



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

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

Tour Time and Date: Wednesday, July 26, 2023 at 8:15 am
Departing from 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. June 29, 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 and 6b
- 6. Public Hearings – New Applications**
 - a. **Trisha & Tim Donelon** – Property owner Trisha Donelon and applicant Tim Donelon are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to replace and expand a dwelling and deck closer to the township road Right-of-Way and Ordinary High Water Level (OHWL) than required in the Rural Residential I (RRI) District / Shoreland Management District. The .25± acre subject site is located at 49725 Afton Avenue in Nessel Township, S28, T37, R22 (PID 06.00751.00).
 - b. **Patty Jo Hagen and Steven Hagen** – Property owners Patty Jo Hagen and Steven Hagen are requesting a Variance to Shoreland Management Ordinance Section 5.52 in order to exceed the maximum allowable amount of impervious surface coverage in the Shoreland Management District. The .42± acre subject site is located at 51040 Rush Lake Way in Nessel Township, S14, T37, R22 (PID 06.01183.00).
- 7. Public Hearings – Continued Hearings**

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

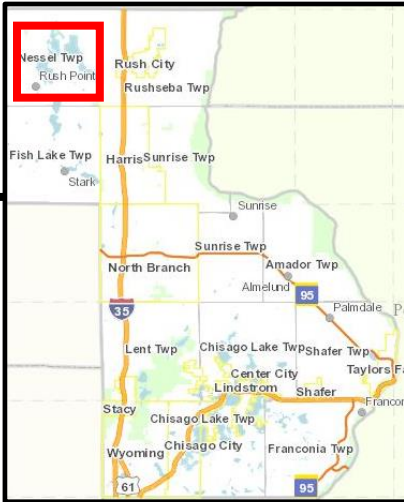
The next meeting is scheduled for Thursday, August 31, 2023 at 7:00 pm.

Board of Adjustment and Appeals

Tour Date and Time:

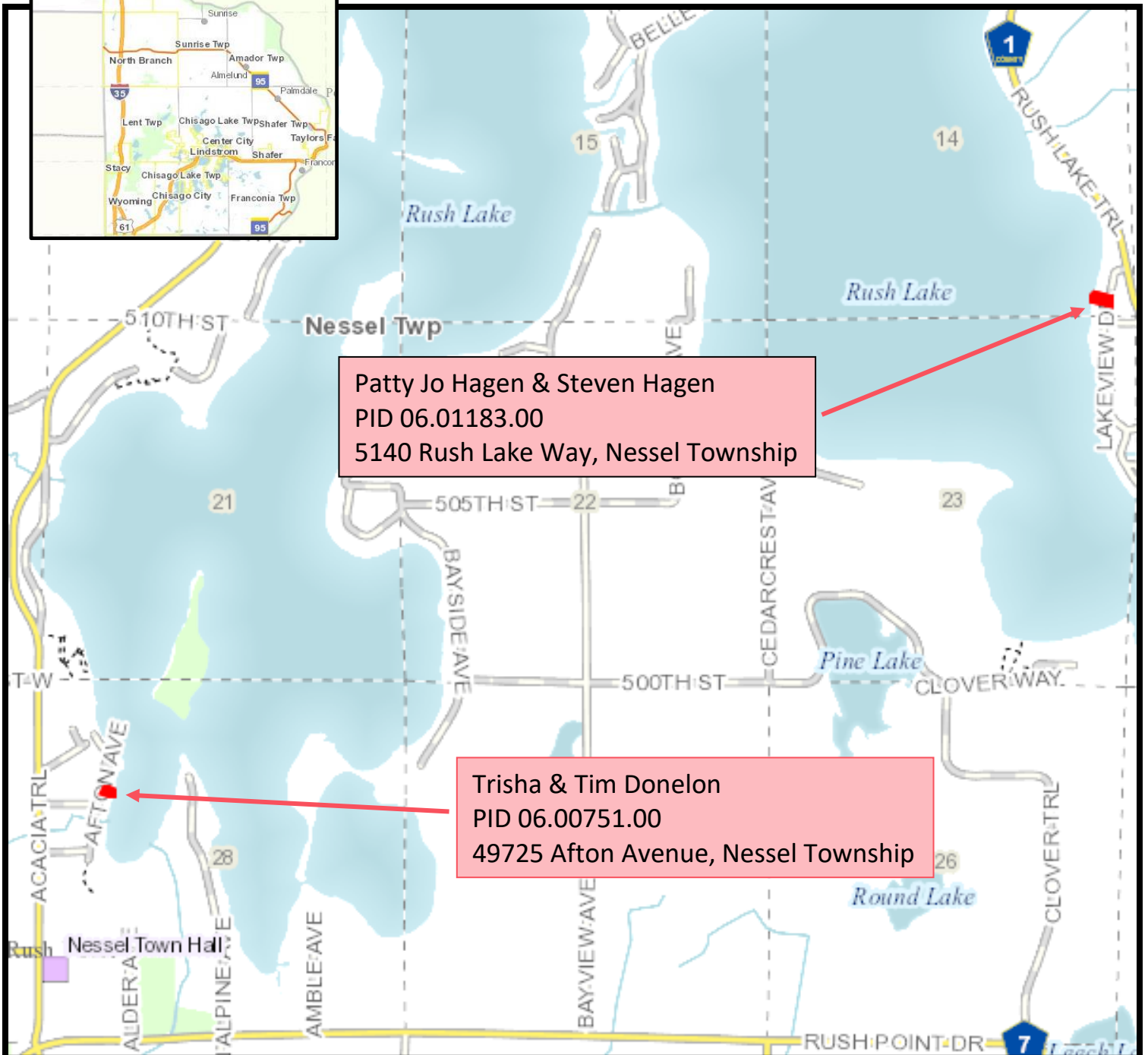
Wednesday, July 26, 2023 at 8:15 am

Departing from Chisago County Highway Department
31325 Oasis Road, Center City, MN 55012



Patty Jo Hagen & Steven Hagen
PID 06.01183.00
5140 Rush Lake Way, Nessel Township

Trisha & Tim Donelon
PID 06.00751.00
49725 Afton Avenue, Nessel Township



**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
June 29, 2023**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, June 29, 2023 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator; and, Nadia Broome, 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: Doug Greene, Gregg Carlson, Chip Yeager, John Sutcliffe, and Becky Strand. A quorum was established with all members present.

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

APPROVAL OF MINUTES – Motion to approve the May 25, 2023 meeting minutes as presented by John Sutcliffe; 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 Doug Greene. The **motion passed** and carried unanimously. Meeting materials distributed in advance to the Board of Adjustment & Appeals for their review included: a 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

Kenneth and Mary Evanoff – Coordinator Gervais provided background information on Kenneth & Mary Evanoff's Variance request for property located at 32740 N. Center Court in Chisago Lake Township (PID 02.01080.00), explaining that the property owners were requesting Variance approval to allow the expansion of their non-conforming deck. The proposed deck, similar to the existing deck, will be closer to the OHWL than allowed by the Shoreland Management Ordinance and closer to the southerly property boundary than allowed by the Zoning Ordinance but will not encroach any closer than the existing deck. The proposed deck is considered an expansion due to the fact that the height will be increased in conjunction with increasing the height of the dwelling.

Gervais explained that the .21-acre parcel was platted in 1955 and was considered a legal non-conforming parcel, adding that the site was located on the east side of North Center Lake in the Rural Residential II (RRII) District / Shoreland Management District. The subject site had been developed with a dwelling and detached garage and received Variance approval in 2022 to construct an addition which would connect the two structures, and in April 2023 allowing for the expansion of the existing basement and, subsequently, increasing the height of the dwelling. Surrounding properties were similarly zoned and developed.

The Technical Review Committee met with property owners on June 14, 2023. The group discussed the submitted impervious surface calculation worksheets and the fact that the property owners did not include a new 8'x10' structure; the property owners' intentions to maintain a pervious surface and/or use pervious materials underneath the proposed deck; and, the anticipated height of the proposed deck. The Chisago Lake Town Board considered the request on June 20, 2023 and recommended approval with no conditions. The state mandated 60-day review period was scheduled to expire on August 6, 2023.

Gervais commented it is staff's understanding that the proposed deck expansion is an expansion in height only and it will not exacerbate existing setback encroachments. The property owners have not yet acted on their previous 2022 and 2023 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 and April 2023, staff is recommending, if the request is approved, that the requirement for acting on the previous Variances be extended to be in line with the current Variance request.

Chair Carlson invited the property owners to address the Board. Property owners Kenneth and Mary Evanoff stepped forward.

Chair Carlson asked staff a clarifying question regarding the pervious and impervious surface coverage, and if needed, should it be stricken out. Coordinator Gervais stated it would be a little more complicated than just striking out the previously allowed impervious surface coverage percentage of 25.7%, and allowing the amount to remain allows for unforeseen issues.

Chair Carlson opened the public hearing and sought public comment. With no members of the audience wishing to speak, **motion** to close the public hearing by Becky Strand; second by Chip Yeager. The **motion passed** and carried unanimously.

Chair Carlson sought comment from the Board. Chip Yeager stated he saw no compelling reason to change or remove the previously allowed impervious surface coverage. All members were in agreement. The Board had no other comments or questions.

Motion by Chip Yeager to adopt Resolution No. BOAA2023-0601, 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.; second by Doug Greene. The **motion passed** and carried unanimously.

Conditions:

1. This approval allows the expansion of a non-conforming structure in the Rural Residential II (RRII) District / Shoreland Management District and grants the following Variances:
 - a. A Variance to allow the replacement and expansion of a non-conforming deck by increasing the height. The existing deck appears to be less than 12" off the ground and the expanded deck will be placed at the same level as the main level sliding door on the west wall of the

dwelling (approximately 66 ½" – 74 ½" off the ground as measured at the west wall of the dwelling).

- b. A Variance to allow the expanded deck to be situated closer to the Ordinary High Water Level (OHWL) than allowed by the Chisago County Shoreland Management Ordinance and closer to the southerly property boundary (side yard) than allowed by the Chisago County Zoning Ordinance. The approved deck shall be located no closer to the OHWL or southerly property boundary than the existing deck.
2. The approved deck shall be constructed in conformance with application materials dated received May 30, 2023 and kept on file with the Department of Environmental Services, including that the deck shall be no greater than 12' wide x 8' deep (96 sq ft). Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. The ground underneath the deck shall remain pervious.
4. The County acknowledges that the following Variances were granted on April 27, 2023 and filed with the Chisago County Recorder as Document #T-29208 allowing the expansion of a legal non-conforming structure through expansion of the basement and overall increase in height of the dwelling:
 - 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.
5. 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%.
6. The property owners shall comply with all conditions included in the July 28, 2022 Variance approval (Document #A-661410) and April 27, 2023 Variance approval (Document #T-29208) unless specifically noted otherwise by this approval.
7. The property owners shall obtain a building permit prior to construction and, further, the deck shall comply with all applicable codes and regulations except as otherwise permitted by this Variance.
8. 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 and April 27,

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

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUISNESS

None

NEW BUISNESS

None

MISCELLANEOUS

None

ADJOURN MEETING – *Motion* to adjourn by Chip Yeager; second by Doug Greene. The **motion passed** and carried unanimously. With no further business the meeting was adjourned at 7:22 p.m.

