

12142

Doc# A-661410

Recorded on:

August 09, 2022 3:27 PM

KAREN M LONG
CHISAGO COUNTY RECORDER
CHISAGO COUNTY, MN

Fee: \$46.00 Pages: 4

Returned To: CHISAGO COUNTY DEPT OF ENVIRON



STATE OF MINNESOTA)
) ss.
COUNTY OF CHISAGO)

I, Beth Gervais, Land Services Coordinator for the County of Chisago hereby certify that the attached

RESOLUTION NO. BOAA2022-0702

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING VARIANCES TO ZONING ORDINANCE SECTIONS 4.03 AND 5.15 AND SHORELAND
MANAGEMENT ORDINANCE SECTION 5.52 IN ORDER TO EXPAND A LEGAL NON-CONFORMING
STRUCTURE IN THE RURAL RESIDENTIAL II (RRII) DISTRICT / SHORELAND MANAGEMENT DISTRICT AND
TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF IMPERVIOUS SURFACE COVERAGE ON
PROPERTY LOCATED AT 32740 N. CENTER COURT IN CHISAGO LAKE TOWNSHIP**

is a true and correct record of the decision adopted by the Chisago County Board of Adjustment and Appeals at a duly authorized meeting thereof held on the 28th day of July, 2022.



Beth Gervais 8-5-22
Beth Gervais, Land Services Coordinator Date

This document drafted by:
Beth Gervais, Land Services Coordinator
Chisago County Department of Environmental Services
313 N. Main Street, Suite 240
Center City, MN 55012

Please return to:
Beth Gervais, Land Services Coordinator
Chisago County Department of Environmental Services
313 N. Main Street, Suite 240
Center City, MN 55012

RESOLUTION NO. BOAA2022-0702

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING VARIANCES TO ZONING ORDINANCE SECTIONS 4.03 AND 5.15 AND SHORELAND
MANAGEMENT ORDINANCE SECTION 5.52 IN ORDER TO EXPAND A LEGAL NON-CONFORMING
STRUCTURE IN THE RURAL RESIDENTIAL II (RRII) DISTRICT / SHORELAND MANAGEMENT DISTRICT AND
TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF IMPERVIOUS SURFACE COVERAGE ON
PROPERTY LOCATED AT 32740 N. CENTER COURT IN CHISAGO LAKE TOWNSHIP**

WHEREAS, Kenneth Evanoff and Mary Evanoff, property owners, submitted an application dated received June 27, 2022 and considered complete on July 5, 2022 for Variances to Zoning Ordinance Sections 4.03 and 5.15 and Shoreland Management Ordinance Section 5.52; and

WHEREAS, the property owners desire to construct an addition to connect the existing dwelling and detached garage, thereby creating a dwelling with attached garage. The existing and proposed structures encroach on certain setbacks and cause the amount of impervious surface coverage to exceed 25%; and

WHEREAS, the subject site is legally described as:

PID 02.01080.00

*Lot 10, Chi-Gak-Wa Shores, as per plat thereof on file and of record in the office
of the Register of Deeds in and for said Chisago County, Minnesota*

WHEREAS, notice was provided and on July 28, 2022 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, the applicant and/or property owner, and invited members of the public to comment; and

WHEREAS, the Board of Adjustment and Appeals considered several criteria for granting Variances and made the following findings per Zoning Ordinance Section 8.06 Variances:

- | | |
|-------------|--|
| Criteria #1 | The proposed action will not impair an adequate supply of light and air to adjacent property; |
| Finding #1 | <i>The proposed expansion of a non-conforming structure will occur in such a manner that it will not be situated any closer to adjacent properties than the existing dwelling and detached garage. The County finds that the proposed addition will be situated in a location which is adequately separated by distance from adjacent properties so as not to impair an adequate supply of light and air to adjacent properties.</i> |
| Criteria #2 | The proposed action will not unreasonably increase the congestion in the public right-of-way; |
| Finding #2 | <i>The proposed addition will not increase the number of bedrooms or occupants; therefore, the County finds that the proposed action will not increase the amount of traffic generated at the subject site nor increase congestion on surrounding roadways.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| Finding #3 | <i>The property owners will be required to obtain a building permit prior to construction of the proposed addition, and it will, therefore, be constructed in compliance with all</i> |

applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.

Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;

Finding #4 Being that the subject site is currently developed with a seasonal cabin and detached garage and the proposed addition will not change how the property is being used, the County finds that there is no evidence to suggest that there will be any negative impact to surrounding properties.

Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;

Finding #5 The proposed expansion of a non-conforming structure will not create additional bedrooms and will not increase the number of occupants in the dwelling or the need for facilities and services; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.

Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and

Finding #6 The County finds that the proposed expansion of a non-conforming structure and proposed amount of impervious surface will not have any negative fiscal impact on the County or school district.

Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.

Finding #7 The subject site is zoned Rural Residential II (RRII) District / Shoreland Management District. The existing seasonal cabin is considered legal non-conforming due to setback encroachments created by development of the subject site prior to the County adopting zoning and shoreland regulations. The property owners were granted a Variance in 2014 to construct a detached garage closer to the township road Right-of-Way than allowed by the Zoning Ordinance. The proposed expansion is contrary to the intent of applicable land use controls; however, the Zoning Ordinance allows for Variances to expand legal non-conforming uses when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The Board of Adjustment and Appeals finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance and satisfies the three-factor test of uniqueness, reasonableness and essential character.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variance is hereby approved, subject to the following conditions:

1. This approval allows the expansion of a legal non-conforming structure in the Rural Residential II (RRII) District / Shoreland Management District through construction of a 422.5 square foot addition connecting the existing dwelling and detached garage. This approval grants the following Variances:

- a. A 5.5' Variance to the side yard setback requirement allowing the proposed dwelling with attached garage to be situated 4.5' from the southerly property boundary;
 - b. An approximate 25' Variance to the OHWL setback requirement allowing the proposed addition to be situated approximately 50' from the OHWL;
 - c. An approximate 14' Variance to the township road setback requirement allowing the proposed addition to be situated approximately 26' from the township road Right-of-Way; and
 - d. A .7% Variance to the maximum amount of impervious surface coverage allowing the subject site to have an impervious surface coverage of 25.7%.
2. The addition shall be constructed in general conformance with the application materials, including site plan, dated received June 27, 2022. Any deviation from the approved request shall require further 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 except as permitted by this Variance.
 4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.
 5. The property owner shall mitigate water run-off with the use of gutters and/or other measures to keep water from the neighboring properties.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 28th day of July, 2022.

Gregg Carlson
Douglas Greene
Becky Strand

AYE
AYE
AYE

John Sutcliffe
Charles Yeager

AYE
AYE


CP Yeager
Chip Yeager
Chair

ATTEST:

Beth Gervais
Beth Gervais
Land Services Coordinator

Kenneth & Mary Evanoff - Aerial Photo

Property owners Kenneth & Mary Evanoff are requesting Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21 in order to expand a legal non-conforming structure which is closer to the Ordinary High Water Level (OHWL) than required. The .21-acre property, platted as Lot 10, Chi-Gak-Wa Shores, is located at 32740 N. Center Court, Chisago Lake Township, S22, T34, R20 (PID 02.01080.00).

Evanoff property - 



Evanoff property - ☐



RESOLUTION NO. BOAA2023-0402

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING VARIANCES TO ZONING ORDINANCE SECTION 4.03 AND SHORELAND MANAGEMENT
ORDINANCE SECTION 5.21 IN ORDER TO EXPAND A LEGAL NON-CONFORMING STRUCTURE ON
PROPERTY LOCATED AT 32740 N. CENTER COURT IN CHISAGO LAKE TOWNSHIP**

WHEREAS, Kenneth Evanoff and Mary Evanoff, property owners, submitted an application dated received March 29, 2023 and considered complete on March 30, 2023 for Variances to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21; and

WHEREAS, the property owners desire to expand their legal non-conforming structure by improving the basement, resulting in a taller ceiling height in the basement and an overall increase in the height of the dwelling. The proposed expansion, similar to the existing dwelling, will be closer to the OHWL than allowed by the Shoreland Management Ordinance; and

WHEREAS, the subject site is legally described as:

PID 02.01080.00

*Lot 10, Chi-Gak-Wa Shores, as per plat thereof on file and of record in the office
of the Register of Deeds in and for said Chisago County, Minnesota*

WHEREAS, notice was provided and on April 27, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, the applicant and/or property owner, and invited members of the public to comment; and

WHEREAS, the Board of Adjustment and Appeals considered several criteria for granting Variances and made the following findings per Zoning Ordinance Section 8.06 Variances:

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 The proposed expansion of a non-conforming structure will occur in such a manner that it will not be situated any closer to adjacent properties than the existing structures. The County finds that the proposed addition will be situated in a location which is adequately separated by distance from adjacent properties so as not to impair an adequate supply of light and air to adjacent properties.

Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;

Finding #2 The proposed addition will not increase the number of bedrooms or occupants; therefore, the County finds that the proposed action will not increase the amount of traffic generated at the subject site nor increase congestion on surrounding roadways.

Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;

Finding #3 The property owners will be required to obtain a building permit prior to construction of the proposed expansion, and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.

Criteria #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties;
Finding #4	<i>Being that the subject site is currently developed with a dwelling and the proposed expansion will not change how the property is being used, the County finds that there is no evidence to suggest that there will be any negative impact to surrounding properties.</i>
Criteria #5	The proposed action will not cause an unreasonable strain upon existing facilities and services;
Finding #5	<i>The proposed expansion of a non-conforming structure will not create additional bedrooms and will not increase the number of occupants in the dwelling or the need for facilities and services; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.</i>
Criteria #6	The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
Finding #6	<i>The County finds that the proposed expansion of a non-conforming structure will not have any negative fiscal impact on the County or school district.</i>
Criteria #7	The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
Finding #7	<i>The subject site is zoned Rural Residential II (RRII) District / Shoreland Management District. The existing dwelling is considered legal non-conforming due to setback encroachments created by development of the subject site prior to the County adopting official land use controls. The proposed expansion is contrary to the intent of applicable land use controls; however, the Zoning Ordinance allows for Variances to expand legal non-conforming uses when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The Board of Adjustment and Appeals finds that the proposed action satisfies the three-factor test of uniqueness, reasonableness and essential character.</i>

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variances is hereby approved, subject to the following conditions:

1. This approval allows for the expansion of a legal non-conforming structure in the Rural Residential II (RRII) District / Shoreland Management District through improvement of the existing basement. This approval specifically grants the following Variances:
 - a. A Variance to allow the expansion of a legal non-conforming structure.
 - b. A 47' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the existing dwelling and proposed basement expansion to be situated 28' from the OHWL.
2. The County acknowledges that the following Variances were granted on July 28, 2022 and filed with the Chisago County Recorder as Document #A-661410 allowing for a 422.5 sf addition to connect the existing dwelling and detached garage:

- a. A 5.5' Variance to the side yard setback requirement allowing the proposed dwelling with attached garage to be situated 4.5' from the southerly property boundary;
 - b. An approximate 25' Variance to the OHWL setback requirement allowing the proposed addition to be situated approximately 50' from the OHWL;
 - c. An approximate 14' Variance to the township road setback requirement allowing the proposed addition to be situated approximately 26' from the township road Right-of-Way; and
 - d. A .7% Variance to the maximum amount of impervious surface coverage allowing the subject site to have an impervious surface coverage of 25.7%.
3. The property owners shall comply with all conditions of approval included in the July 28, 2022 Variance approval (Document #A-661410) unless specifically noted otherwise by this approval.
4. The expansion shall be constructed in general conformance with the application materials, including site plan, dated received March 29, 2023. Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
5. The property owners shall obtain a building permit prior to construction and, further, the expansion shall comply with all applicable codes and regulations except as permitted by this Variance.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void. Additionally, this approval grants an extension to the July 28, 2022 Variance approval such that the 2022 and 2023 approvals must be made use of within one year of the date of the 2023 approval or they shall both become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 27th day of April, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Exceed Maximum Allowable Amount of Accessory Storage Space
 14824 310th Street, Chisago Lake Township
 DATE: April 27, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing a total of 4,680 square feet of accessory storage space in the Rural Residential II (RRII) District where the maximum allowable amount is 2,000 square feet.

SITE & APPLICATION INFORMATION

Applicant(s):	John & Cassandra Clements
Property Owner(s):	John Clements
Property Address:	14824 310 th Street / CSAH 37
	Chisago Lake Township
General Location:	Section 26, Township 34, Range 20
PID:	02.00751.20
Property Area:	4.90± Acres
Current Zoning:	Rural Residential II (RRII) District
Adjacent Zoning:	
North:	Agricultural (AG) District
South:	Rural Residential II (RRII) District
East:	Rural Residential II (RRII) District
West:	Rural Residential II (RRII) District
Date Application Received:	March 30, 2023
Date Application Complete:	March 30, 2023
60-Day Review Period:	May 29, 2023

BACKGROUND

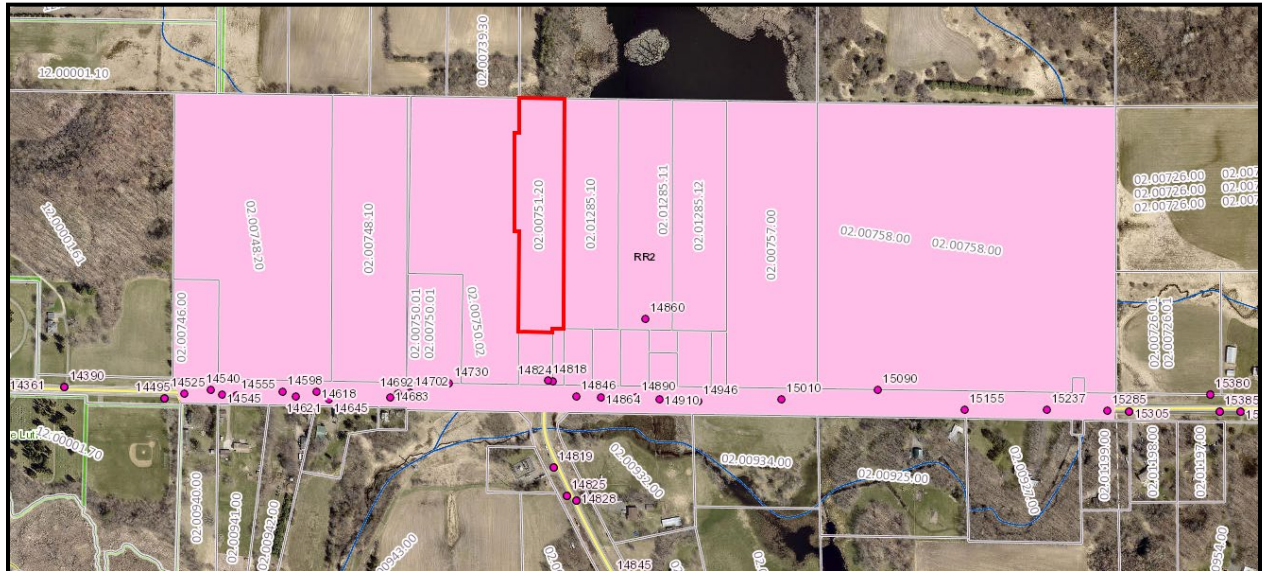
Applicants John & Cassandra Clements wish to construct a 40' x 72' (2,880 sf) accessory structure on property located at 14824 310th Street in Chisago Lake Township. The subject site is located in the Rural Residential II (RRII) District, where – based on the size of the property – the maximum amount of accessory storage space allowed is 2,000 sf. In addition to the proposed accessory structure, the subject site has been developed with a 30' x 60' (1,800 sf) detached accessory structure. In total, the applicants wish to have 4,680 sf of accessory storage space.

SITE ANALYSIS

The Clements' 4.90-acre property is generally located north of the intersection of 310th Street / CSAH 37 and Pleasant Valley Road, east of Oasis Road / CSAH 9 and west of Otter Lane. The property is considered non-conforming for various reasons, including the fact that it doesn't have



any frontage on a public road; therefore, access to 310th Street / CSAH 37 is gained through the Behnke property (PID 02.01065.00, directly south of subject site). The site has been developed with a single family dwelling (no attached garage) and a 30' x 60' (1,800 sf) detached accessory structure. The subject site and all properties to the west, east, and immediately south are zoned Rural Residential II (RRII) District. Properties directly north are zoned Agricultural (AG) District (see image below; pink shading represents RRII District and no shading represents AG District).



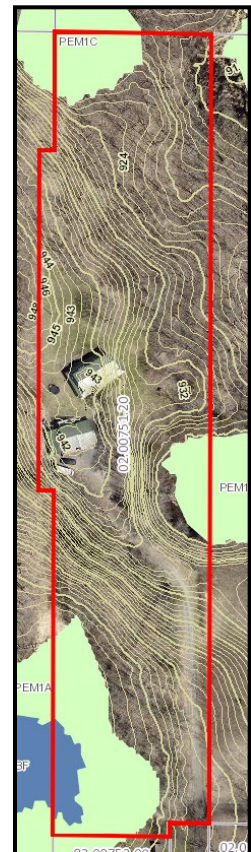
The topography of the subject site includes elevations ranging from 906' at the south property boundary to 945' slightly northwest of the dwelling, and there are three wetland areas scattered throughout the site. The adjacent image illustrates both elevations and wetlands.

While the minimum lot size in the RRII District is two acres and the subject site has sufficient area to support two parcels, without any road frontage, the property would not be eligible for subdivision. The subject site also is not eligible for Rezoning to Agricultural (AG) District – where there is no limit on the amount of accessory storage space – given that it doesn't meet the minimum dimensional requirements for the AG District.

Surrounding properties within the immediate RRII District range in size from less than one acre to 38 acres. Most of the surrounding properties have been developed with single family homes and related accessory structures, while a few remain undeveloped. There may also be a small amount of commercial activity in the immediate area, presumably activity that was occurring prior to the County's adoption of official land use controls (i.e., legal non-conforming uses).

PROPOSAL ANALYSIS

The attached site plan shows that the proposed 2,880 sf detached accessory structure will be situated directly south of the existing 1,800 sf detached accessory structure on the west side of the driveway. The applicants have verbally stated that the exact location may be adjusted slightly but it will be in that same general location and it will meet all required setbacks. The attached written narrative provides the



following reasons for the proposed Variance / detached accessory structure:

- The applicants own several pieces of machinery and equipment including: a 30' motorhome, a 20' boat, a skid steer with many different attachments and a 24' trailer, two snowmobiles and a snowmobile trailer, a car trailer, a tractor, a riding lawnmower, and a 4-wheeler. The written narrative explains that the proposed structure would provide dedicated covered storage for these items.
- The applicants maintain and repair their own machinery and equipment, and the proposed structure would provide dedicated space for a workshop. The applicants believe that an indoor workshop would reduce noise pollution associated with this maintenance and repair.
- In addition to a solution for storage, the applicants believe that the proposed structure will provide security for their machinery and equipment and provide a better appearance of their property.

In addition, the written narrative addresses two of the three factors included in the State mandated practical difficulties standard by offering the following:

- The applicants believe that the proposed accessory structure is a reasonable use of the land and “it does not have any burden on any of the neighboring property owners”. Further, they believe that granting the Variance would provide benefit to the neighboring property owners.
- The applicants do not believe that the proposed accessory structure would alter the essential character of the neighborhood. To demonstrate this point, the applicants provided examples of other properties in the immediate area which have more than 2,000 sf of accessory storage space (see attached aerial images). The following is a list of the properties identified by the applicants along with staff notes:
 - 14598 310th Street (labeled 14618 310th Street) – Based on staff testimony, it appears that this structure is classified as a legal non-conforming use. It's been reported by an Environmental Services staff member that the original legal non-conforming structure may have been lost to fire and a new structure was built in its place as is allowed by Minnesota statute. The County's electronic records do not include any information about this structure, so exact details are unknown.
 - 14860 Otter Lane – Based on building permit records, it appears that this detached accessory structure was built in approximately 2005. The building permit suggests that the detached structure is 2,000 sf in size, and there also appears to be an attached garage. Unfortunately, this permit also suggests that this property was deemed to be zoned AG District at time of building permit application, which – based on historical zoning maps – was not the case. While the amount of accessory storage space on this property was allowed in error, it does not provide justification for the Clements' Variance request.
 - 15010 310th Street – Records found in the Assessor's Office show that these detached accessory structures have existed since at least 1979, which means that they were constructed prior to the implementation of a cap on the overall amount of accessory storage space in the Rural Residential Districts. Further, the zoning classification for this property in and prior to 1979 is unknown. These structures are considered legal non-conforming.
 - 15432 310th Street – Staff notes that this property is located in the Agricultural (AG) District where there is no limit on the number of detached accessory structures or the overall amount of accessory storage space.

The written narrative explains that the applicants are not including the existing 1,800 sf detached accessory structure in the request because they view it to be similar to an attached garage which many of their neighbors have and because the existing structure was constructed by a previous property owner. Staff notes that neither of these circumstances would exempt the existing structure from being counted against the total amount of accessory storage space. Even if the 1,800 sf structure were attached to the dwelling, it would count against the total allowable amount of accessory storage space. And, the fact that a previous property owner constructed the structure does not take away from the fact that the current property owners have that 1,800 sf of accessory storage space for their personal use.

Accessory Structures in the RRII District are regulated by Zoning Ordinance Section 4.08.2. The table below provides a comparison of accessory structure standards for the RRII District and corresponding information for the proposed Variance, with the Variance request shown in **red**.

	RRII District Allowable Accessory Storage Space	Existing Accessory Storage Space	Proposed Accessory Storage Space	Total Proposed Accessory Storage Space	Maximum Number of Detached Accessory Structures Allowed	Proposed Number of Detached Accessory Structures
Clements Variance Request	1,000 sf or 5% of lot area, whichever is greater, but in no case to exceed 2,000 sf *2,000 sf*	30' x 60' detached accessory structure = 1,800 sf	40' x 72' detached accessory structure = 2,880 sf	4,680 sf	2	2

HISTORICAL ANALYSIS

Prior to submission of the request for Variance, the property owner requested that staff provide information about the immediate RRII District, specifically related to past Variances granted for properties with more than 2,000 sf of accessory storage space. Staff researched electronic records for a total of 18 properties in the immediate vicinity and found no record of any past Variances for this specific RRII District. Additionally, based on research conducted for the applicants, staff learned that the 2,000 sf maximum did not come into effect until 1987, which may explain why some neighboring properties have more than 2,000 sf of accessory storage space.

The Board has reviewed and approved Variance requests for additional accessory storage space in the past. In review of two of the most recent requests, staff notes that the Board did grant Variance approval allowing the properties to have more than 2,000 sf of accessory storage space; however, the Board did not grant approval for the full requested amount. In both cases from 2022, the property owner was required to reduce the amount of accessory storage space as part of the Variance approval. In both situations, the Board considered the total lot area as part of the basis for approval, and, in both situations, the allowed amount of accessory storage space equated to approximately 1.211% - 1.324% of the lot area. If these same percentages were applied to the Clements property, it would equate to a range of approximately 2,585 sf - 2,826 sf of accessory storage space. The Clements' request of 4,680 sf equates to approximately 2.192% of total lot area, far exceeding what the Board has allowed in the recent past. The table below provides a comparison of the two past approvals and the Clements request.

Applicant(s)	PID	Lot Area	Zoning District	Amount Requested	Amount Allowed by BOAA	Approximate Percentage of Lot Area
Bodell	02.00848.40	5.23 ac	RRII	3,048 sf	2,760 sf	1.211%
Rieck	02.00860.00	4.94 ac	RRII	3,354.5 sf	2,850 sf	1.324%
Clements	02.00751.20	4.90 ac	RRII	4,680 sf	-----	2.192% as requested

Based on recent guidance from MCIT and the Chisago County Attorney's Office, the Board no longer has the ability to negotiate or modify Variance requests. This means that the Board must either approve or deny the request as submitted, unless the applicants offer an amended request prior to the Board taking action to approve or deny. The applicants have been informed of their ability to amend their request.