ATTEST:

Gregg Carlson
Chair

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Encroach on Required Right-of-Way and Ordinary High Water Level Setbacks
 49725 Afton Avenue, Nessel Township
 DATE: July 27, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance to Zoning Ordinance Section 5.15 (Dimensional Standards) and Shoreland Management Ordinance Section 5.21 (Placement of Structures and Sewage Treatment Systems on Lots) in order for the property owner to replace and expand a dwelling and deck closer to the township Right-of-Way and Ordinary High Water Level (OHWL) than required in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s): Tim & Trisha Donelon
 Property Owner(s): Trisha Donelon
 Property Address: 49725 Afton Avenue
 Nessel Township
 General Location: Section 28, Township 37, Range 22
 PID: 06.00751.00
 Property Area: .25± 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: West Rush Lake
 West: Rural Residential I (RRI) District / Shoreland Management District
 Date Application Received: June 30, 2023
 Date Application Complete: July 6, 2023
 60-Day Review Period: September 4, 2023

BACKGROUND

Applicants Tim & Trisha Donelon are proposing to redevelop their lakeshore property by demolishing the existing dwelling and constructing a new dwelling. The subject site is located at 49725 Afton Avenue in Nessel Township.

The property was platted as Lot 7, Bayside Townsite in 1954 and records from the Chisago County Assessor's Office suggest that the dwelling was



constructed in 1955. The original dwelling appears to have been constructed as a 28' x 24' (672 sf) structure with a 4' x 6' "shed" extending from the south wall (labeled as "well house" on the attached "existing" site plan). At some point in time, presumably after 1971 when the photo below was taken, a 10' x 28' deck extending across the full width of the dwelling was added to the east / lake side. And, at some later point in time, the north end of the deck appears to have been reconstructed as additional living space.



Photo taken in 1971; east wall (lake side)



Photo taken in 2015; west wall (road side)

SITE ANALYSIS

The subject site is located approximately 140' north of 497th Street on the east side of Afton Avenue on West Rush Lake. Topography of the site includes elevations ranging from 915' along the shoreline / eastern property boundary to 932' at the western property boundary. While the attached site plans and the original 1954 plat show that the property is 80' wide and 120.5' – 121' deep (approximately 9,680 sf), the County's GIS Viewer shows the property to be .25 acres in size or 80' wide and 130' – 135' deep (10,600 sf) with the eastern property boundary being in approximately the same location as the OHWL elevation. Regardless of which dimensions are utilized, the property does not meet today's minimum dimensional requirements in terms of area or width. However, being that the property was platted prior to the County's adoption of zoning, subdivision and shoreland regulations, it's considered a legal non-conforming parcel.

The subject site has been developed with a dwelling (described above), a 20' x 32' (640 sf) detached garage, and a 10' x 12' (120 sf) shed. The detached garage was allowed in its current location and height by Variance approval in June 2019. The 120 sf shed appears to be located less than 10' from OHWL where the required setback is 75' and there is no known Variance approval for this structure, which means that this structure is non-conforming. The attached "existing" site plan shows a 5' x 6'6" (32.5 sf) well house extending from the south wall of the dwelling. Being that the well house is attached to the dwelling, this would not be factored into the overall amount of accessory storage space and would not be counted as an accessory structure.

Based on the attached "existing" site plan, the applicants are reporting that the existing dwelling is situated 9' from the Afton Avenue Right-of-Way and 15' from the eastern edge of the improved road surface. The required setback is 40' from Right-of-Way, which means that the existing dwelling is encroaching on the required setback by 31'. The dwelling appears to meet and exceed all other required setbacks, including an approximate 86' setback from the OHWL of Rush Lake (OHWL=915.10' elevation),

a 14.5' setback from the southerly property boundary and an approximate 32' setback from the northerly property boundary.

The existing impervious surface coverage is reported to be 19.2%.

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 West Rush Lake to the east. Surrounding properties located along the east side of Afton Avenue are similarly sized and developed with year-round dwellings / seasonal cabins and related accessory structures. The majority of parcels in the immediate vicinity appear to have structures that encroach on the required setbacks, presumably some having been constructed prior to the County's adoption of official land use controls and others permitted by Variance.

The County's GIS Viewer makes it appear as if the existing detached garage is located on the northerly property boundary. While the applicants have not provided a survey to demonstrate that the structure is located entirely on the subject site, they and their neighbors have found several property pins and the applicants are confident that the garage is set back 5.5' from the northerly property boundary.

PROPOSAL ANALYSIS

As previously stated, the applicants are requesting a Variance in order to redevelop their lakeshore property by demolishing the existing dwelling and constructing a new dwelling. The proposed dwelling will be 32' wide x 34' deep (1,088 sf) plus a 32' wide x 10' deep deck, and it will be constructed in generally the same location as the existing dwelling. Given that the dwelling will be expanding southerly and encroaching on the existing well, the applicants are showing on the "proposed" site plan that a new well will be dug between the proposed structure and the southerly property boundary. The dwelling is currently served by a holding tank and the project will require a compliance inspection.

The "proposed" site plan shows that the dwelling and deck will be situated 9' from Right-of-Way, 32' from the northerly property boundary (side yard), 16' from the southerly property boundary (side yard), and approximately 77' from the OHWL of Rush Lake. Being that the applicants do not have a survey verifying the exact location of the OHWL and despite the fact that the site plan shows that the proposed structure will meet the required 75' setback, they've included the OHWL setback encroachment in their request in order to be sure that the structure is in compliance with either the required setback or the Variance approval.

While the attached written narrative explains that the proposed dwelling will not exacerbate the Right-of-Way setback, that the proposed setbacks will be consistent with neighboring properties, and that the proposed Variance is consistent with past approvals made by the Board, it does not fully address the State mandated practical difficulty standard. However, staff would offer pre-existing development as another factor for the Board's consideration due to the fact that the subject site was platted long before the County's adoption of official land use controls. Staff notes that the circumstance of pre-existing development may address redevelopment of the site and it may be justification for some relief from the strict setback requirements, but it does not preclude the applicants from adjusting placement of the dwelling in an effort to reduce the Variance needed. Case in point, based on the "proposed" site plan, it appears that the applicants have room to shift the dwelling to the east by 2' in order to slightly reduce the Right-of-Way setback Variance and up to 12' if the OHWL setback Variance is granted. This is assuming, however, that the reported distance of 77' between the proposed deck and OHWL is accurate.

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

	RRI District / Shoreland Management District Standards	Existing Dwelling (Legal Non-Conforming Status)	Proposed Dwelling
Road Setback	40' to township Right-of-Way	9' to township Right-of-Way (15' to edge of road surface)	9' to township Right-of-Way (15' to edge of road surface)
Ordinary High Water Level (OHWL) Setback	75' for structures; 50' for septic systems	86'	65' (site plan shows a compliant 77' setback; however, without benefit of a survey, the applicants are requesting a 10' setback Variance to ensure compliance)
Side Yard Setback	10' for dwelling + attached garage; 5' for detached accessory structures	14.5' from southerly property boundary and 32' from northerly property boundary	16' from southerly property boundary and 32' from northerly property boundary
Impervious Surface Coverage	25%	19.2%	22.7%

REVIEW PROCESS

The Nessel Town Board considered the request on July 11, 2023 and recommended approval with conditions that the dwelling be set back 15' from Right-of-Way (rather than the proposed 9' setback) and that all drainage goes toward the lake.

The Technical Review Committee met with Tim Donelon on July 12, 2023. Donelon reviewed details of his meeting with the Nessel Town Board and its recommended conditions. The Committee briefly discussed the possibility of moving the dwelling easterly, and, in response, Donelon commented that topography of the site may present challenges and moving the dwelling easterly would also impact neighbors' views of the lake. In regard to sending all drainage toward the lake, staff noted that, ultimately, all drainage makes its way to the lake and it's better for the lake if drainage is slowed by not sending it directly to the lake.



The state mandated 60-day review period expires on September 4, 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;

Aside from offering that the proposed setbacks are generally consistent with existing setbacks and consistent with setbacks in the general area (i.e., essential character), the application materials do not cite any exceptional or extraordinary circumstances unique to the property. However, consistent with similarly sized and platted lake properties, staff would offer pre-existing development as an exceptional or extraordinary circumstance for the Board's consideration. The property owner has 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 property owners within the RRI District / Shoreland Management District. 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, and the subject site is presently developed with a single family dwelling. As a legal non-conforming structure, the property owner has a statutory right to continue – including through repair, replacement, restoration, maintenance or improvement – use of the dwelling in its current location.

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 subject site was platted in its current configuration in 1954, which means that neither the applicants nor the previous owner(s) created the special circumstance of pre-existing development.

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;

While the property owners are proposing to construct the new dwelling in approximately the same location as the existing dwelling (same Right-of-Way setback and generally the same setbacks from the side property boundaries), the applicants are requesting a Variance to encroach on the required OHWL setback where it does not presently encroach. Further, it appears that the applicants have the ability to locate the dwelling farther east, thereby slightly reducing the Variance needed for encroachment on the township road Right-of-Way. Based on the applicants' "proposed" site plan, the dwelling could be shifted easterly by 2' and still maintain the required 75' OHWL setback; or, if the OHWL setback Variance is approved, the dwelling could be shifted easterly by as much as 12'.

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 or Shoreland Management Ordinances 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. 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 application materials do 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 the easternmost 7'-12' of the subject site is located in a flood district, the proposed dwelling location is located entirely 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 The proposed dwelling will be situated 32' from the northerly property boundary and 16' from the southerly property boundary (side yards where the required setback is 10'), 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 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 proposed use of the property will not change from the existing use and the proposed action will not result in the dwelling being any closer to the Right-of-Way than the existing dwelling. While the Nessel Town Board has expressed concern with the Right-of-Way setback encroachment, the County finds that the proposed use will not increase the amount of traffic generated at the subject site or increase the amount of congestion on Afton Avenue and surrounding roadways.