REVIEW PROCESS

The Technical Review Committee met with applicants John & Cassandra Clements on April 12, 2023. The group discussed the basis of the request being personal preference rather than related to uniqueness of the property / compliance with State mandated practical difficulties standard. Other than general concerns with sound basis for granting the proposed Variance, the only other concern identified related to inspecting the existing septic system for compliance. The proposed structure will have no direct impact on the septic system; however, it's customary for septic compliance inspections as part of the Variance process.

The Chisago Lake Town Board considered the request on April 18, 2023 and recommended approval with the condition that the structure meets all setback requirements. The Town Board also commented that the proposed structure is "not out of character with neighboring parcels".

The state mandated 60-day review period expires on May 29, 2023.

VARIANCE ANALYSIS

A Variance to the provisions of the Zoning Ordinance may be issued to provide relief to the landowner in those cases where the application of the strict letter of the Ordinance imposes particular hardship or practical difficulties to the property owner in the use of the land. No Variance may be granted that would allow any use that is prohibited in the zoning district in which the property is located. A Variance may be granted only in the event that the following circumstances exist. Staff has provided notes (shown in *italics*) for each of the circumstances for the Board's consideration.

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control;

The applicants have not cited any exceptional or extraordinary circumstances which apply to their property. Rather, the written narrative references personal circumstances (personal machinery and equipment, desire for workshop) which are creating the desire for additional accessory storage space. Additionally, the applicants have cited other examples of properties with more than 2,000 sf of accessory storage space in the immediate RRII District as a basis for their Variance; however, staff has found no record that these other examples have been allowed through Variance approval. Staff suspects that the majority of these other examples are examples of legal non-conforming uses, which is not basis for granting the applicants' request.

2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;

Literal interpretation of the Zoning Ordinance would not deprive the applicants of rights commonly enjoyed by other RRII District properties. Property owners located in the RRII District have the right to accessory storage in compliance with Zoning Ordinance Section 4.08.2. The subject site, based on lot size, is allowed a maximum of 2,000 sf of accessory storage space, which is the largest amount of accessory storage space permitted in the RRII District. The site has been developed with 1,800 sf of accessory storage space, leaving the applicants with 200 sf for additional accessory storage purposes.

3. That the special conditions or circumstances do not result from the actions of the owner(s) or under previous owner(s) under the current law;

As mentioned above, the applicants have cited personal circumstances and examples of other properties with more than 2,000 sf of accessory storage space in their immediate RRII District as basis for their request. Owning more machinery and equipment than can be stored within a maximum of 2,000 sf of accessory storage space is entirely a circumstance resulting from the applicants' / property owner's actions. Further, there is no evidence to suggest that the other examples of more than 2,000 sf of accessory storage space in the immediate area were allowed through Variance approval.

4. That granting the Variance requested will not result in allowing a use otherwise not permitted in the same district;

Accessory structures are a permitted use in the RRII District; therefore, the Variance is not considered a use Variance.

5. The Variance requested is the minimum Variance which would alleviate the hardship;

The applicants' stated hardship for this particular request is related to personal circumstances (machinery and equipment, desire for workshop) and examples of other properties in the immediate area with more than 2,000 sf of accessory storage space. Because the applicants have indicated a desire for a 40' x 72' accessory structure, it's presumed that this is the amount of space they feel they need for storage and workshop purposes. There has been no written or verbal indication that a smaller structure – thereby requiring a lesser Variance – has been considered.

6. The Variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone;

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. Staff does not believe that the Variance, if approved, would be detrimental to the purposes or intent of the Zoning Ordinance or to other properties in the RRII District; however, staff does not believe that the application fully or satisfactorily addresses the State mandated practical difficulties standard, specifically in terms of reasonableness and uniqueness. Further, while the Variance may not be detrimental to other properties in the RRII District, it may perpetuate similar Variance requests.

7. Economic conditions or circumstances alone shall not be considered in the granting of a Variance request if a reasonable use of the property exists under the terms of this Ordinance; and

The applicants did not cite economic conditions as a practical difficulty.

8. In the Flood Plain District, no Variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by State law.

The subject site is not located in a flood district.

The Board is tasked with determining whether or not a “practical difficulty” exists prohibiting the property owner from using the land in a manner consistent with the Zoning Ordinance. Minnesota Statute 394.27 offers the following guidance:

*The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a **reasonable** manner not permitted by an official control; the plight of the landowner is due to circumstances **unique** to the property not created by the landowner; and the variance, if granted, will not alter the **essential character** of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.*

As indicated above, “practical difficulties” is a legal standard that the County must apply when considering applications for Variances. It’s a three-factor test, including: reasonableness, uniqueness, and essential character. In order to constitute practical difficulties, all three factors of the test must be satisfied. Descriptions of the three factors are offered below for the Board’s consideration:

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the Variance. For example, if the Variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the Variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

3. Essential Character

The third factor is that the Variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the Variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

FINDINGS OF FACT

Zoning Ordinance Section 8.06 Variances, E. states that in considering all requests for a Variance, the Board of Adjustment and Appeals shall make certain Findings of Fact. Staff has provided proposed findings, shown in *italics* below, for the Board's consideration.

Criteria #1	The proposed action will not impair an adequate supply of light and air to adjacent property;
<i>Finding #1</i>	<i>The proposed accessory structure will be situated in a manner that meets minimum setback requirements so as not to impair an adequate supply of light and air to adjacent properties.</i>
Criteria #2	The proposed action will not unreasonably increase the congestion in the public right-of-way;
<i>Finding #2</i>	<i>The proposed accessory structure will not create additional bedrooms and will not increase the number of occupants in the proposed single family dwelling and will, therefore, not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on 310th Street / CSAH 37 or surrounding roadways.</i>
Criteria #3	The proposed action will not increase the danger of fire or endanger the public safety;
<i>Finding #3</i>	<i>The property owner will be required to obtain a building permit prior to construction of the proposed accessory structure and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.</i>
Criteria #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties;
<i>Finding #4</i>	<i>The proposed accessory structure itself will likely not cause undue negative impact to surrounding properties; however, the Variance may perpetuate similar requests which, per Finding #7 below, is contrary to the intent of Zoning Ordinance Section 4.08.2, F.</i>
Criteria #5	The proposed action will not cause an unreasonable strain upon existing facilities and services;
<i>Finding #5</i>	<i>The proposed accessory structure will not create additional bedrooms and will not increase the number of occupants in the dwelling or the need for additional facilities and services; therefore, the County finds that the proposed accessory structure will not have any strain or increased impact upon existing facilities and services.</i>
Criteria #6	The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
<i>Finding #6</i>	<i>The proposed accessory structure will not have any negative fiscal impact on the County or school district. The Board of Adjustment and Appeals finds that the proposed</i>

structure will increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.

Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.

Finding #7 The intent of Zoning Ordinance Section 4.08.2, F. is to establish a maximum amount of accessory storage space in the County's various zoning districts, including the Rural Residential II (RRII) District, and allows accessory storage space in proportion to lot size. The Board of Adjustment and Appeals finds that the proposed action is contrary to the intent of Zoning Ordinance Section 4.08.2, F. and finds that the application fails to fully or satisfactorily address the State mandated practical difficulties standard, specifically in terms of reasonableness and uniqueness.

STAFF RECOMMENDATION

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff does not support the request for Variance and recommends denial** and has prepared a resolution for the Board's consideration. Staff's recommendation is based on the comments included in the Variance Analysis section (shown in *blue italics*) along with Findings of Fact 4 and 7 (shown in *red italics*).

Alternatively, should the Board determine that the request for Variance satisfies the State mandated practical difficulties standard and the Board presents revised Findings of Fact (#4 and #7 shown in *red italics*) to support approval of the request for Variance, staff encourages the Board to consider the following conditions of approval:

1. This approval grants a 2,680 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the property to have a total of 4,680 square feet of accessory storage space in the Rural Residential II (RRII) District. In addition to the existing 30' x 60' (1,800 square foot) detached accessory structure, this approval allows the construction of a 40' x 72' (2,880 square feet) detached accessory structure.
2. The accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received March 30, 2023. Any significant deviation from the approved request and site plan, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.
3. Any future subdivision or reconfiguration of the property shall only occur in such a manner that does not reduce the existing lot area of 4.9 acres, unless the property is brought into compliance with the regulations for accessory structures / accessory storage space in the Rural Residential II (RRII) District in effect at the time of said subdivision or reconfiguration.
4. The property owner shall obtain a building permit prior to construction and, further, the accessory structure shall comply with all applicable codes and regulations except as permitted by this Variance.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to amend draft Findings of Fact #4 and #7.*
2. **Deny** the Variance based on the Findings of Fact presented.
3. **Table** action to allow for further review and consideration. The current review period expires on May 29, 2023, allowing for further review and consideration at the Board's May 25, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0403, a resolution denying a Variance to Zoning Ordinance Section 4.08.2, F. to exceed the maximum allowable amount of accessory storage space on property located at 14824 310th Street / CSAH 37 in Chisago Lake Township, as presented or amended.

If the Board chooses to approve the request for Variance, staff will prepare a revised resolution based on the Findings of Fact and conditions established by the Board.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plan
 - d. Examples of other properties with more than 2,000 sf of accessory storage space (four aerial images)
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0403 (denial)

CC: John & Cassandra Clements, applicants
County file

Permit #

23-297

PLANNING ADMINISTRATIVE FORM

Chisago County Department of Environmental Services

Recording Fee

\$46-

Base Fee

\$500-

Wetland or Septic Fees

Plat Compliance Fee

TOTAL FEE

\$546-

Street Location

14824 310th St.

Tax Parcel #

02.00751.20

Legal Description

E-Mail Address:

Owner:

John Clements

Day Phone

Address

14824 310th St. Center City MN 55012

Applicant (if other than owner)

Cassandra Clements

Day Phone

Address

(same)

526, 734, 220

Type of Request:

Variance

☒

Preliminary Plat

☐

Administrative Appeal

☐

Administrative Permit

☐

Conditional Use Permit

☐

Ordinance Amendment

☐

Interim Use Permit

☐

Rezoning

☐

Applicable section of ordinance:

Description of request:

Please see attached for details.

If Variance Application, Brief

Description of Practical

Difficulty

Signature of Applicant

Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Date Received

3-30-23

Date Complete

5-29-23

60/120 Day Review Period

Date of Public
Hearing:

APRIL 27, 2023

TOWNSHIP PRESENTATION FORM

Street Location 14824 310th St.

Legal Description _____

Owner Name John Clements

Day Phone: [REDACTED]

Address: 14824 310th St. Center City MN 55012

Applicant: Cassandra Clements
(if other than owner)

Day Phone: [REDACTED]

Address: (same)

Type of Request:

Variance ☒

Preliminary Plat ☐

Administrative Appeal ☐

Administrative Permit ☐

Conditional Use Permit ☐
(or amendment to CUP)

Rezoning ☐

Interim Use Permit ☐

Ordinance Amendment ☐

Description of Request: Please see attached for details

Date of County Public Hearing: APRIL 27, 2023

Date of Township Presentation: APRIL 18, 2023

TOWNSHIP ACTION TAKEN

Approved ☒

Denied ☐

Reasons and Conditions: not out of character with neighboring parcels - needs to ensure bldg meets setbacks

Homeowner concerned about security of equipment

Signature of Township Officers:

[Signature]
Jul 7. Reed
[Signature]

[Signature]

Signature of Applicant

3-30-23

Date

To whom it may concern,

My name is John Clements and I am a resident of the Chisago Lakes Township district RR2 zoning district @ 14824 310th St., Center City. I am respectfully asking that the Board grant me a variance for constructing a pole building on my property that will measure 40'X72'. I am seeking a variance approval as this proposed pole building will exceed the 2,000 sqft. maximum that has been set forth in my zoning district. I have attached a depiction of where the pole building would be situated on my property. I believe that having this pole building on my property is a reasonable use of the land and it does not have any burden on any of the neighboring property owners. Granting the variance would, in my opinion, provide some benefit to my neighbors for the reasons mentioned in this application.

I will list the reasons why I believe I am in need of a pole building this size. Firstly, I have been a resident in my zoning district for 14 years and have a growing family that consists of 5 of us now. My wife and I are proud to be able to take our family on camping trips, so we bought a 30' class C motorhome which is sadly having to sit outdoors in the elements since we do not have any covered storage for it. Secondly, we have acquired a 20' outboard boat that we use to entertain our family on the many great lakes we have in the area and on the camping trips we take, which is sadly sitting outside getting weathered. Thirdly, I have acquired a skidsteer with many different attachments and a 24' trailer for it so I can maintain the nearly 5 acres of wooded land and long gravel driveway we live on, all of which is sitting outside due to no covered storage space. In addition to the motorhome, boat, skid steer and attachments/trailer, I also have 2 snowmobiles, snowmobile trailer, car trailer, Farmall Model A tractor, riding lawnmower and a 4-wheeler that are in need of dedicated covered storage. Lastly, I do a lot of my own repairs and maintenance on all the various types of machinery and equipment that we own. Consequently, having the additional space that this pole building would provide would enable me to have a dedicated workshop so I can fix and maintain our machinery and equipment. Having the space enclosed would reduce the noise pollution when I am working on the machinery and equipment.

I do not believe having this pole building will alter the essential character of the neighborhood. When comparing my property to others who also reside within my specific RR2 zoning district, I can report that there are 4 other owners who own sizeable pole buildings that exceeds the 2,000 sqft. storage building maximum. I have attached these 4 properties to this application for your review. The owner at address 14555 310th Street has an attached garage, 2 storage buildings, one of which is an exceptionally large pole building in the back of their property. The owner at 14860 Otter Lane has a large, attached garage and another large, sizeable pole building in the front of their property. The owner at 15010 310th street has 2 pole buildings on their property. The owner at 15432 310th St. also has 2 large outbuildings located near their house. There are some agricultural zoning districts nearby as well, and having multiple pole buildings is quite common in this area as the Board is aware.

I currently have a detached garage that is 1,800 sqft. Just like my neighbors who have attached garages, I am not putting the area of my garage into this variance request. This garage is a space that was inherited, not created by me.

In summary, I believe the addition of my proposed pole building would not only be a practical solution to the storage and shop needs that I have, but in today's highly evolving criminal/theft environment, having this pole building would give me the needed security to protect all my assets that I have worked so hard for. Furthermore, having the pole building would help make the appearance of my property more clean and organized and, I believe I have provided sufficient evidence, that the appearance of my proposed pole building would only match the appearance of my neighbors. Indoor storage is good not only for security reasons but also to avoid having a blight property. This is a positive for the neighborhood as well and the value of my property and neighboring properties.

If there are any questions about my proposal, please don't hesitate to reach out to me



Sincerely,

John Clements

current detached garage

1,800 sqft.

Chisago



legend



Results
View



Zoom In



Zoom Out



Pan



Zoom Prev

Navigation

Zoom Next

Zoom Select

Zoom Extent



Clear



Search



Identify

Links/Downloads



Buffer

X/Y



Proposed building site of 40'x72' pole building
14824 310th St.
Center City

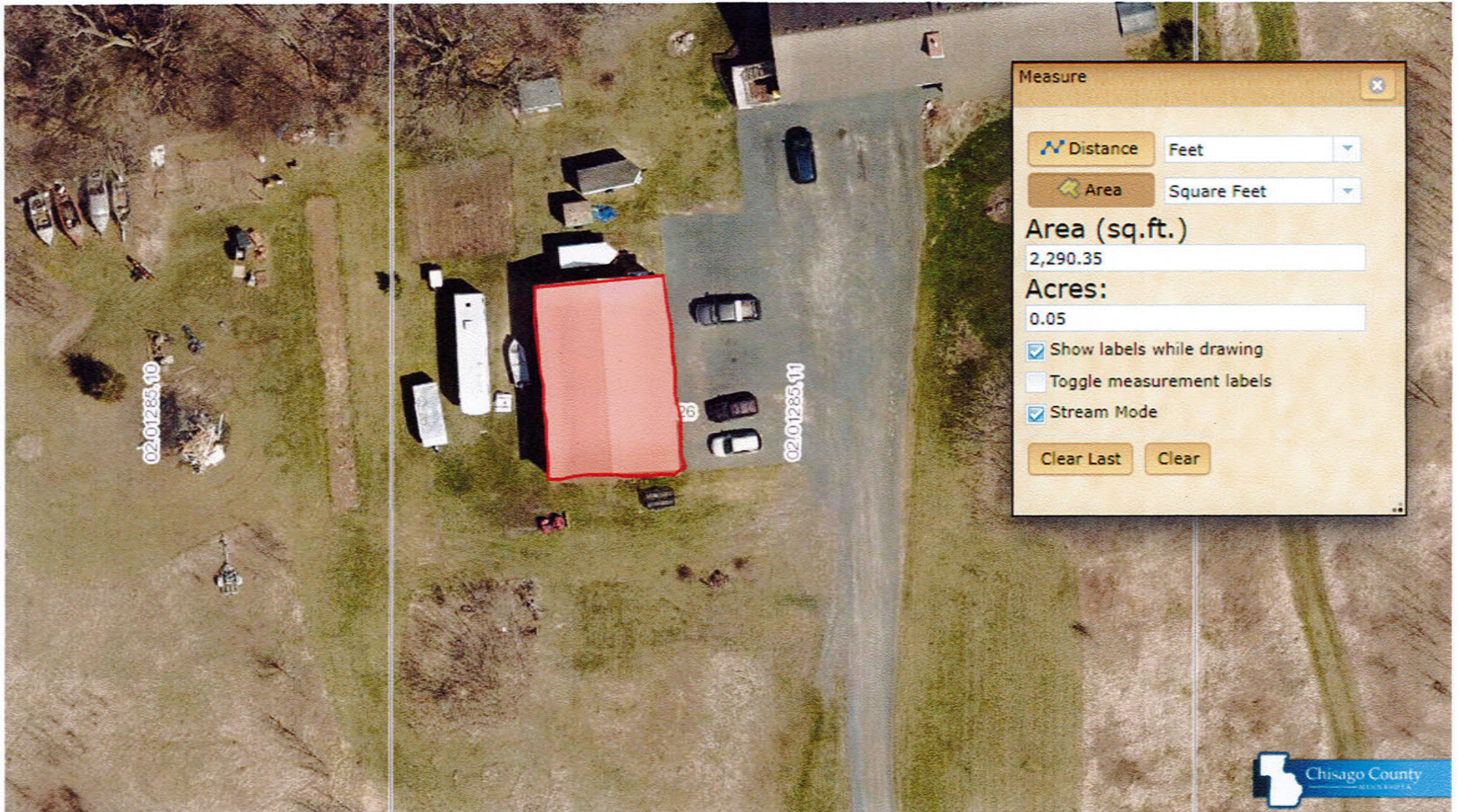
Scale 1: 500

X: 571419.2545

Y: 137507.3058



Property address:
14618 310th St.
Center City MN



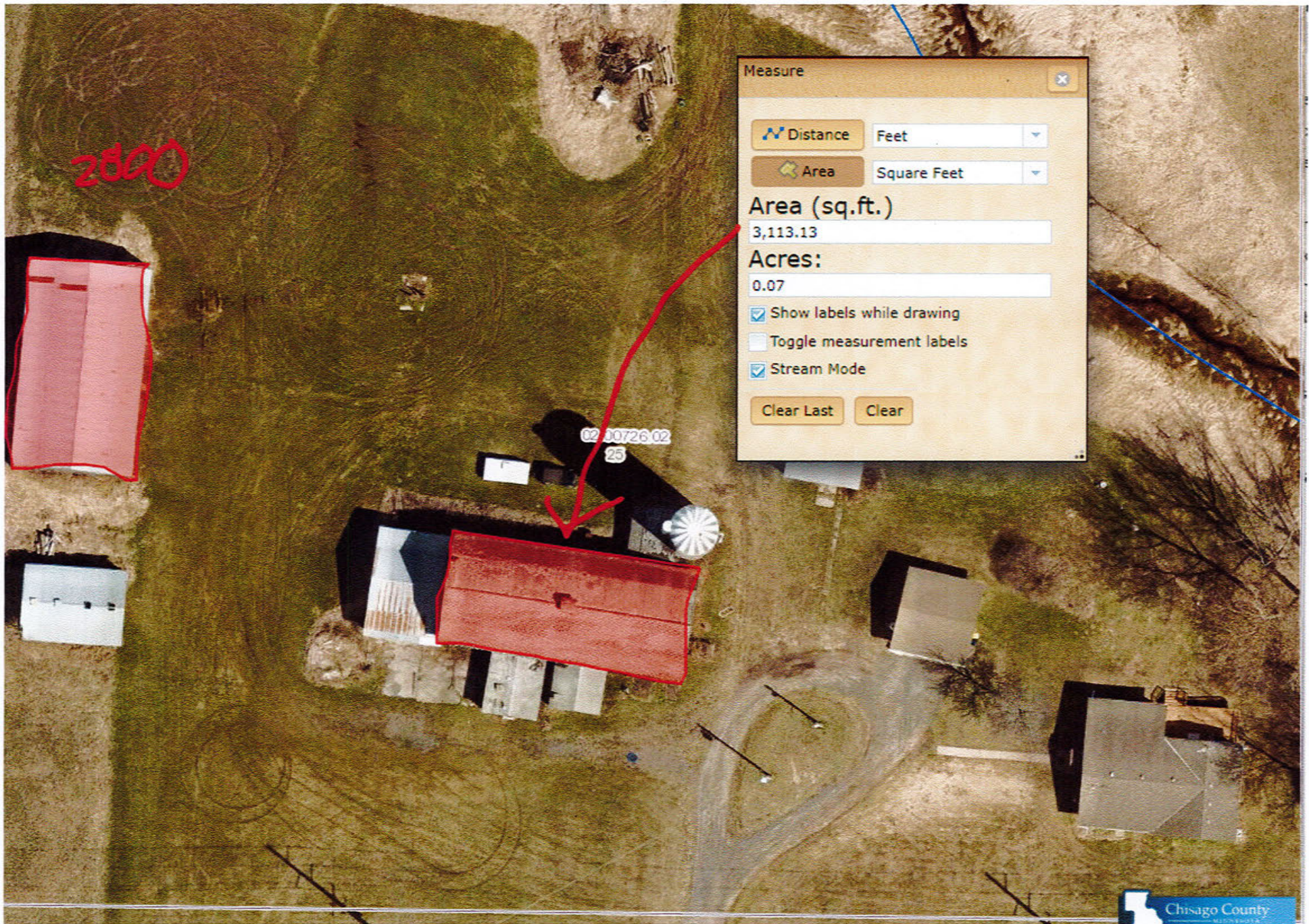
property address:

14860 Otter LN
Center City



Property address:

15010 310th St.
Center City



Property address:
15432 310th St.
Center City

John & Cassandra Clements - Aerial Photo

Property owners John & Cassandra Clements are requesting a Variance to Zoning Ordinance Section 4.08.2 in order to exceed the maximum allowable amount of accessory storage space. The 4.90-acre property is zoned Rural Residential II (RRII) District and located at 14824 310th Street, Chisago Lake Township, S26, T34, R20 (PID 02.00751.20).

Clements property - 



Property owners John & Cassandra Clements are requesting a Variance to Zoning Ordinance Section 4.08.2 in order to exceed the maximum allowable amount of accessory storage space. The 4.90-acre property is zoned Rural Residential II (RRII) District and located at 14824 310th Street, Chisago Lake Township, S26, T34, R20 (PID 02.00751.20).