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

Finding #3 The property owner will be required to obtain a building permit prior to construction of the proposed dwelling, 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. 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	<i>Being that the subject site is currently developed with a single family dwelling and the proposed dwelling will not change how the property is being used, and being that the proposed dwelling will not be situated any closer to the northerly or southerly 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;
Finding #5	<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
Finding #6	<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	<i>The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 allows 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 Ordinance and satisfies the three-factor test of uniqueness, reasonableness and essential character.</i>

STAFF RECOMMENDATION

Staff believes that the requested Variance is reasonable based on the following considerations:

- The property and existing dwelling constitute pre-existing development for which the property owner had no control.
- The proposed dwelling will not exacerbate the Right-of-Way setback encroachment and it will meet or exceed the required side yard setbacks.
- The proposed dwelling is reasonably sized for the subject site while still meeting the required minimum dwelling size (960 sf required; 1,088 sf proposed).
- It would be impossible to construct a dwelling on the subject site which meets all minimum architectural requirements and the required setbacks.

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 requested Variance 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 31' Variance to the township Right-of-Way setback requirement allowing the proposed dwelling to be no closer than 9' from the Afton Avenue Right-of-Way. This Variance will allow the proposed dwelling to be located no closer to the township Right-of-Way than the existing dwelling and existing detached garage.
 - b. A 10' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling and deck to be no closer than 65' from the OHWL of Rush Lake.
2. Except as specifically required herein, the dwelling shall be constructed in general conformance with the application materials, including "proposed" site plan, dated received June 30, 2023. Any significant deviation, 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 permit holder shall obtain a building permit prior to construction and, further, the dwelling shall comply with all applicable codes and regulations.
4. The permit holder shall obtain a compliance inspection for the existing holding tank prior to or in conjunction with the building permit application process.
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.
2. **Deny** the Variance 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 September 4, 2023, allowing the Board to further review and consider the request at its August 31, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0701, a resolution approving a Variance allowing reduced Right-of-Way and Ordinary High Water Level setbacks on property located at 49725 Afton Avenue in Nessel Township, as presented or amended.

If the Board chooses to deny the request for Variance, 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 plans (“existing” and “proposed”)
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0701

CC: Tim & Trisha Donelon, applicants
County file



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 23-1070

Township Nessel Township S/T/R 28/37/22 PID# 06.00751.00

Project Address 49725 Afton Ave

Property Owner(s) Tim & Trisha Donelon

Mailing Address (If Different from Project Address) 5704 103rd Ave N, Brooklyn Park, MN 55443

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Tim & Trisha Donelon

Mailing Address (If Different from Project Address) 5704 103rd Ave N, Brooklyn Park, MN 55443

Phone# [REDACTED] Email [REDACTED]

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) _____

See Attached

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

☐ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☐ Plat Drawings

Tim Donelon

Digitally signed by Tim Donelon
Date: 2023.06.28 20:20:09 -05'00'

Applicant Signature

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>6-30-23</u>
Recording Fee	\$ <u>46</u>	Application Complete	<u>7-6-23</u>
Plat Fee — No Road(s) / With Road(s)	\$ _____	<u>60</u> / 120 Day Review Period	<u>9-4-23</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 Nessel Township S/T/R 28/37/22 PID# 06.00751.00

Project Address 49725 Afton Ave

Property Owner(s) Tim & Trisha Donelon

Mailing Address (If Different from Project Address) 5704 103rd Ave N, Brooklyn Park, MN 55443

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Tim & Trisha Donelon

Mailing Address (If Different from Project Address) 5704 103rd Ave N, Brooklyn Park, MN 55443

Phone# [REDACTED] Email [REDACTED]

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) _____

See Attached _____

Tim Donelon Digitally signed by Tim Donelon
Date: 2023.06.28 20:20:38 -05'00'

Applicant Signature

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 JULY 27, 2023 Date of Township Presentation JULY 11, 2023

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Approved on Condition that the setback is 15' from ROW and all drainage goes toward the Lake.

Signatures of Township Officials or Authorized Personnel

Michelle Meis Betsy Rising
Stacy Spiller Brandon Melt #5. [Signature]

Tim & Trisha Donelon Variance Request

49725 Afton Ave, Stanchfield, MN 55080

PID # 06.00751.00

Legal Description: Lot Seven (7) of Bayside Townsite

- **Reduced Right-of-Way (R-O-W) setback from the road**

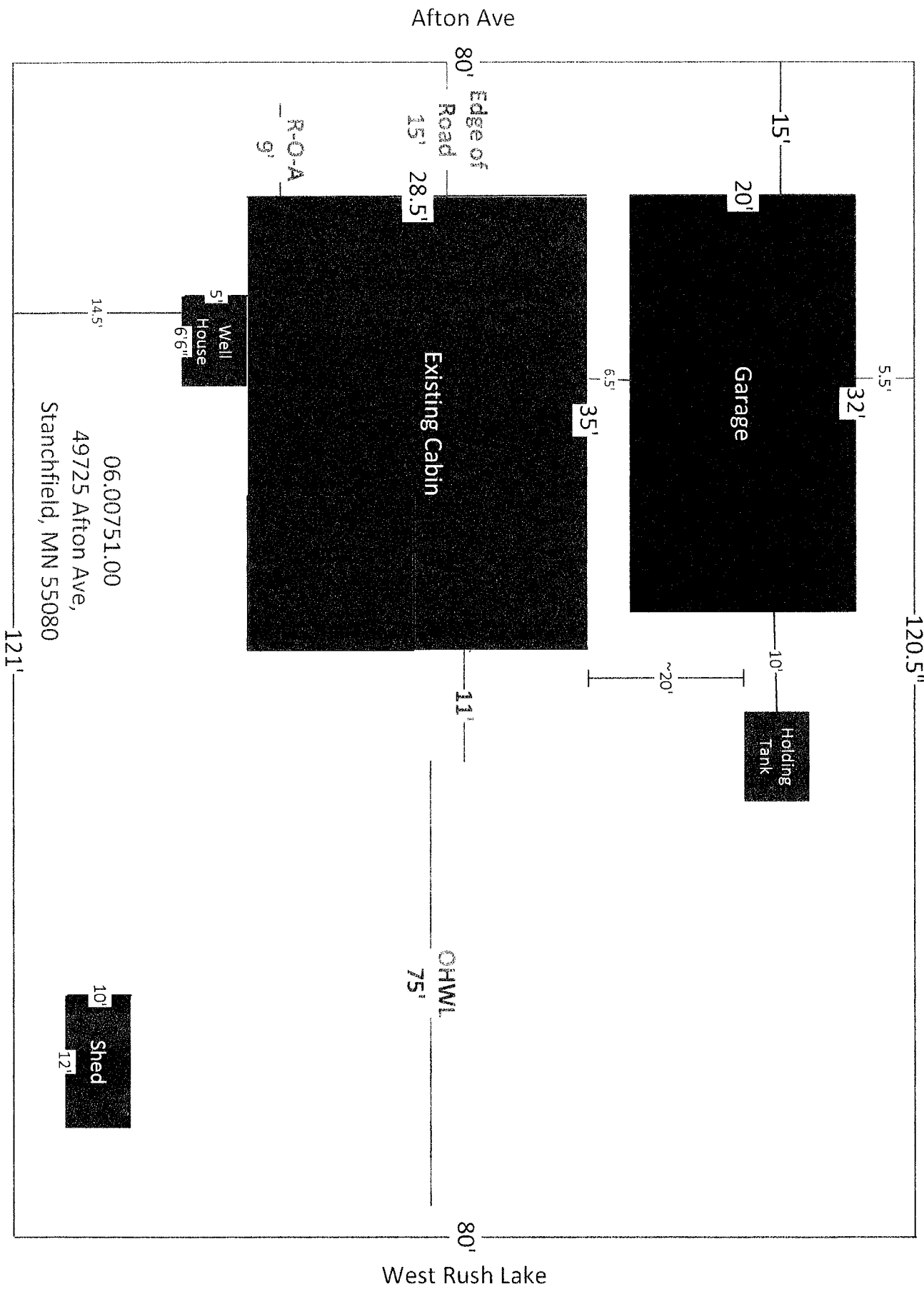
Applicant is requesting a setback of 15' from the road (Afton Ave) or 9' from R-O-W which is in line with the garage built in 2019. This is also exactly how the existing structure (cabin) sits today on the lot. Additional, being 15' from the road or 9' from R-O-W, puts the new structure in line with all the cabins, homes, and garages on the east side (lake side) of Afton Ave. This R-O-W variance was recently granted for the Foss cabin re-build in 2022 (49705 Afton Ave) and for the Donelon garage build in 2019 (49725 Afton Ave).

- **Reduced Ordinary High-Water Level (OHWL) setback**

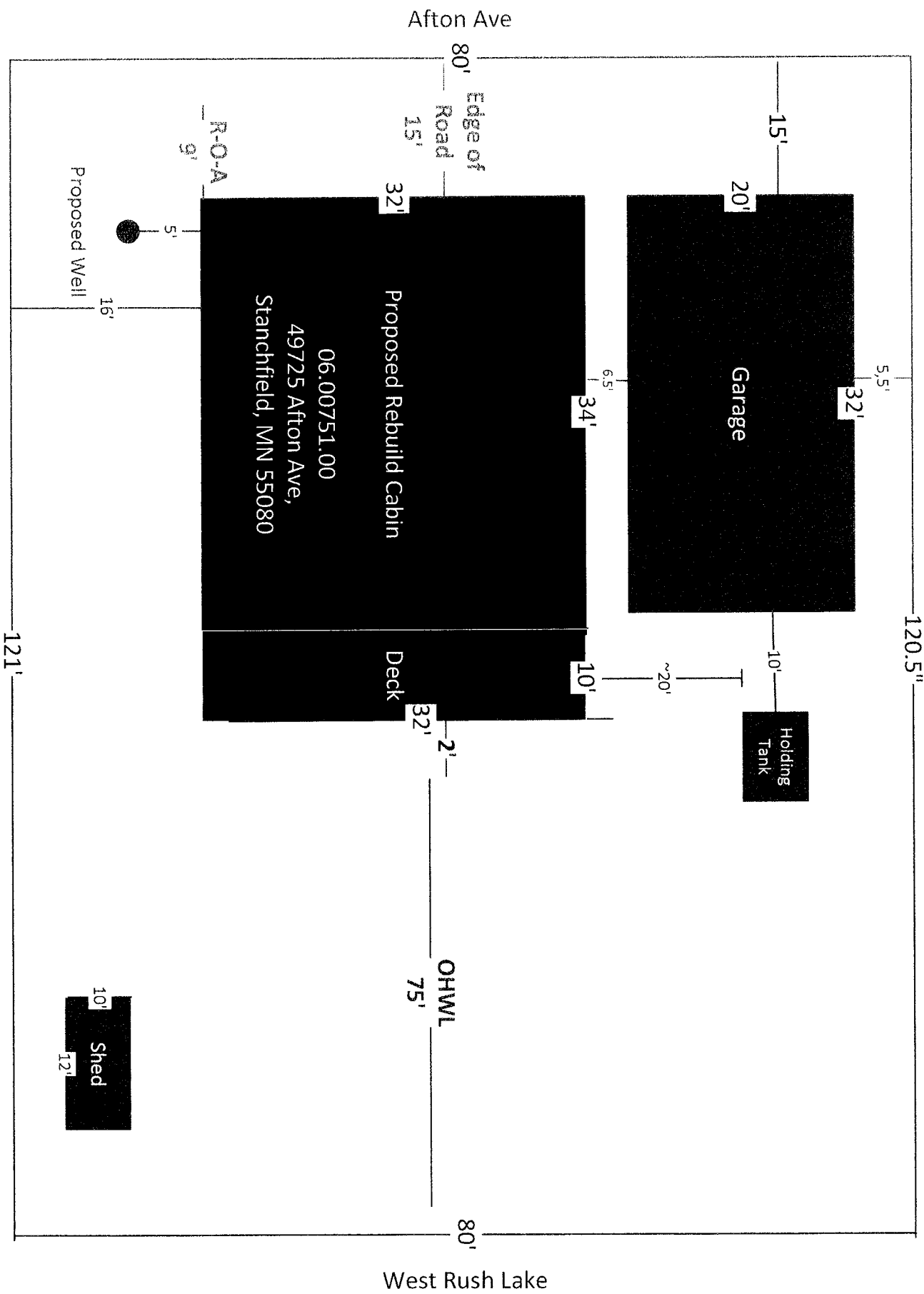
Proposed new structure will be 32' x 34' with an additional 10' of deck extending towards the lake. Applicant is requesting to go an additional 10' past the 75' high water mark (65' OHWL). Note, current plans do not necessarily require this setback as they show 77' from the OHWL (2' buffer from the 75' requirement). This is being requested by applicant as measuring from the OHWL seems somewhat subjective. This variance was granted for the Foss cabin re-build in 2022 (49705 Afton Ave).