This aerial map displays the Center City area in Chisago County, Illinois. The map is overlaid with a grid of property parcels, each labeled with a unique parcel number. A red rectangle highlights a specific parcel located south of the County Highway/ Public Works Building and east of the County Government Center and Courthouse. The map also shows several bodies of water, including Pioneer Lake, Little Lake, and South Center Lake. Other labeled features include Lakes Middle School, Center City, and the Chisago County Public Safety Center. The map is oriented with North at the top.

RESOLUTION NO. BOAA2023-0403

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
DENYING A VARIANCE TO ZONING ORDINANCE SECTION 4.08.2, F. TO EXCEED THE
MAXIMUM ALLOWABLE AMOUNT OF ACCESSORY STORAGE SPACE ON PROPERTY LOCATED
AT 14824 310th STREET / CSAH 37 IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owner John Clements submitted an application dated received and considered complete on March 30, 2023 for a Variance to Zoning Ordinance Section 4.08.2 Accessory Structures and Uses in UR, RRI and RRII Districts, F.; and

WHEREAS, the property owner desires to exceed the maximum allowable amount of accessory storage space in the Rural Residential II (RRII) District by constructing a 40' x 72' (2,880 sf) detached accessory structure in addition to having an existing 1,800 sf detached accessory structure, thereby having a total of 4,680 square feet of accessory storage space where the maximum allowable amount is 2,000 square feet; and

WHEREAS, the subject site is located at 14824 310th Street / CSAH 37 in Chisago Lake Township and is legally described as:

PID 02.00751.20

All that part of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 26, Township 34, Range 20, Chisago County, Minnesota described as follows, to-wit: Commencing at the Southwest corner of said Southwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of said Section 26; thence North 0 degrees 02 minutes 45 minutes East along the West line of said Southwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ a distance of 290.4 feet; thence East 150 feet to the point of beginning of the parcel hereby conveyed; thence West, retracing last course 150 feet to the West line of said Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$; thence North along the West line of said Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ to the Northwest corner of said Southwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$; thence East along the North line of the Southwest $\frac{1}{4}$ of Northeast $\frac{1}{4}$ a distance of 200 feet; thence South at a right angle to last course in a straight line to a monument set at the Northeast corner of Outlot A of the plat "Center City East"; thence West along the North line of Outlot A of Center City East a distance of 50 feet to a monument at the Northwest corner of said Outlot A; thence South along the West line of said Outlot A to the point of beginning. Together with an easement for ingress and egress over and across all of Outlot A of Center City East, according to the plat thereof on file and of record in the office of the County Recorder of Chisago County, Minnesota.

WHEREAS, notice was provided and on April 27, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, the applicant and/or property owner, and invited members of the public to comment; and

WHEREAS, the Board of Adjustment and Appeals considered several criteria for granting Variances and made the following Findings of Fact:

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

<i>Finding #1</i>	<i>The proposed accessory structure will be situated in a manner that meets minimum setback requirements so as not to impair an adequate supply of light and air to adjacent properties.</i>
Criteria #2	The proposed action will not unreasonably increase the congestion in the public right-of-way;
<i>Finding #2</i>	<i>The proposed accessory structure will not create additional bedrooms and will not increase the number of occupants in the proposed single family dwelling and will, therefore, not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on 310th Street / CSAH 37 or surrounding roadways.</i>
Criteria #3	The proposed action will not increase the danger of fire or endanger the public safety;
<i>Finding #3</i>	<i>The property owner will be required to obtain a building permit prior to construction of the proposed accessory structure and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.</i>
Criteria #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties;
<i>Finding #4</i>	<i>The proposed accessory structure itself will likely not cause undue negative impact to surrounding properties; however, the Variance may perpetuate similar requests which, per Finding #7 below, is contrary to the intent of Zoning Ordinance Section 4.08.2, F.</i>
Criteria #5	The proposed action will not cause an unreasonable strain upon existing facilities and services;
<i>Finding #5</i>	<i>The proposed accessory structure will not create additional bedrooms and will not increase the number of occupants in the dwelling or the need for additional facilities and services; therefore, the County finds that the proposed accessory structure will not have any strain or increased impact upon existing facilities and services.</i>
Criteria #6	The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
<i>Finding #6</i>	<i>The proposed accessory structure will not have any negative fiscal impact on the County or school district. The Board of Adjustment and Appeals finds that the proposed structure will increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.</i>
Criteria #7	The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
<i>Finding #7</i>	<i>The intent of Zoning Ordinance Section 4.08.2, F. is to establish a maximum amount of accessory storage space in the County's various zoning districts, including the Rural Residential II (RRII) District, and allows accessory storage space in proportion to lot size. The Board of Adjustment and Appeals finds that the proposed action is contrary to the intent of Zoning Ordinance Section 4.08.2, F. and finds that the application fails to fully or satisfactorily address the State mandated practical difficulties standard, specifically in terms of reasonableness and uniqueness.</i>

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variance is hereby **denied** based on the findings provided herein.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 27th day of April, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variances to Top of Bluff and Township Right-of-Way Setback Requirements
 13xxx North Lakes Lane, Chisago Lake Township
 DATE: April 27, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider Variances allowing construction of a dwelling with attached garage and deck 17.6' from Top of Bluff and 20' from township Right-of-Way where the required minimum setbacks are 30' from Top of Bluff and 40' from township Right-of-Way. Additionally, the Board will consider a Variance to allow a septic site 6.9' from Top of Bluff where the required setback is 30'.

SITE & APPLICATION INFORMATION

Applicant(s):	Louis & Angela Biondo
Property Owner(s):	Louis & Angela Biondo
Property Address:	13xxx North Lakes Lane Chisago Lake Township
General Location:	Section 21, Township 34, Range 20
PID:	02.01271.51
Property Area:	1.09± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	Rural Residential I (RRI) District / Shoreland Management District
South:	Rural Residential I (RRI) District / Shoreland Management District
East:	North Center Lake
West:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	March 31, 2023
Date Application Complete:	April 3, 2023
60-Day Review Period:	June 2, 2023



BACKGROUND

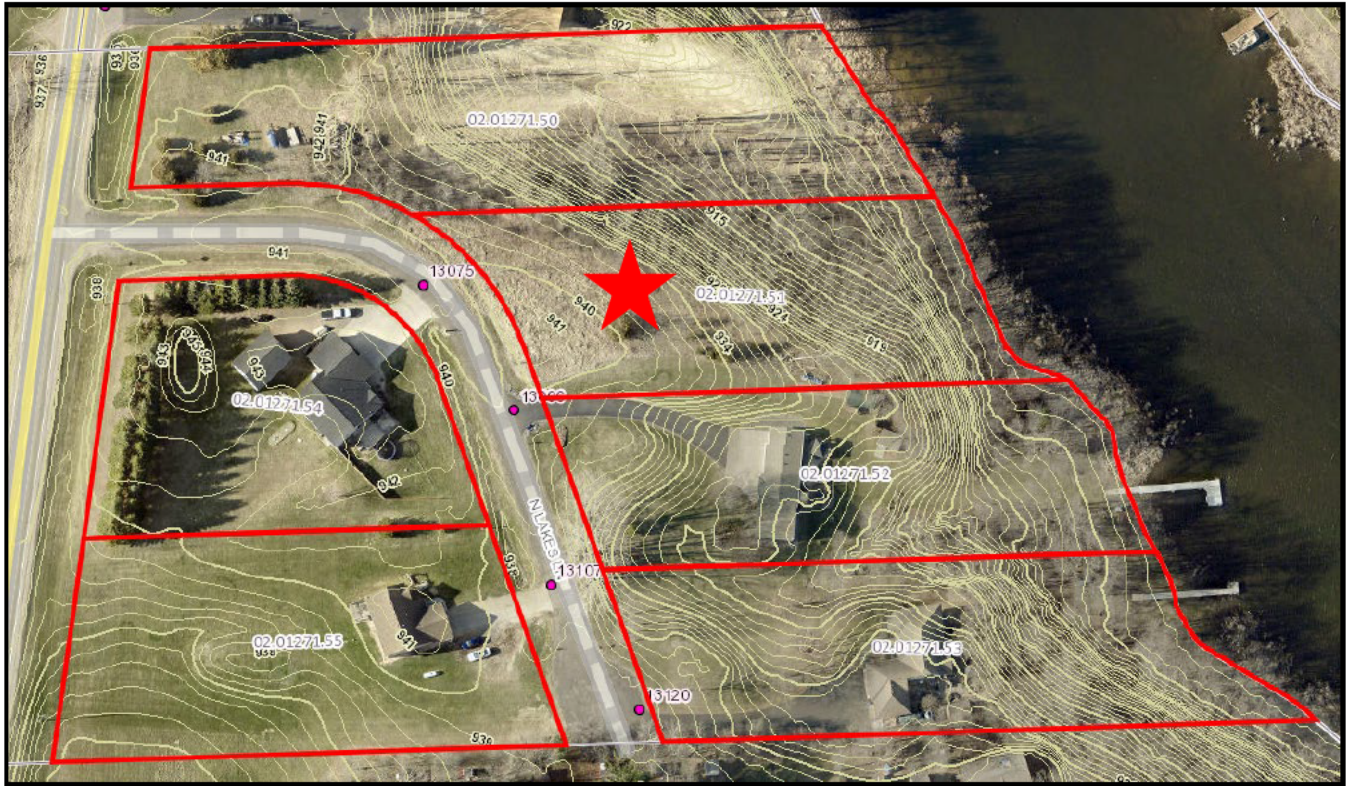
Property owners Louis & Angela Biondo wish to develop their currently vacant lakeshore property by constructing a 2,044 sf dwelling with 816 sf attached garage and 522.4 sf deck (all sizes based on attached survey). The subject site is located at 13xxx North Lakes Lane in Chisago Lake Township, within the Rural Residential I (RRI) District / Shoreland Management District. The proposed development will require setback Variances for the dwelling / attached garage / deck and the alternate septic system site.

SITE ANALYSIS

The Biondo property is located between North Lakes Lane and the northwest corner of North Center Lake, generally situated north of 325th Street and south of Malmberg Avenue. The 1.09± acre site is 166.72' wide with an average depth of approximately 355', exceeding all dimensional requirements for the Shoreland Management District. Topography of the site includes significant slopes on the easterly half of the lot which meet bluff status and fairly level elevations near the roadway. The bluff area appears to be heavily wooded. The images below illustrate 1' contours (elevations) for the subject site (top image) and Hillcrest Estates subdivision (bottom image).

The subject site is located in the Rural Residential I (RRI) District / Shoreland Management District and is surrounded by the RRI District / Shoreland Management District to the north, south and west, and bordered by North Center Lake to the east. The site was platted as Lot 2, Block 1, Hillcrest Estates in 1989; the plat included a total of six lots. Surrounding properties located within Hillcrest Estates are similarly sized and four of the lots have been developed with dwellings and related accessory structures. It does not appear that any of the developed properties required setback Variances.





HISTORICAL ANALYSIS

The Hillcrest Estates subdivision was platted in 1989. Review of Planning Commission meeting minutes from August 31, 1989 indicate that there was concern specifically related to severe slopes and limited area for development on Lot 2 (subject site). The following is an excerpt from the August 31, 1989 meeting minutes:

"The lot sizes were adequate, but the lakeshore lots showed some rather severe slope areas. Some concern was expressed regarding lakeshore Lot 2, which showed a limited area for building site. When asked if a 10,000 square foot area could be found there for a sewer and set-aside site, Gary Anderson replied that it might be slightly crowded. The Planning Commission asked if the road could be moved slightly west, to allow more building and septic area for Lot 2. ... After some further discussion, the matter was tabled for the developer to consult with his perc tester regarding the septic site on Lot 2, to redraw the plat with the road further west, and to stake the proposed roadway and lot lines for on-site inspection."

The September 28, 1989 Planning Commission meeting minutes state that "Lot 2 had been adjusted as requested by the Planning Commission" and the Commission recommended approval with conditions. The County Board approved the Preliminary Plat on October 5, 1989.