	RRI / Shoreland Management District Standards	Existing Structure	Proposed Structure
Road Setback	40' to Township Road Right-of-Way (R-O-W)	9' to Afton Ave R-O-W (15' from edge of Afton Ave)	9' to Afton Ave R-O-W same as current setback (15' from edge of Afton Ave)
OWHL (General Development Lake)	75'	86'	65' (plans call for 77'; however, measurement is somewhat subjective, so applicant is requesting 65' to ensure OWHL measurement is compliant)
Side Yard Setback	10' for Dwelling and Attached Garage	≥10' (15' from cabin to southern lot line)	≥10' (16' from cabin to southern lot line)
Impervious Surface Coverage	25%	19.2%	22.7%

Existing



Proposed





Trisha & Tim Donelon – Property owner Trisha Donelon and applicant Tim Donelon are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to replace and expand a dwelling and deck closer to the township road Right-of-Way and Ordinary High Water Level (OHWL) than required in the Rural Residential I (RRI) District / Shoreland Management District. The .25± acre subject site is located at 49725 Afton Avenue in Nessel Township, S28, T37, R22 (PID 06.00751.00).

Donelon Property - 





Trisha & Tim Donelon – Property owner Trisha Donelon and applicant Tim Donelon are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to replace and expand a dwelling and deck closer to the township road Right-of-Way and Ordinary High Water Level (OHWL) than required in the Rural Residential I (RRI) District / Shoreland Management District. The .25± acre subject site is located at 49725 Afton Avenue in Nessel Township, S28, T37, R22 (PID 06.00751.00).

Donelon Property - 



RESOLUTION NO. BOAA2023-0701

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE ALLOWING REDUCED RIGHT-OF-WAY AND ORDINARY HIGH WATER LEVEL
SETBACKS ON PROPERTY LOCATED AT 49725 AFTON AVENUE IN NESSEL TOWNSHIP**

WHEREAS, applicants Tim Donelon & Trisha Donelon and property owner Trisha Donelon submitted an application dated received June 30, 2023 and considered complete on July 6, 2023 for a Variance to Zoning Ordinance Section 5.15 Dimensional Standards and Shoreland Management Ordinance Section 5.21 Placement of Structures and Sewage Treatment Systems on Lots; and

WHEREAS, the applicants wish to demolish the existing dwelling and construct a new dwelling 9' from the Afton Avenue Right-of-Way where the required setback is 40' and approximately 65' from the OHWL of Rush Lake where the required setback is 75'; 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 06.00751.00
Lot 7 of Bayside Townsite, Chisago County, Minnesota.

WHEREAS, notice was provided and on July 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(s) 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 dwelling will be situated 32' from the northerly property boundary and 16' from the southerly property boundary (side yards where the required setback is 10'), 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 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 proposed use of the property will not change from the existing use and the proposed action will not result in the dwelling being any closer to the Right-of-Way than the existing dwelling. While the Nessel Town Board has expressed concern with the Right-of-Way setback encroachment, the County finds that the proposed use will not increase the amount of traffic generated at the subject site or increase the amount of congestion on Afton Avenue and surrounding roadways.</i> |

Criteria #3 Finding #3	The proposed action will not increase the danger of fire or endanger the public safety; <i>The property owner will be required to obtain a building permit prior to construction of the proposed dwelling, 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. The County finds that the proposed action will have no impact on the danger of fire or public endangerment.</i>
Criteria #4 Finding #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties; <i>Being that the subject site is currently developed with a single family dwelling and the proposed dwelling will not change how the property is being used, and being that the proposed dwelling will not be situated any closer to the northerly or southerly neighboring properties, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.</i>
Criteria #5 Finding #5	The proposed action will not cause an unreasonable strain upon existing facilities and services; <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 Finding #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>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 Finding #7	The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls. <i>The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 allows 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 Ordinance and 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 Variance is hereby **approved**, subject to the following conditions:

1. This approval grants the following Variances:
 - a. A 31' Variance to the township Right-of-Way setback requirement allowing the proposed dwelling to be no closer than 9' from the Afton Avenue Right-of-Way. This Variance will

allow the proposed dwelling to be located no closer to the township Right-of-Way than the existing dwelling and existing detached garage.

- b. A 10' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling and deck to be no closer than 65' from the OHWL of Rush Lake.
2. Except as specifically required herein, the dwelling shall be constructed in general conformance with the application materials, including "proposed" site plan, dated received June 30, 2023. Any significant deviation, 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 permit holder shall obtain a building permit prior to construction and, further, the dwelling shall comply with all applicable codes and regulations.
4. The permit holder shall obtain a compliance inspection for the existing holding tank prior to or in conjunction with the building permit application process.
5. 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 July, 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 Impervious Surface Coverage
 51040 Rush Lake Way, Nessel Township
 DATE: July 27, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance to Shoreland Management Ordinance Section 5.52 (Specific Standards) allowing an impervious surface coverage of 31.6% where the maximum allowable amount of impervious surface coverage is 25%.

SITE & APPLICATION INFORMATION

Applicant(s):	Patty Jo Hagen & Steven Hagen
Property Owner(s):	Patty Jo Hagen & Steven Hagen
Property Address:	51040 Rush Lake Way Nessel Township
General Location:	Section 14, Township 37, Range 22
PID:	06.01183.00
Property Area:	.42± 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:	Rural Residential I (RRI) District / Shoreland Management District
West:	East Rush Lake
Date Application Received:	June 30, 2023
Date Application Complete:	July 6, 2023
60-Day Review Period:	September 4, 2023

BACKGROUND

Property owners Patty Jo Hagen & Steven Hagen are proposing to expand their dwelling by constructing an addition to the east side of the dwelling, including an attached two-stall garage. While the proposed addition appears to meet all required setbacks and be compliant with the allowable amount of accessory storage space, the property owners report that it will result in 31.6% impervious surface coverage. The subject site, being located in the Shoreland Management District, is limited to a maximum of 25% impervious surface coverage.



SITE ANALYSIS

The .42-acre subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and located approximately one-tenth of a mile southwest of the intersection of Rush Lake Trail / CSAH 7 and Rush Lake Way on East Rush Lake. The unplatted subject site has been developed with a dwelling and two detached accessory structures. Topography of the site includes elevations ranging from approximately 915' near the shoreline and 934' over the easterly half of the site, as well as mature maple and walnut trees located adjacent to the southerly property boundary. All surrounding properties are similarly zoned and developed for residential purposes or remain vacant.



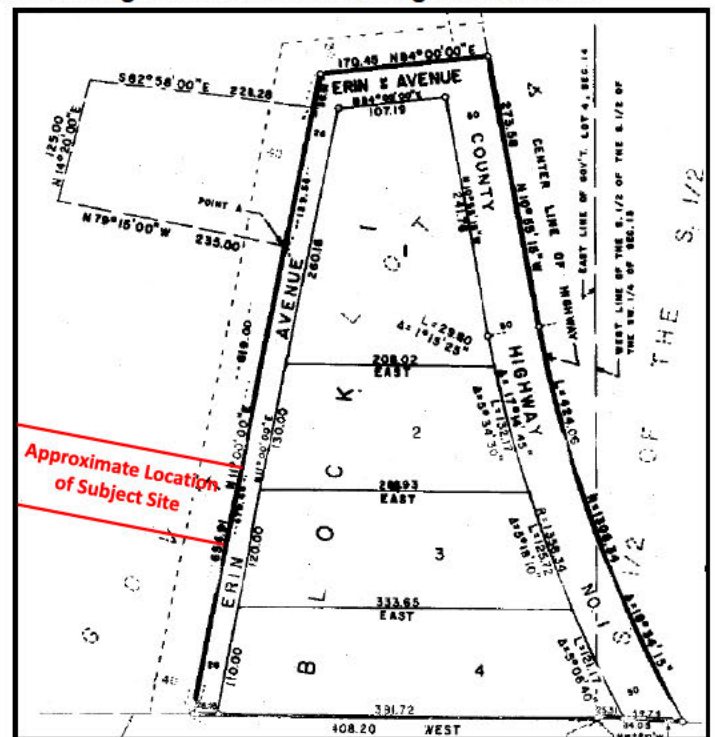
Based on information provided by the Chisago County Assessor's Office, the existing dwelling appears to have been constructed in 1971 and it meets all currently required setbacks. However, based on lot area and lot width, the property is considered legal non-conforming in the Shoreland Management District.

While the subject site has frontage on an unimproved public Right-of-Way (26' wide Erin Avenue, platted as part of Lois Acres in 1978), access to the site and neighboring properties is gained by a private road – Rush Lake Way – which runs through the easterly side of the subject site. There is no required setback from the private road; however, it does present other challenges to property owners, namely, its impact on impervious surface coverage.

PROPOSAL ANALYSIS

The property owners are proposing to construct a dwelling addition which will include an attached two-stall garage. The property owners initially reported, per the June 30, 2023 application materials, that the existing amount of impervious surface coverage was 24.96% and the proposed addition would result in coverage increasing to 26.14%. However, due to suspected discrepancies within the impervious surface calculation worksheets submitted on June 30, 2023, Code Enforcement Officer Putman visited the site on July 11, 2023 to gain a better understanding of current conditions. Putman confirmed that the worksheets were not entirely accurate and the property owners were informed on July 12, 2023 that they must provide updated worksheets.

The property owners submitted updated impervious surface calculation worksheets on July 18, 2023 showing that the existing amount of impervious surface coverage is 25.4% and the proposed addition will result in coverage increasing to 31.6%. Therefore, the property owners are amending their original request for Variance to exceed the maximum allowable amount of impervious surface coverage by 6.6%



rather than 1.4%. Staff is not certain that the updated worksheets are entirely accurate but does believe that the information is much closer to being accurate than the original worksheets.

The attached preliminary building plans show that the addition will extend easterly from the existing dwelling toward Rush Lake Way, partially located on the existing driveway. The existing dwelling and proposed addition appear to comply with all required setbacks. In regard to accessory storage space, staff notes that the proposed attached garage is shown on the attached preliminary building plans to be 25' wide and 29.5' deep or 737.5 sf. The two existing detached accessory structures are reported to be 8' x 10' or 80 sf (near road) and 8' x 12' or 96 sf (near lake, encroaching on required OHWL setback). The garage and existing sheds total 913.5 sf of accessory storage space and, based on zoning classification and lot size, the maximum allowable amount of accessory storage space is 1,000 sf.

REVIEW PROCESS

The Nessel Town Board considered the request on July 11, 2023 and recommended approval with no conditions.

The Technical Review Committee met on July 12, 2023. Committee members briefly discussed discrepancies within the impervious surface calculation worksheets submitted on June 30, 2023 and the need for updated worksheets for both existing and proposed conditions in order to determine the true request.

The state mandated 60-day review period expires on September 4, 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 subject site includes the private roadway known as Rush Lake Way, and the improved surface of the roadway accounts for approximately 951 sf of impervious surface (based on attached survey dated May 5, 2023). Because the property owners must include the improved road surface as impervious surface where most property owners in the same zoning district do not, staff finds this to be an exceptional or extraordinary circumstance for which the current property owners had no control.

Staff notes that the property owners are reporting the existing amount of impervious surface coverage to be 25.4% and, if the private road was not located on the subject site, the site would most likely be within the allowable amount of impervious surface coverage. However, the proposed amount of impervious surface coverage, being 31.6%, suggests that the subject site would be exceeding the maximum allowable amount of impervious surface coverage even if the private road was not located on the property. And, aside from the private road, the property owners have not provided any other evidence of exceptional or extraordinary circumstances to support the Variance

request. In summary, the private road is one factor for the property exceeding the allowable amount of impervious surface coverage but not the only factor.

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;

While the Variance request pertains specifically to impervious surface coverage, the basis of the request relates to the property owners' desire to expand their dwelling and have a garage on a property where there currently is no garage. The Board of Adjustment and Appeals has historically viewed garages to be a right commonly enjoyed by other properties in the Rural Residential I (RRI) District / Shoreland Management District and, therefore, believes that literal interpretation of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.

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 current property owners nor the previous property owner(s) created the special circumstance of a private road being constructed through the subject site. However, as noted above, the private road itself is not the full cause of the subject site exceeding 25% impervious surface coverage and other areas of impervious surface coverage (i.e., existing pavers, concrete pads and detached accessory structures, proposed sidewalk, etc.) are a direct result of the actions of the property owners.

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

The proposed dwelling addition with attached garage is a permitted use in the Rural Residential I (RRI) District / Shoreland Management District; therefore, the Variance would not be considered a use Variance.

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

This is a highly subjective question. The basis of the request relates to the property owners' desire to have a two-stall garage on a property where there currently is no garage; however, garages are not an absolute necessity. It's very likely that a one-stall garage and/or the elimination of the proposed impervious 120 sf sidewalk would help reduce the overall amount of impervious surface and, therefore, the overall Variance needed, so the Board will need to consider the request and determine if the request is reasonable and the minimum Variance needed to provide relief.

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 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.

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 applicant 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 proposed Variance would have no impact on the flood zone which covers the westerly 1' – 10" of the subject site.

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 County finds that the proposed Variance relates to the overall amount of impervious surface coverage which has no impact on the supply of light and air to adjacent properties. The County further finds that the proposed addition will meet all required setbacks and, therefore, 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; |
| <i>Finding #2</i> | <i>Neither the proposed amount of impervious surface coverage nor the dwelling addition will create additional bedrooms or otherwise change the use of the subject property. Therefore, the County finds that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion in the immediate vicinity of 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 owner will be required to obtain a building permit 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. Further, the proposed increase in amount of impervious surface coverage, for which the request is being made, will have no impact on public safety.</i> |
| Criteria #4 | The proposed action will not unreasonably cause undue negative impact to surrounding properties; |
| <i>Finding #4</i> | <i>The subject site is currently developed with a dwelling and related detached accessory structures and the proposed action will not change the primary use of the property. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties. In fact, the County finds that the addition of an attached garage may benefit surrounding properties by improving storage on and aesthetics of the subject site.</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.
<i>Finding #7</i>	<i>The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District. While the Zoning Ordinance identifies dwellings and related accessory structures as Permitted Uses in this District, the Shoreland Management Ordinance limits the overall amount of impervious surface coverage to 25%. However, the Zoning Ordinance also 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. The County finds that the request is reasonable in that the property owners desire to have a garage on a property where there currently is no garage; that the subject site is unique in that it has a private road located on the property and the property owners are therefore required to count this road against their total amount of impervious surface; and, that the proposed dwelling addition (providing an attached garage) will fit the essential character of the surrounding area as most properties in the general vicinity have attached and/or detached garages.</i>

STAFF RECOMMENDATION

Staff is somewhat concerned about the accuracy of the impervious surface calculation worksheets and ensuring that the request is sufficient for the proposed project. If the Board shares this concern, it may wish to consider requiring the property owners to enlist the services of a registered land surveyor or other professional to prepare a survey / drawing showing proposed conditions (i.e., dwelling / garage addition, new driveway design, etc.) and provide detailed impervious surface coverage calculations.

Alternatively, if the Board supports the request as presented and barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, staff has provided recommended Findings of Fact (see above) and conditions (see below) for the Board's consideration.

Recommended condition(s):

1. This approval grants a 6.6% Variance to the maximum amount of impervious surface coverage in the Shoreland Management District allowing the total amount of impervious surface to be no greater than 31.6%.
2. The size and location of the dwelling / garage addition shall be in general conformance with the application materials dated received June 30, 2023 (with exception of the impervious surface calculation worksheets) and the updated impervious surface calculation worksheets dated received July 18, 2023, so as not to impact the overall amount of impervious surface coverage. 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 and, further, the dwelling expansion 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 Variance based on the Findings of Fact and conditions as presented or amended.
2. **Deny** the Variance 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 September 4, 2023, allowing the Board to further review and consider the request at its August 31, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0702, a resolution approving a Variance to exceed the maximum allowable amount of impervious surface coverage on property located at 51040 Rush Lake Way in Nessel Township, as presented or amended.

If the Board chooses to deny the request for Variance, 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. Survey
 - d. Preliminary building plans
 - e. Impervious surface calculation worksheets dated received June 30, 2023
 - f. Impervious surface calculation worksheets dated received July 18, 2023
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0702

CC: Patty Jo Hagen & Steven Hagen, property owner
County file

Permit #

23-1076

PLANNING ADMINISTRATIVE FORM

Chisago County Department of Environmental Services

Recording Fee

Base Fee

Wetland or Septic Fees

Plat Compliance Fee

TOTAL FEE

Street Location

51040 Rush Lake Way

Tax Parcel #

06.01183.00

Legal Description

See attached

E-Mail Address

Owner:

Patty Jo Hagen/Staven Hagen

Day Phone

Address

51040 Rush Lake Way Rush City, MN 55069

Applicant (if other than owner)

Day Phone

Address

S14 T87 R22

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:

To build an addition to living room and a

If Variance Application, Brief

Description of Practical

Difficulty

garage which will exceed the maximum amount of impervious surface by approximately 1.14%. The property does not have a garage or storage space.

Signature of Applicant

Patty Jo Hagen

Date of Application

6/29/23

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

6-30-23

7-6-23

Date Complete

9-4-23

60 / 120 Day Review Period

Date of Public Hearing:

July 27, 2023

TOWNSHIP PRESENTATION FORM

Street Location 51040 Rush Lake Rd.

Legal Description See attached

Owner Name Patty J. Hagen Steven Hagen Day Phone: [REDACTED]

Address: 51040 Rush Lake Way Rush City, MN 55069

Applicant: [Signature] Day Phone: ()
(if other than owner)

Address: _____

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: Add a garage and add to living room

There was not a garage at time of purchase which this will exceed the maximum amount of impervious surface by approximately 1.14%

Date of County Public Hearing: JULY 27, 2023

Date of Township Presentation: JULY 11, 2023

TOWNSHIP ACTION TAKEN

Recommend Approval ☒ Recommend Denial ☐

Recommended Conditions: _____

Signature of Township Officers:

Michelle Meis Betsy A Rising
Dan [Signature] Brandon Mell by H.S.
Steve [Signature]

Patty J. Hagen Steven Hagen
Signature of Applicant

6/29/23
Date

1. REASONABLENESS

The addition of the garage will increase the amount of the impervious surface.

2. UNIQUENESS

When the property was purchased there was not a garage and no storage space. The road to the property is personal property to all those living on the road. The township chose to asphalt that road rather than the projected road, which is included in the impervious surface. Had the original road been established 951 square feet would not be included in the existing impervious surface. That would allow the additional garage to be within the appropriate guidelines.

3. ESSENTIAL CHARACTER

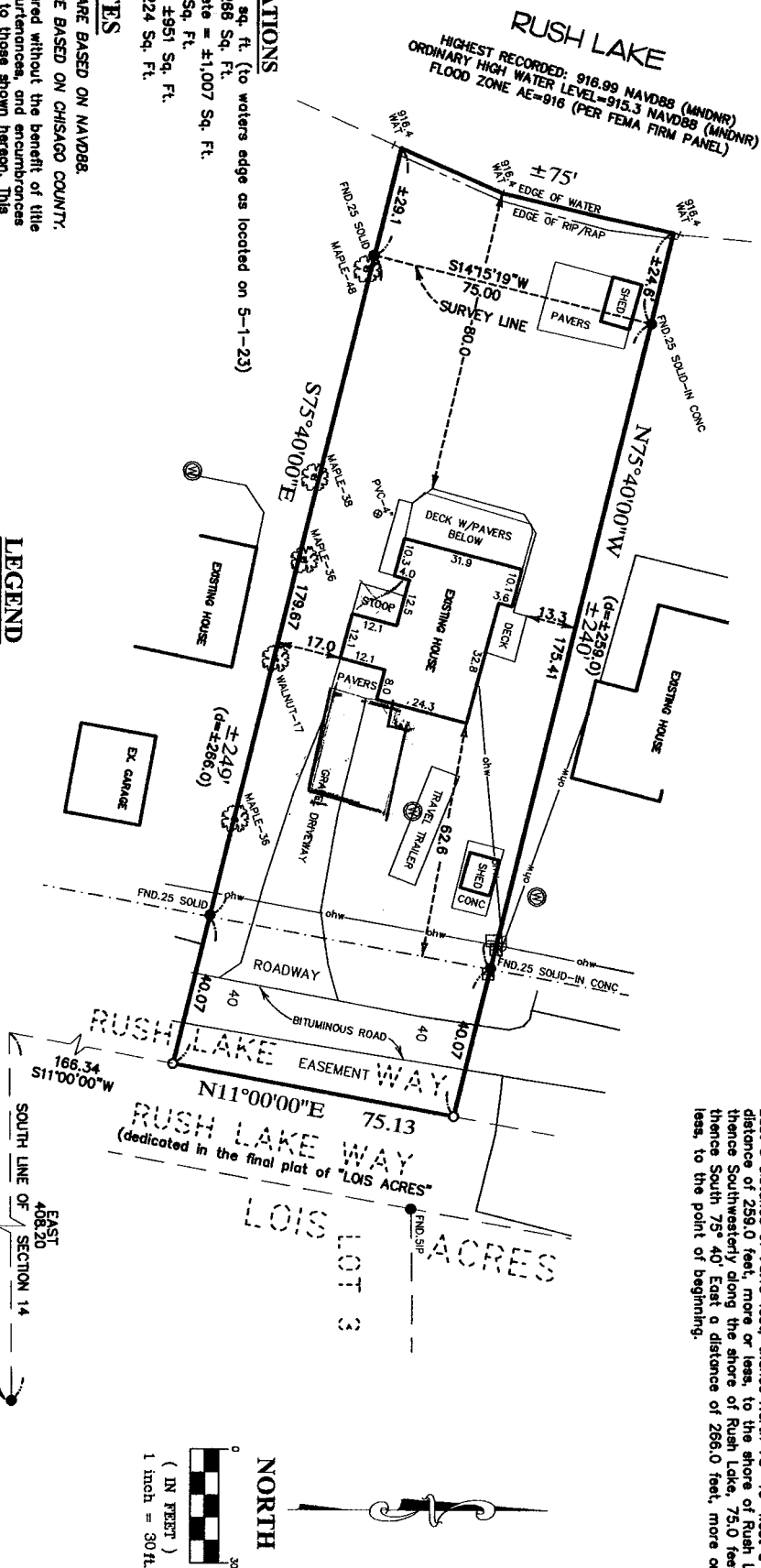
The addition of the garage will not alter any characteristics to the surrounding area. All setbacks are within the guidelines.

ADDRESS: 51040 RUSH LAKE WAY, RUSH CITY, MN

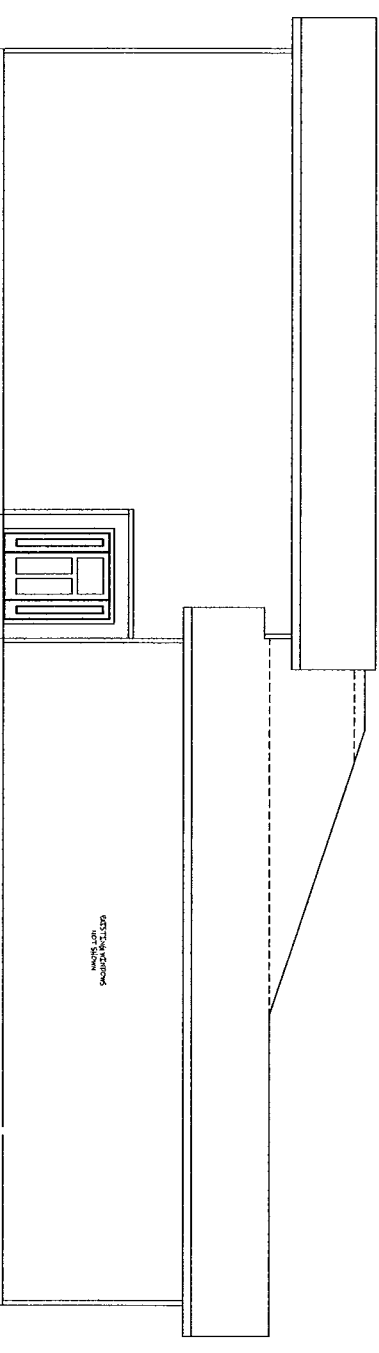
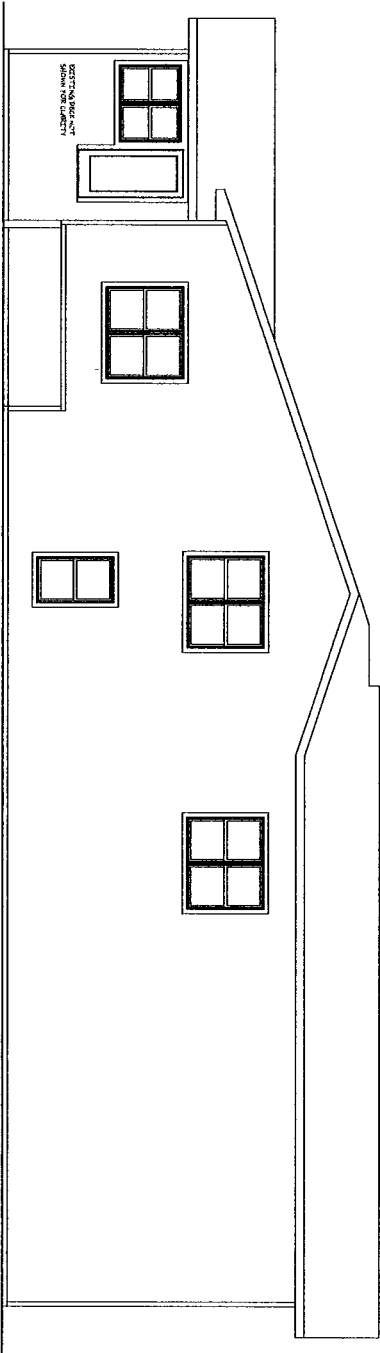
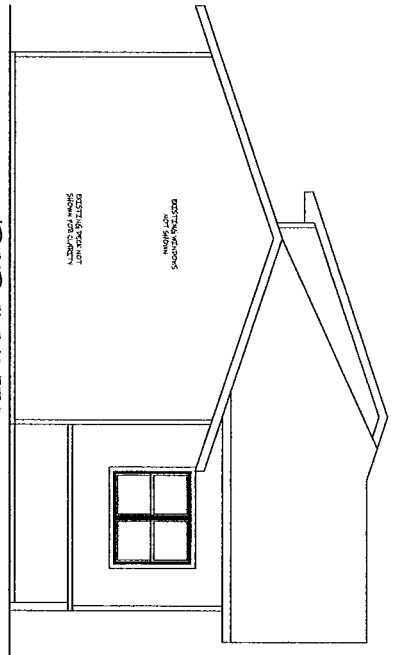
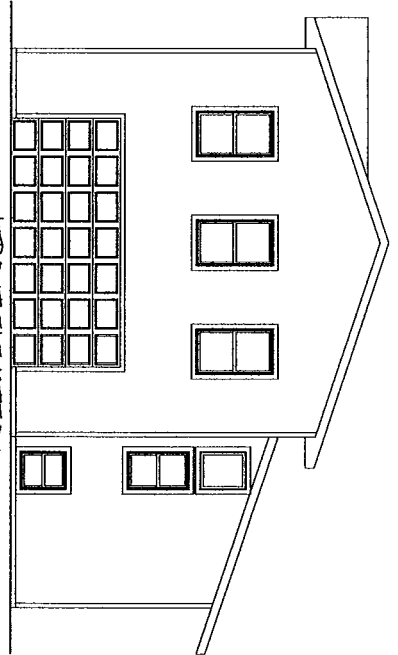
All that part of Government Lot Four (4), Section Fourteen (14), Township Thirty-seven (37), Range Twenty-two (22), described as follows:

Commencing at a point on the South line of said Section 14, 406.2 feet West of the Southeast corner; thence North 11° 00' East a distance of 166.34 feet to the point of beginning of the property herein to be described; thence continuing North 11° 00' East a distance of 75.15 feet; thence North 75° 40' West a distance of 259.0 feet, more or less, to the shore of Rush Lake; thence Southwesterly along the shore of Rush Lake, 75.0 feet; thence South 75° 40' East a distance of 206.0 feet, more or less, to the point of beginning.

ACRE LAND SURVEYING
Blaine, MN 55449
763-238-6278 j.s.acrelandsurvey@gmail.com



PRELIMINARY PLANS



DISCLAIMER:
THESE PLANS ARE PRELIMINARY AND NOT FOR CONSTRUCTION. THEY ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THESE PLANS.

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THESE PLANS ARE THE PROPERTY OF E.M.E. DRAFTING. THEY ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF E.M.E. DRAFTING.