It's clear from the 1989 meeting minutes that the Planning Commission was concerned about the buildability of Lot 2 (subject site) due to the severe slopes. What is unclear is whether the slopes had been reviewed for bluff status which would have required an additional 30' setback from Top of Bluff. Ultimately, the County deemed the subject site to be buildable, which in 1989 required a minimum dwelling size of 750 sf (current requirement is 960 sf) and, as the above meeting minute excerpt indicates, a 10,000 sf area for primary and alternate septic sites.

PROPOSAL ANALYSIS

As stated above, the Biondos are proposing to construct a 2,044 sf dwelling with 816 sf attached garage and 522.4 sf deck. The attached survey illustrates all required setbacks, showing that the dwelling and deck will be as close as 17.6' from the Top of Bluff and the attached garage will be as close as 20' to township Right-of-Way. As proposed, the dwelling, attached garage and deck will meet the required 10' side yard setbacks (north and south). The survey also shows a primary septic site slightly northwest of the dwelling which meets all required setbacks, and an alternate septic site east of the dwelling which is situated 6.9' from Top of Bluff.

The attached written narrative addresses the State mandated practical difficulties standard by offering the following:

- **Reasonableness:** We are requesting this Variance with the intention to use the property in a reasonable manner – to build a home that we will reside in.
- **Uniqueness:** We are requesting this Variance due to circumstances unique to the property, not caused by any landowner. The sloping topography, along with the literal interpretation of the setbacks, result in a smaller, awkward triangular buildable area.
- **Essential Character:** If granted, this Variance will not alter the essential character of our locality. The home will not be out of scale, out of place, or otherwise inconsistent with the surrounding area.

The table below provides a comparison of minimum dimensional standards for the RRI District / Shoreland Management District and corresponding information for the proposed Variances, with the Variance requests shown in red.

	RRI District / Shoreland Management District Standards	Proposed Setbacks
Road Setback	40' to Township Right-of-Way	20' to North Lakes Lane Right-of-Way
Top of Bluff Setback	30' to Top of Bluff	17.6' – dwelling and deck 6.9' – alternate septic site
Side Yard Setback	10' for Dwelling and Attached Garage; 10' for Septic Systems	Dwelling, attached garage, deck and alternate septic site are shown to be 10' from the southern property boundary and more than 60' from the northern property boundary; the primary septic site is more than 20' from the northern property boundary and approximately 70' from the southern property boundary.

REVIEW PROCESS

The Technical Review Committee met with Louis Biondo on April 12, 2023. Biondo explained that he and his wife have modified their building plans multiple times in an effort to meet the required setbacks to the best of their ability, providing detail about locating the dwelling closer to the roadway to better protect the bluff, reducing the footprint of the dwelling, slightly redesigning the deck, and adjusting the size and orientation of the attached garage. Biondo also spoke briefly about methods for handling drainage. Code Enforcement Officer Putman commented that clear cutting of the site is prohibited and

suggested that a Stormwater Pollution Prevention Plan (SWPPP) and erosion control plan may be required.

The Chisago Lake Town Board considered the request on April 18, 2023 and recommended approval with no conditions. The Town Board commented that the “primary septic system meets code. Builder plans to do infiltration system to help mitigate erosion. Site line for road and driveway. Structure is outside road Right-of-Way.”

The state mandated 60-day review period expires on June 2, 2023.

VARIANCE ANALYSIS

A Variance to the provisions of the Zoning Ordinance may be issued to provide relief to the landowner in those cases where the application of the strict letter of the Ordinance imposes particular hardship or practical difficulties to the property owner in the use of the land. No Variance may be granted that would allow any use that is prohibited in the zoning district in which the property is located. A Variance may be granted only in the event that the following circumstances exist. Staff has provided notes (shown in *italics*) for each of the circumstances for the Board’s consideration.

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control;

The written narrative cites, and the survey illustrates, topography (i.e., bluff) as an exceptional or extraordinary circumstance. Further, historical documentation – in the form of Planning Commission meeting minutes from 1989 – show that there was concern about the buildable area for the subject site due to “severe slopes”. The property owners have had no control over this circumstance.

2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;

Staff does not believe that literal interpretation of the Zoning Ordinance would deprive the applicants of rights commonly enjoyed by other RRI District / Shoreland Management District properties. Properties in the RRI District / Shoreland Management District have the right to be developed for single family dwelling purposes, in addition to other uses identified by the Zoning Ordinance, with the required minimum dwelling size being 960 sf. Based on the survey provided by the applicants, staff believes that the site could be developed with a smaller dwelling, attached garage and primary septic site meeting all required setbacks. However, it’s unclear if the site could accommodate an alternate septic site meeting all setback requirements in this same scenario.

3. That the special conditions or circumstances do not result from the actions of the owner(s) or under previous owner(s) under the current law;

The bluff status is a condition not created by any current or previous landowner; however, a previous landowner (Kasich) platted the subject site in 1989 in a manner which created significant development challenges. Planning Commission meeting minutes from 1989 indicate that the County was aware of “severe slopes” on the subject site but, ultimately, deemed the site buildable. For clarification, “buildable” in 1989 meant that the site could support a 750 sf dwelling and a 10,000 sf area for primary and alternate septic sites. It’s unclear if the County was aware in 1989 that the severe slopes met bluff status, which would require a 30’ setback from Top of Bluff.

4. That granting the Variance requested will not result in allowing a use otherwise not permitted in the same district;

Single family dwellings are a Permitted Use in the RRI District / Shoreland Management District; therefore, the Variance is not considered a use Variance.

5. The Variance requested is the minimum Variance which would alleviate the hardship;

The exceptional or extraordinary circumstance for this particular request is related to topography (i.e., bluff) and the challenges of complying with all required setbacks due to the added Top of Bluff setback requirement. While the proposed use is reasonable, the applicants are proposing a dwelling size which is more than twice the required minimum dwelling size (minimum required = 960 sf; proposed = 2,044 sf) along with a three-stall attached garage. Staff believes, based on the attached survey, that the site could be developed with a smaller dwelling and attached garage and primary septic site meeting all required setbacks. However, it's unclear if the site could also accommodate an alternate septic site meeting all setback requirements in this same scenario.

The applicants have stated that they've made several adjustments to their building plans to comply with the required setbacks to the best of their ability, including reducing the dwelling size; however, the proposed dwelling size is still significantly larger than the required minimum. Ultimately, staff does not believe that the applicants have done everything possible to present the least amount of Variance needed to alleviate the exceptional or extraordinary circumstance.

6. The Variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone;

Staff does not believe that the Variance, if approved, would be detrimental to the purposes or intent of the Zoning Ordinance or to other properties in the RRI District / Shoreland Management District. The Zoning Ordinance allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. Staff believes that the applicant has satisfied the State mandated practical difficulties standard.

7. Economic conditions or circumstances alone shall not be considered in the granting of a Variance request if a reasonable use of the property exists under the terms of this Ordinance; and

The written narrative does state that the property owners "would like to build a reasonable enough sized home to support the cost of the lake lot"; however, this was not the sole condition or circumstance cited as a practical difficulty.

8. In the Flood Plain District, no Variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by State law.

While a small portion of the subject site is located in a flood district, the proposed dwelling and septic locations are located entirely outside of the flood district.

In addition to staff's notes above (shown in *italics*), the property owners have provided responses to similar circumstances included in an informational handout provided to all Variance applicants. See the attached written narrative for the property owners' responses.

The Board is tasked with determining whether or not a “practical difficulty” exists prohibiting the property owner from using the land in a manner consistent with the Zoning Ordinance. Minnesota Statute 394.27 offers the following guidance:

*The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a **reasonable** manner not permitted by an official control; the plight of the landowner is due to circumstances **unique** to the property not created by the landowner; and the variance, if granted, will not alter the **essential character** of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.*

As indicated above, “practical difficulties” is a legal standard that the County must apply when considering applications for Variances. It’s a three-factor test, including: reasonableness, uniqueness, and essential character. In order to constitute practical difficulties, all three factors of the test must be satisfied. Descriptions of the three factors are offered below for the Board’s consideration:

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the Variance. For example, if the Variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the Variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

3. Essential Character

The third factor is that the Variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the Variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

FINDINGS OF FACT

Zoning Ordinance Section 8.06 Variances, E. states that in considering all requests for a Variance, the Board of Adjustment and Appeals shall make certain Findings of Fact. Staff has provided proposed findings, shown in *italics* below, for the Board's consideration.

- | | |
|-------------|--|
| Criteria #1 | The proposed action will not impair an adequate supply of light and air to adjacent property; |
| Finding #1 | <i>The proposed dwelling, attached garage and deck will be situated 10' from the southern property boundary and more than 60' from the northern property boundary (side yards), bordered by a public roadway along the western property boundary and bordered by a public body of water along the eastern property boundary. The County finds that the proposed dwelling and attached accessory structures will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.</i> |
| Criteria #2 | The proposed action will not unreasonably increase the congestion in the public right-of-way; |
| Finding #2 | <i>The subject site is located within the Hillcrest Estates subdivision – platted in 1989 – and the lot was created with the intention of it being developed for residential purposes. Records from 1989 do not indicate that there was any concern related to traffic or congestion resulting from approval of the subdivision or future development of the platted lots. Further, the road authority – Chisago Lake Township – has not expressed any concern specifically related to traffic or congestion as a result of the proposed action. Therefore, the County finds that the proposed action will not cause an unreasonable amount of traffic or congestion within the public Right-of-Way.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| Finding #3 | <i>The property owners will be required to obtain a building permit prior to construction of the proposed dwelling and attached accessory structures, and they will therefore be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County finds that the proposed action will have no impact on the danger of fire or public endangerment.</i> |
| Criteria #4 | The proposed action will not unreasonably cause undue negative impact to surrounding properties; |
| Finding #4 | <i>Being that the subject site was platted with the intention of creating a lot for residential purposes and the property owners are proposing to develop the lot with uses which are classified as Permitted Uses in the RRI District and because the proposed structures will meet all required side yard setbacks, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.</i> |
| Criteria #5 | The proposed action will not cause an unreasonable strain upon existing facilities and services; |
| Finding #5 | <i>The subject site was platted in 1989 with the intention of creating a lot for residential purposes, which suggests that the County considered the impact of future development on facilities and services. With no historical record of County concern specifically related</i> |

to facilities or services, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.

- Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
- Finding #6 *The proposed action will allow the development of a currently vacant parcel; therefore, the County finds that the proposed action will only increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 identifies dwellings as a Permitted Use in the RRI District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning and Shoreland Management Ordinances and satisfies the State mandated practical difficulties standard, which includes factors relating to uniqueness, reasonableness and essential character.*

STAFF RECOMMENDATION

Staff believes that the proposed uses – including dwelling, attached garaged, deck, and septic sites – are reasonable uses and consistent with the essential character of the neighborhood, and also believes that the subject site is unique in that it's classified as a bluff and the bluff along with required Top of Bluff setback area encompass most of the subject site; however, staff is concerned that the applicants are proposing structure sizes which are not well suited for this particular property. Ultimately, staff does support the Top of Bluff setback Variance for the alternate septic site and some level of Top of Bluff and township Right-of-Way setback Variances for the proposed dwelling, attached garage and deck. Staff encourages the Board to discuss further with the applicants their ability to reduce the dwelling and attached garage sizes in an effort to reduce the setback Variances needed.

Based on recent guidance from MCIT and the Chisago County Attorney's Office, the Board no longer has the ability to negotiate or modify Variance requests; however, the applicants have the ability to offer an amended request prior to the Board taking action to approve or deny. Alternatively, the applicants have the ability to request that the Board table their Variance request in order to further develop their building plans.

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing and for sake of discussion, **staff recommends approval** of the proposed Variances with recommended Findings of Fact (see above) and conditions (see below) and has prepared a resolution for the Board's consideration.

Recommended Condition(s):

1. This approval grants the following Variances:
 - a. A 12.4' Variance allowing a dwelling and deck to be no closer than 17.6' from Top of Bluff.

- b. A 20' Variance allowing a dwelling with attached garage to be no closer than 20' from township Right-of-Way.
 - c. A 23.1' Variance allowing an alternate septic site to be no closer than 6.9' from Top of Bluff.
- 2. The subject site shall be developed in general conformance with the application materials, including survey, dated received March 31, 2023 and kept on file with the Department of Environmental Services. Any significant deviation from the approved request and survey, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
- 3. The property owners shall provide a Stormwater Pollution Prevention Plan (SWPPP) and / or erosion control plan if deemed necessary by the Department of Environmental Services.
- 4. The property owners shall obtain a building permit prior to construction and, further, the structures shall comply with all applicable codes and regulations.
- 5. The property owners shall obtain a septic permit prior to installation of either the primary or alternate septic systems and, further, the systems shall comply with all applicable codes and regulations.
- 6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

-
- 1. **Approve** the Variances based on the Findings of Fact and conditions as presented or amended.
 - 2. **Deny** the Variances based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
 - a. The request for Variance, as presented, is not consistent with the Chisago County Zoning Ordinance due to _____.
 - b. The proposed Variance will have a negative impact to surrounding properties due to _____.
 - c. The request for Variance, as presented, does not meet the threshold for "practical difficulty" as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.
 - 3. **Table** action to allow for further review and consideration. The current review period expires on June 2, 2023, allowing for further review and consideration at the Board's May 25, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0404, a resolution approving Variances allowing reduced Top of Bluff and township Right-of-Way setbacks on property located at 13xxx North Lakes Lane in Chisago Lake Township, as presented or amended.

If the Board chooses to deny the request for Variances, staff will prepare a revised resolution based on the Findings of Fact established by the Board.

ATTACHMENTS

-
- 1. Application materials:

- a. Application
 - b. Written narrative
 - c. Surveys #1 - #5 (with #5 illustrating the requested Variances)
 - d. Survey (clean copy of "survey #5")
- 2. Aerial photo (1) – subject site
- 3. Aerial photo (2) – vicinity map
- 4. Draft Resolution No. BOAA2023-0404

CC: Louis & Angela Biondo, property owners
County file

Permit #

23-303

PLANNING ADMINISTRATIVE FORM

Chisago County Department of Environmental Services

Recording Fee 46.00

Base Fee 500.00

Wetland or Septic Fees _____

Plat Compliance Fee _____

TOTAL FEE 546.00

PID # 02.01271.51

Street Location North Lakes Lane

Tax Parcel # _____

Legal Description lot 2, block 1, Hillcrest Estates

E-Mail Address: _____

Owner: Louis & Angela Biondo

Day Phone _____

Address XXX North Lakes Lane Hillcrest Estates L2, B1

S21, T34, R20

Applicant (if other than owner) _____

Day Phone () _____

Address 5168 Louisiana Ave N Crystal, MN 55428

Type of Request:

Variance ☒

Preliminary Plat ☐

Administrative Appeal ☐

Administrative Permit ☐

Conditional Use Permit ☐
(or amendment to CUP)

Ordinance Amendment ☐

Interim Use Permit ☐
(or amendment to IUP)

Rezoning ☐

Applicable section of ordinance: _____

Description of request: Variance to build past setbacks as shown on survey and detailed in narrative

If Variance Application, Brief Description of Practical Difficulty

Topography of lot creates unique challenges to buildable area and being able to fit a reasonably sized house in comparison w/ other houses in neighborhood and on lake

Signature of Applicant

3/31/23
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

3/31/23
Date Received

4-3-23
Date Complete

60-2-23
60/120 Day Review Period

Date of Public Hearing:

April 27, 2023

TOWNSHIP PRESENTATION FORM

Street Location North Lakes Lane

Legal Description lot 2, block 1, Hillcrest Estates

Owner Name Louis & Angela Biundo Day Phone: [REDACTED]

Address: XXX North Lakes Lane

Applicant: _____ Day Phone: () _____
(if other than owner)

Address: 5168 Louisiana Ave N, Crystal, MN 55428

Type of Request: Variance ☒ Preliminary Plat ☐

Administrative Appeal ☐ Administrative Permit ☐

Conditional Use Permit ☐ Rezoning ☐
(or amendment to CUP)

Interim Use Permit ☐ Ordinance Amendment ☐

Description of Request: Variance request to build into street
and bluff setback

Date of County Public Hearing: APRIL 27, 2023

Date of Township Presentation: APRIL 18, 2023

TOWNSHIP ACTION TAKEN

Approved ☒ Denied ☐

Reasons and Conditions: primary septic system meets code
Builder plans to do infiltration system to help mitigate
erosion. Set lines for road & driveway. Structure is outside
road ROW

Signature of Township Officers: _____

Shirley St...
John J. Reed
Wayne D. K...

[Signature]
Signature of Applicant

3/31/23
Date

To those in the community, on the Technical Review Board, and Board of Adjustments and Appeals,

We, the land owners, are requesting variance consideration for PID #02.01271.51.

We've made multiple adjustments to our building plans over the past 9 months in an attempt to better fit within the setbacks. I've included the various iterations of the survey to show where we started, to where we are at today.

Our initial building plans showed the home sitting over the bluff. The first adjustment was pulling the home closer to the road to get out of the bluff. We then reduced the width of the structure from 74' to 64', sacrificing sq' footage and some initial aesthetic ideas. From there we consulted with Craig Wills, DNR/Area Hydrologist, who said he did not see anything as it relates to the structure that he'd argue against, but said his one suggestion would be to pull back the deck some if possible. We pulled the deck back, sacrificing some aesthetic, to bring the deck within the same angle as the home in relation to the top of bluff. We did not stop there, and continued to make further adjustments to pull back. We gave up other initial aesthetics that we had hoped for, for the garage, adjusting size (30x34 to 24x34) and orientation (garage doors to west side vs north side of structure).

Given the unique challenges the topography presents, we feel our variance request is reasonable, and respectfully ask for consideration.

The request:

The greatest variation for the street setback is building 20' into the street setback, however, this lessens as we move towards the northside of the lot. The home and deck variation is to build 17.6' from the top of the bluff. This continues to lessen as we move towards the west side of the lot. The primary septic system does not require any variance. The secondary septic variation is placed 6.9' from top of bluff. See survey (Survey #5) for visual representation. Our builder plans for an infiltration trench to mitigate any concerns around potential bluff erosion.

Standards outlined by the Variances Application Guide

1. Is there another feasible method to alleviate the need for a Variance and, if not, is the Variance requested the minimum Variance which would alleviate the practical difficulty?
We cannot find a feasible alternative without a variance. The amount requested is the minimum amount we've been able to establish while maintaining a home we feel is reasonable and can support and function for our families needs.
2. How substantial is the requested variation from the requirements of the zoning ordinance?
The greatest variation for the street setback is 20' into the street setback, however, this lessens as we move towards the northside of the lot. The home and deck variation sits

17.6' from the top of bluff. This continues to lessen as we move towards the west side of the lot. The primary septic system does not require any variance. The secondary septic variation is 6.9' from top of bluff.

3. Would Variance approval affect a substantial change in the character of the neighborhood or result in a significant detriment to neighboring properties?
No, the requested Variance would not significantly change the character of the neighborhood. We intend to build a home similar in size/function to the other properties. The proposed build does not encroach on either neighboring property setbacks.
4. Did this landowner or a previous owner create the need for a Variance? If so, does the need for a Variance arise from an owner's actions under current regulations?
No. The need relates directly to the buildable area based on the topography of the lot.
5. Are economic conditions or circumstances cited as reasons for the Variance request?
Are economic circumstances the sole reason for seeking a Variance?
No not directly but we would like to build a reasonable enough sized home to support the cost of the lake lot.
6. Do exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zoning district? Examples of exceptional or extraordinary circumstances may include such things as lot size or shape, topography, or other circumstances over which the property owners, since enactment of the relevant ordinance, have had no control?
Yes. The shape and topography of our lot (i.e., the placement of the bluff) presents a buildable area that is restricted when compared to other properties in our zoning district.
7. Would literal interpretation of the provisions of the zoning ordinance deprive the applicant of rights commonly enjoyed by other properties in the same district under the strictly applied terms of this ordinance?
Yes. If we were to follow the literal interpretation of the zoning ordinance (without a variance), we would not be able to build a property similar to those in our same district.
8. Will granting the Variance result in allowing a use otherwise not permitted in the same district?
No. The lot will be used to build a home.
9. Would the Variance approval be materially detrimental to the purposes of the zoning ordinance or to property in the same zoning district?
No, we plan to build a home that will fit in with the other lakeside homes.

10. Does a reasonable use of the property exist under the terms of the zoning ordinance without Variance approval? If not, define "reasonable use" in the context of the immediate area and properties in the same zoning district.

Given the cost of the lake lot and the complexities that come with the bluff setback we are proposing to build a reasonably sized home. The home is of average size and scale to others in the area and on the lake. The proposed plan will provide the space needed to raise our family.

11. Would Variance approval permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for this particular area or permit standards lower than those required by State law?

No.

12. In light of all of the above factors, would denying a Variance serve the interests of justice?

No, given the unique circumstances of the bluff, and how it runs through the property, a variance would allow a reasonably sized home to be built.

Statement of Practical Difficulties:

Reasonableness:

We are requesting this Variance with the intention to use the property in a reasonable manner - to build a home that we will reside in.

Uniqueness:

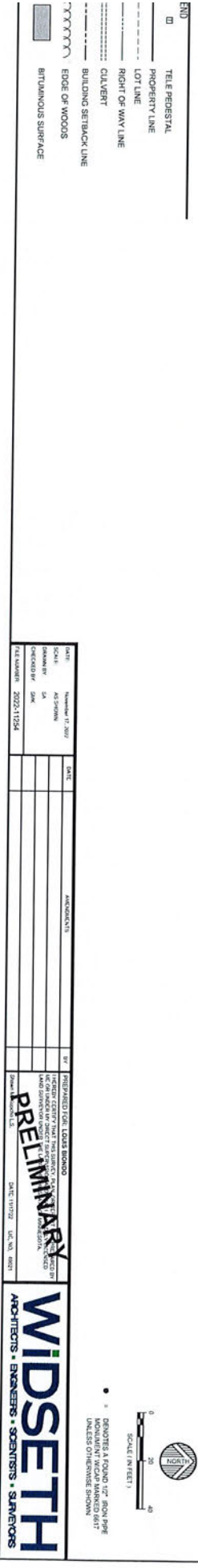
We are requesting this Variance due to circumstances unique to the property, not caused by any landowner. The sloping topography, along with the literal interpretation of the setbacks, result in a smaller, awkward triangular buildable area.

Essential Character:

If granted, this Variance will not alter the essential character of our locality. The home will not be out of scale, out of place, or otherwise inconsistent with the surrounding area.