E.M.E. DRAFTING

E.M.E. DRAFTING
51040 RUSH LAKE WAY
RUSH CITY, MN 55069

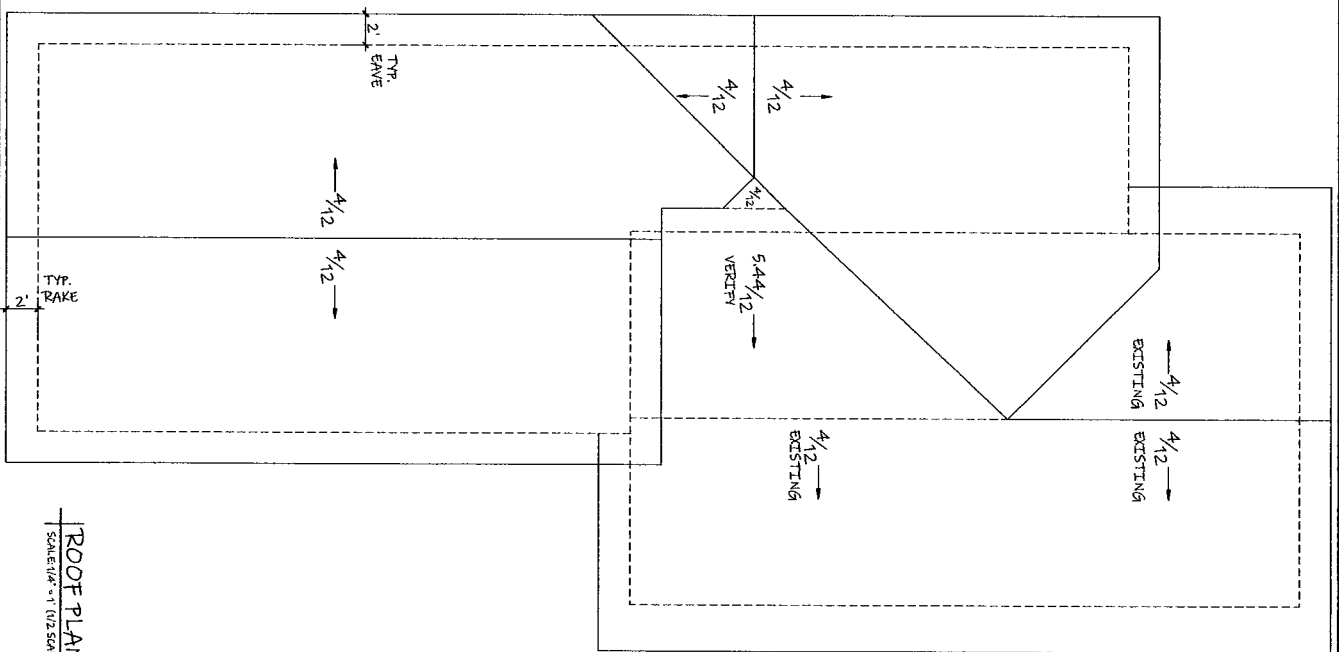
HAGEN
51040 RUSH LAKE WAY
RUSH CITY, MN 55069

PROJECT:	HAGEN
DESIGNED BY:	EMIE
DATE:	6/25/23
REVISIONS:	
NO.	DESCRIPTION
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A1

SCALE: 1/4" = 1' (1/2 SCALE ON THICK)

PRELIMINARY PLANS



DISCLAIMER

THESE PLANS ARE FOR
GENERAL INFORMATION &
SCHEDULING ONLY. NO
BIDDING OR BIDS ARE
IMPLICITLY OR EXPLICITLY
MADE. PLANS ARE
FOR INFORMATION ONLY.
THESE PLANS ARE FOR
GENERAL INFORMATION &
SCHEDULING ONLY. NO
BIDDING OR BIDS ARE
IMPLICITLY OR EXPLICITLY
MADE. PLANS ARE
FOR INFORMATION ONLY.

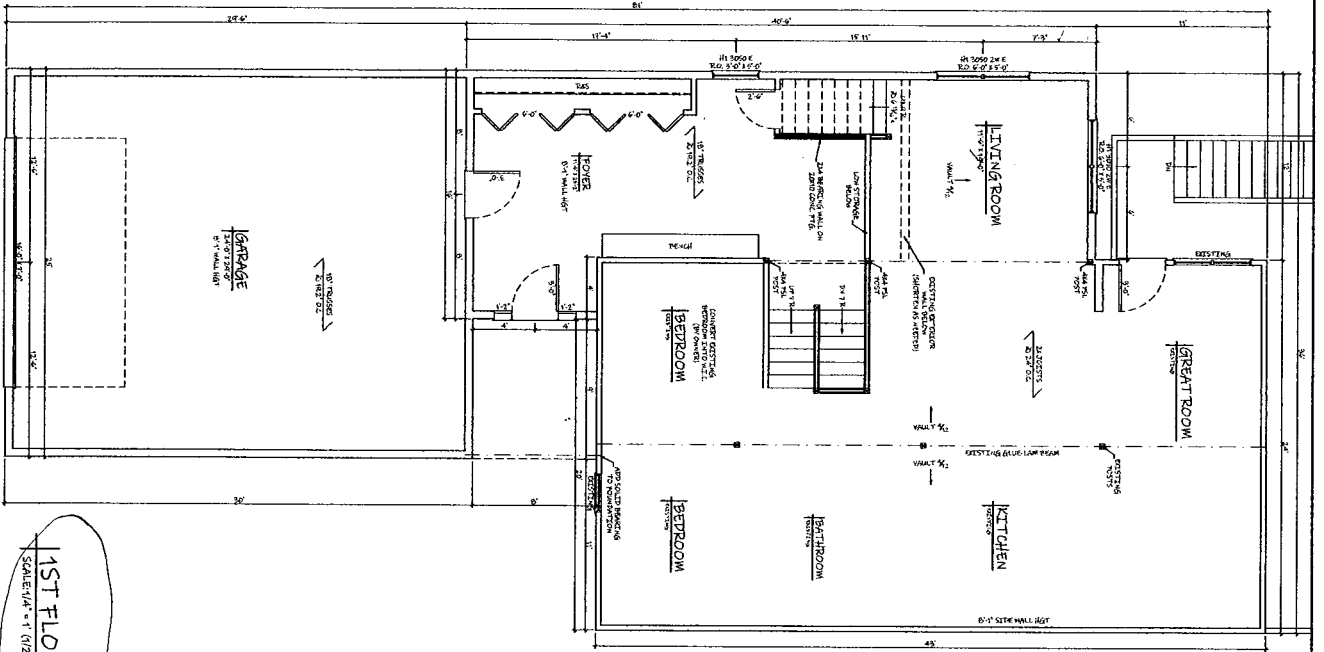
**INTELLECTUAL
PROPERTY:**
ANY INFORMATION, SPRA-
OR CONCRETS IN THIS PA-
ARE THE PROPERTY OF SMI
DOWNTOWN THESE PLANS
ARE NOT TO BE REPRODUCED
IN ANY WAY WITHOUT
WRITTEN PERMISSION
FROM ENR DRAFTING.

E.M.E.
DRAFTING

E.M.E. DRAFTING
ERIC EGGER
900 MAPLE AVE. E.
MCPA, MN 55051

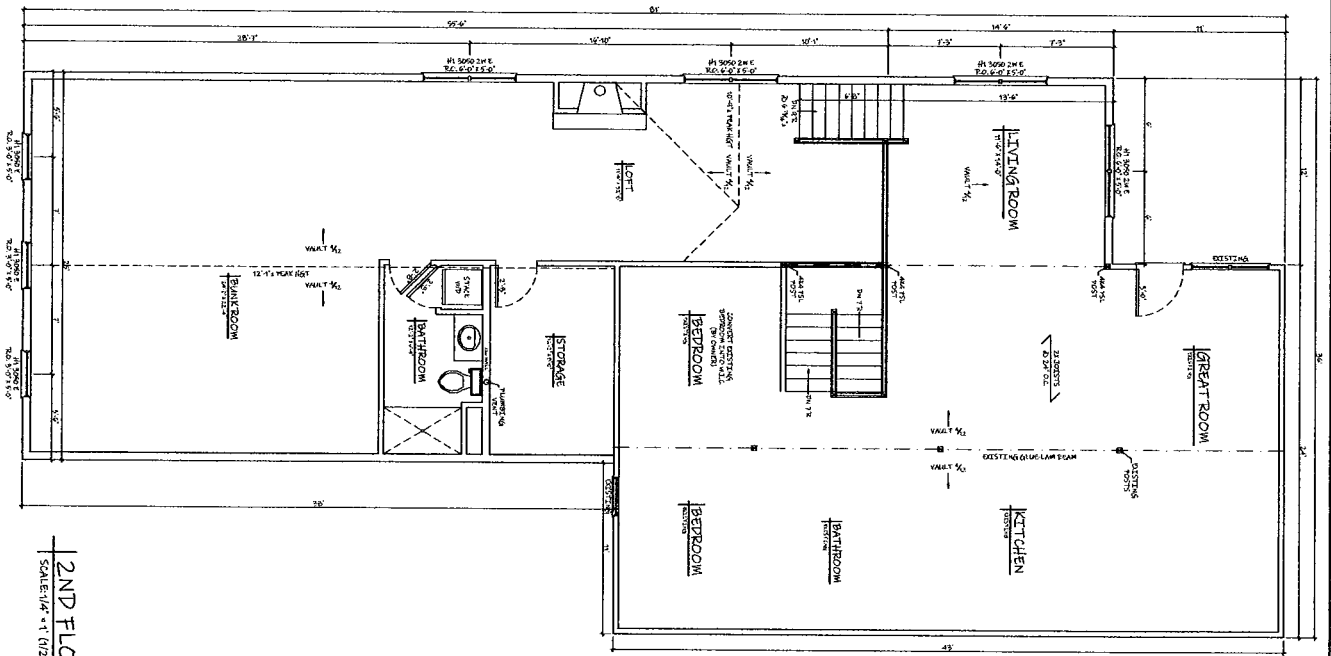
HAGEN
51040 RUSH LAKE WAY
RUSH CITY, MN 55069

FOIA b(7) -	HAGEN
Document Type	EME
DATE	6/26/23
RECORDS TAG	0000-00
SERIAL NUMBER	000000
STANDARD	000000
NOTES	0000-00
ROLL NO.	000000
FIND-ROOT	A2



1ST FLOOR PLAN
SCALE 1/4" = 1' (1/2" SCALE ON 11/17)

PRELIMINARY PLANS



2ND FLOOR PLAN
SCALE 1/4" = 1' (1/2" SCALE ON 11/17)

PROJECT	HAGEN
DATE	6/28/23
DESIGNER	EME
CLIENT	
LOCATION	
NOTES	
1ST-2ND	
A3	

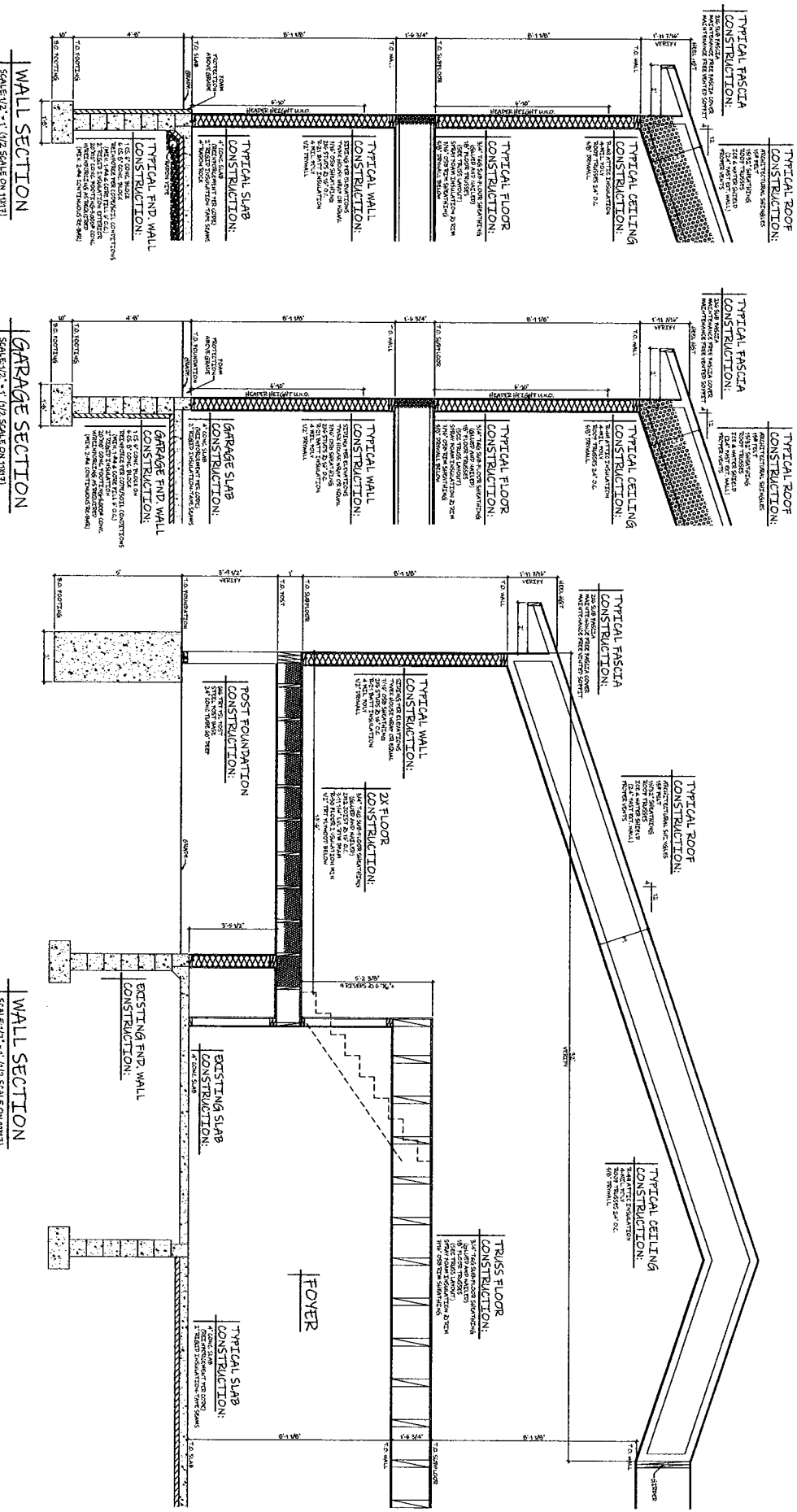
HAGEN
51040 RUSH LAKE WAY
RUSH CITY, MN 55069

TEAM: DRAFTING
ARCHITECT: E.M.E.
PROJECT: HAGEN
DATE: 6/28/23

E.M.E.
DRAFTING

DISCLAIMER
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PRELIMINARY PLANS



DISCLAIMER:

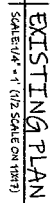
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E.M.E.
DRAFTING

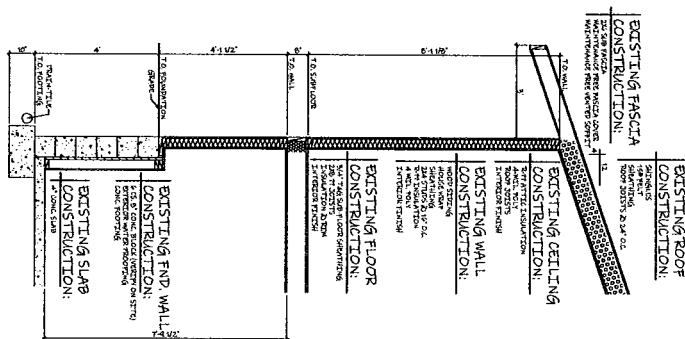
E.M.E. DRAFTING
ERIC EGGERT
900 MAPLE AVE. E.
MORA, MN 55051

HAGEN
51040 RUSH LAKE WAY
RUSH CITY, MN 55069

NAME	HAGEN
ORGANIZATION	EME
DATE	6/26/23
INSTRUCTOR	
TEST DATE	
TEST NAME	
TEST TOPIC	
TEST LOCATION	
SECTION	A4



EXISTING SECTION
SCALE: 1/2" = 1' (1/2 SCALE ON 11X17)



HAGEN
51040 RUSH LAKE WAY
RUSH CITY, MN 55069

51040 RUSH LAKE WAY
RUSH CITY, MN 55069

EXISTING

A5

Existing house

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
	43,560	
x		=
		18,201

OR	Total area of parcel in square feet
	18,201 sq ft

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	42.9 x 31.9	=	1266
garage		=	
8x12 + deck	31.9 x 14	=	530
8x8 + 16x16 + patio		=	4007
sidewalk		=	
driveway	62 x 19.7	=	1224
other; list:		=	
		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3497

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	95
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
	75.13 x 12.68	=	951
landscaping with plastic barrier		=	
other; list:		=	
Shed	95	=	95
		=	
TOTAL OTHER ITEMS			1046

Calculate:

Total from "Residential Structures":	3497	+
Total from "Agricultural Structures":	95	+
Total from "Other Items":	951	+
Total square footage of coverage:		=
(divide by total area of parcel, above)		/
		=
TOTAL IMPERVIOUS SURFACE	4543	%

24.9690

Robert H. Hsu
signature

6/30/23
date

corresponding permit number

New Garage Structure

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
	x 43,560	=

OR	Total area of parcel in square feet
	18,201

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	42.9 x 31.9	=	1266
garage	24 x 29	=	696
8 x 12 deck	32 x 14	=	530
8 x 16 + 16 x 16 patio		=	1,007
sidewalk	4 x 29	=	116
driveway	33 x 19	=	627
other; list:		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3,712

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)		=	951
landscaping with plastic barrier		=	
other; list:		=	
Shed		=	95
		=	
TOTAL OTHER ITEMS			1,046

Calculate:

Total from "Residential Structures":	3,712	+
Total from "Agricultural Structures":		+
Total from "Other Items":	1,046	+
Total square footage of coverage:		=
(divide by total area of parcel, above)		/
		=
TOTAL IMPERVIOUS SURFACE	4,758	%

26.1490

signature	<i>[Signature]</i>
date	6/30/23
corresponding permit number	

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

Current

AREA OF PARCEL		
acres:	square feet per acre:	Total area of parcel in square feet
43	x 43,560	= 1,820,880

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		=	1,266
garage		=	
12 x 33 deck		=	
under deck patio		=	428
sidewalk		=	
* gravel driveway		=	1224
other; list:		=	
stoop	12 x 8	=	100 sq ft
front door porch	6 x 8	=	79 sq ft
road cement	9 3/4 x 19	=	183
private road		=	951
TOTAL RESIDENTIAL STRUCTURES			3280

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)		=	
Private		=	951
landscaping with plastic barrier		=	
other; list:		=	
lake patio		=	391
		=	
TOTAL OTHER ITEMS			1342

Calculate:

Total from "Residential Structures": 3280 +
 Total from "Agricultural Structures": 1342 +
 Total from "Other Items": 4622 =
 Total square footage of coverage: 4622 /
 divide by total area of parcel, above) =

TOTAL IMPERVIOUS SURFACE 25.4 %

signature: [Signature]

date: 7/18/23

RECEIVED

JUL 18 2023

Chicago County
Dept. of Environmental Services

86

Galaxy A32 5G

* total taken from survey

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

New

AREA OF PARCEL		
acres:	square feet per acre:	Total area of parcel in square feet
<i>.43</i>	<i>x 43,560</i>	<i>= 18201</i>

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		=	<i>1666</i>
garage	<i>25 x 29.5</i>	=	<i>737.5</i>
deck		=	<i>478</i>
patio		=	<i>428</i>
<i>under deck</i> sidewalk	<i>4 x 30</i>	=	<i>120</i>
driveway	<i>42 x 25</i>	=	<i>1050</i>
other; list:		=	
<i>front door</i>	<i>8 x 9</i>	=	<i>72</i>
<i>* concrete shed</i>	<i>9.4 x 19</i>	=	<i>183</i>
<i>* under living room</i>	<i>12 x 14</i>	=	<i>168</i>
TOTAL RESIDENTIAL STRUCTURES		=	<i>4429.5</i>

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)		=	<i>957</i>
landscaping with plastic barrier		=	
other; list:		=	
<i>lake patio</i>		=	<i>391</i>
TOTAL OTHER ITEMS		=	<i>1342</i>

Calculate:

Total from "Residential Structures": *4,429.5* +
 Total from "Agricultural Structures": *1,342.0* +
 Total from "Other Items": *1,342.0* +
 Total square footage of coverage: *5766.5* =
 (divide by total area of parcel, above) *18201* =
 TOTAL IMPERVIOUS SURFACE *31.6* %

* Survey

• New

Patty Hager
 signature

7/18/23
 date

corresponding permit number

RECEIVED

JUL 18 2023

Galaxy A32 5G

Chisago County
 Dept. of Environmental Services

66

Asking for an increase of 6% impervious surface

Add to Narrative

Storage: Shed by lake is $12 \times 8 = 96 \text{ sq ft}$
Shed by road is $8 \times 10 = 100 \text{ sq ft}$
garage is $25 \times 29.5 = 737.5$
total = 933.5 sq ft

Area under

living room addition will be impervious with
landscape fabric and rock = $146'' \times 99'' = 100 \text{ sq ft}$

* This is the stoop on the Survey

All flower gardens are using
pervious landscape fabrics.

The new drive way will be $42' \text{ by } 25'$

A side walk will be add from the garage on
the south side. It will be $4' \times 30' = 120 \text{ sq ft}$.
And a new stoop will be added $8' \times 9' = 72 \text{ sq ft}$.

Those items marked * were taken
from Survey.

Added to house:
living room $12 \times 14 = 168 \text{ sq ft}$
foyer $16 \times 12 = 192$
 $4 \times 8 = 40$
 232 sq ft

Added garage: $25 \times 29.5 = 737.5 \text{ sq ft}$

1266 - from Survey

737.5 - garage New

168 - New living room added

2171.5 added

232

2