CERTIFICATE OF SURVEY

PROPOSED CONDITIONS



CERTIFICATE OF SURVEY

PROPOSED CONDITIONS



CERTIFICATE OF SURVEY

PROPOSED CONDITIONS



CERTIFICATE OF SURVEY

PROPOSED CONDITIONS



DATE	March 28, 2023	BY	PREPARED FOR: LOCAL BOARD
TITLE	Local Board of Directors		
DATE PREPARED	March 28, 2023		
DATE OF MEETING	April 5, 2023		
LOCATION	4th Floor		
PREPARED BY	John C. Smith		
REVISIONS	2022-11-24		

PRELIMINARY

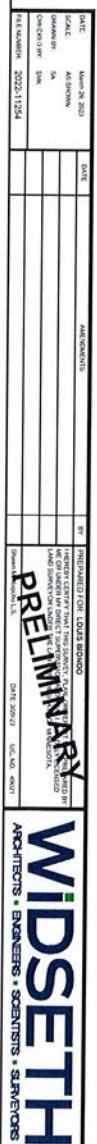
DATE: 3/28/23 LOCAL BOARD #0001

WIDSETH

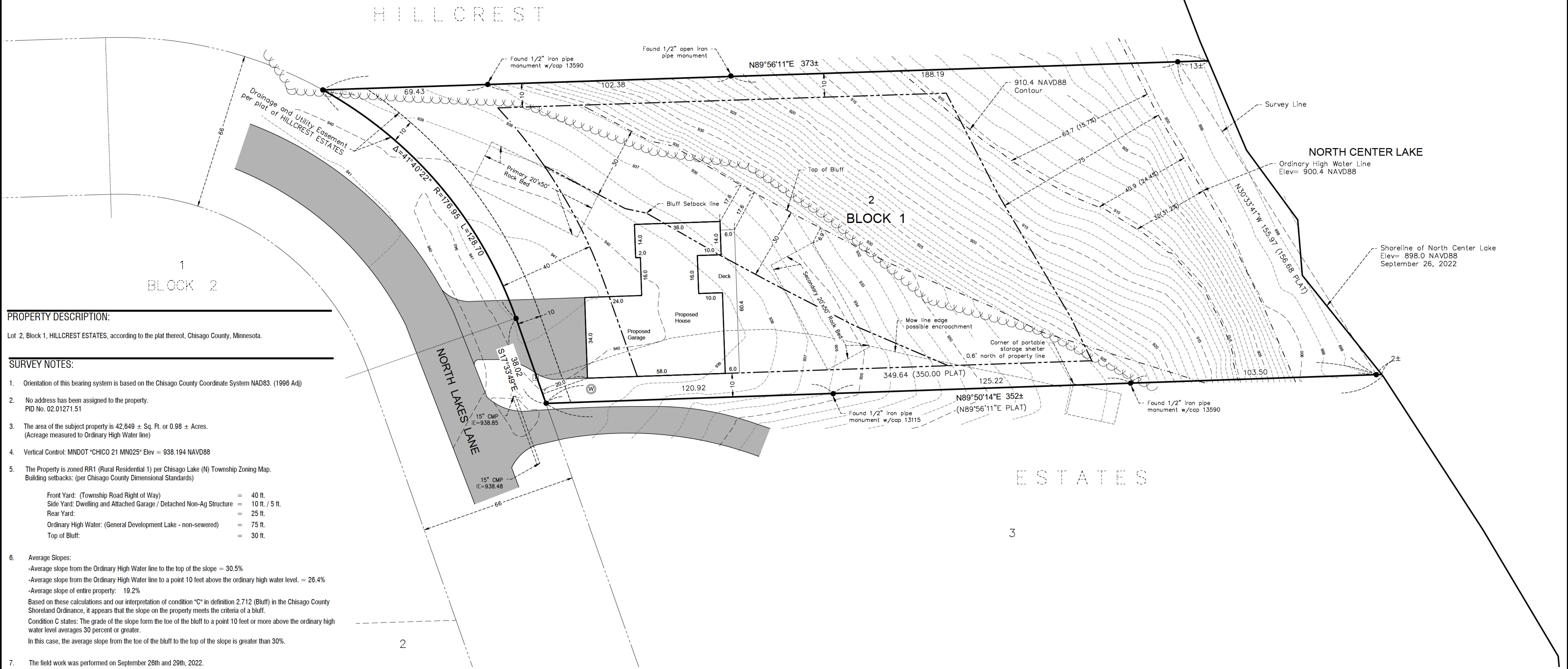
ARCHITECTS • ENGINEERS • SCIENTISTS • STRATEGISTS

CERTIFICATE OF SURVEY

PROPOSED CONDITIONS



CERTIFICATE OF SURVEY
PROPOSED CONDITIONS



PROPERTY DESCRIPTION:

Lot 2, Block 1, HILLCREST ESTATES, according to the plat thereof, Chisago County, Minnesota.

SURVEY NOTES:

- Orientation of this bearing system is based on the Chisago County Coordinate System NAD83. (1996 Adj)
- No address has been assigned to the property.
PID No. 02.01271.51
- The area of the subject property is 42,649 ± Sq. Ft. or 0.98 ± Acres.
(Acreage measured to Ordinary High Water line)
- Vertical Control: MNDOT "CHICO 21 MN025" Elev = 938.194 NAVD88
- The Property is zoned RR1 (Rural Residential 1) per Chisago Lake (N) Township Zoning Map.
Building setbacks: (per Chisago County Dimensional Standards)

Front Yard: (Township Road Right of Way)	=	40 ft.
Side Yard: Dwelling and Attached Garage / Detached Non-Ag Structure	=	10 ft. / 5 ft.
Rear Yard:	=	25 ft.
Ordinary High Water: (General Development Lake - non-sewered)	=	75 ft.
Top of Bluff:	=	30 ft.
- Average Slopes:
-Average slope from the Ordinary High Water line to the top of the slope = 30.5%
-Average slope from the Ordinary High Water line to a point 10 feet above the ordinary high water level. = 26.4%
-Average slope of entire property: 19.2%
Based on these calculations and our interpretation of condition "C" in definition 2.712 (Bluff) in the Chisago County Shoreland Ordinance, it appears that the slope on the property meets the criteria of a bluff.
Condition C states: The grade of the slope from the toe of the bluff to a point 10 feet or more above the ordinary high water level averages 30 percent or greater.
In this case, the average slope from the toe of the bluff to the top of the slope is greater than 30%.
- The field work was performed on September 28th and 29th, 2022.

LEGEND

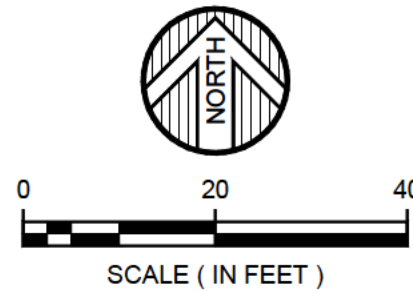
- | | | | |
|--|--|--|-----------------------------|
| | TELE PEDESTAL | | PROPOSED WATER WELL |
| | PROPERTY LINE | | PROPOSED BITUMINOUS SURFACE |
| | LOT LINE | | PROPOSED CONCRETE SURFACE |
| | RIGHT OF WAY LINE | | |
| | CULVERT | | |
| | BUILDING SETBACK LINE | | |
| | EDGE OF WOODS | | |
| | EXISTING BITUMINOUS SURFACE | | |
| | DENOTES A FOUND 1/2" IRON PIPE MONUMENT W/CAP MARKED 6617 UNLESS OTHERWISE SHOWN | | |

PROPOSED IMPERVIOUS CALCULATIONS:

Total Acreage: 42,649 ± Sq. Ft. measured to Ordinary High Water Level

Proposed House	: 2,860 Sq. Ft.
Proposed Deck	: 522 Sq. Ft.
Proposed Driveway	: 887 Sq. Ft.
Total Impervious	: 4,270 Sq. Ft.
Percent Impervious	: 10.0%

DATE: March 29, 2023	DATE:	AMENDMENTS:	BY:	PREPARED FOR: LOUIS BIONDO
SCALE: AS SHOWN				THEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.
DRAWN BY: SA				
CHECKED BY: SMK				
FILE NUMBER: 2022-11254				Shawn M. Kupcho L.S. DATE: 3/29/23 LIC. NO. 49021



WIDSETH
ARCHITECTS ■ ENGINEERS ■ SCIENTISTS ■ SURVEYORS

Louis & Angela Biondo - Aerial Photo

Property owners Louis & Angela Biondo are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to construct a dwelling with attached garage closer to the township Right-of-Way and Top of Bluff than required and to install a septic system closer to the Top of Bluff than required. The 1.09-acre property, platted as Lot 2, Block 1, Hillcrest Estates, is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 13xxx North Lakes Lane, Chisago Lake Township, S21, T34, R20 (PID 02.01271.51). Biondo property - □





Property owners Louis & Angela Biondo are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to construct a dwelling with attached garage closer to the township Right-of-Way and Top of Bluff than required and to install a septic system closer to the Top of Bluff than required. The 1.09-acre property, platted as Lot 2, Block 1, Hillcrest Estates, is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 13xxx North Lakes Lane, Chisago Lake Township, S21, T34, R20 (PID 02.01271.51). Biondo property -

RESOLUTION NO. BOAA2023-0404

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING VARIANCES ALLOWING REDUCED TOP OF BLUFF AND TOWNSHIP RIGHT-OF-WAY
SETBACKS ON PROPERTY LOCATED AT 13XXX NORTH LAKES LANE IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owners Louis Biondo & Angela Biondo submitted an application dated received March 31, 2023 and considered complete on April 3, 2023 for Variances to Zoning Ordinance Section 5.15 Dimensional Standards and Shoreland Management Ordinance Section 5.21 Placement of Structures and Sewage; and

WHEREAS, the property owners wish to develop the subject site by constructing a single family dwelling with attached garage and deck 17.6' from Top of Bluff and 20' from township Right-of-Way where the required minimum setbacks are 30' from Top of Bluff and 40' from township Right-of-Way. Additionally, the property owners are proposing an alternate septic site 6.9' from Top of Bluff where the required setback is 30'; and

WHEREAS, the subject site is located in the Rural Residential I (RRI) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 02.01271.51

Lot 2, Block 1, Hillcrest Estates, Chisago County, Minnesota

WHEREAS, notice was provided and on April 27, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, the applicant and/or property owner, and invited members of the public to comment; and

WHEREAS, the Board of Adjustment and Appeals considered several criteria for granting Variances and made the following findings per Zoning Ordinance Section 8.06 Variances:

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 The proposed dwelling, attached garage and deck will be situated 10' from the southern property boundary and more than 60' from the northern property boundary (side yards), bordered by a public roadway along the western property boundary and bordered by a public body of water along the eastern property boundary. The County finds that the proposed dwelling and attached accessory structures will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.

Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;

Finding #2 The subject site is located within the Hillcrest Estates subdivision – platted in 1989 – and the lot was created with the intention of it being developed for residential purposes. Records from 1989 do not indicate that there was any concern related to traffic or congestion resulting from approval of the subdivision or future development of the

platted lots. Further, the road authority – Chisago Lake Township – has not expressed any concern specifically related to traffic or congestion as a result of the proposed action. Therefore, the County finds that the proposed action will not cause an unreasonable amount of traffic or congestion within the public Right-of-Way.

Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed dwelling and attached accessory structures, and they will therefore be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County finds that the proposed action will have no impact on the danger of fire or public endangerment.*

Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
Finding #4 *Being that the subject site was platted with the intention of creating a lot for residential purposes and the property owners are proposing to develop the lot with uses which are classified as Permitted Uses in the RRI District and because the proposed structures will meet all required side yard setbacks, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*

Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
Finding #5 *The subject site was platted in 1989 with the intention of creating a lot for residential purposes, which suggests that the County considered the impact of future development on facilities and services. With no historical record of County concern specifically related to facilities or services, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.*

Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
Finding #6 *The proposed action will allow the development of a currently vacant parcel; therefore, the County finds that the proposed action will only increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*

Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 identifies dwellings as a Permitted Use in the RRI District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning and Shoreland Management Ordinances and satisfies the State mandated practical difficulties standard, which includes factors relating to uniqueness, reasonableness and essential character.*

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variance is hereby approved, subject to the following conditions:

1. This approval grants the following Variances:
 - a. A 12.4' Variance allowing a dwelling and deck to be no closer than 17.6' from Top of Bluff.
 - b. A 20' Variance allowing a dwelling with attached garage to be no closer than 20' from township Right-of-Way.
 - c. A 23.1' Variance allowing an alternate septic site to be no closer than 6.9' from Top of Bluff.
2. The subject site shall be developed in general conformance with the application materials, including survey, dated received March 31, 2023 and kept on file with the Department of Environmental Services. Any significant deviation from the approved request and survey, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. The property owners shall provide a Stormwater Pollution Prevention Plan (SWPPP) and / or erosion control plan if deemed necessary by the Department of Environmental Services.
4. The property owners shall obtain a building permit prior to construction and, further, the structures shall comply with all applicable codes and regulations.
5. The property owners shall obtain a septic permit prior to installation of either the primary or alternate septic systems and, further, the systems shall comply with all applicable codes and regulations.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 27th day of April, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator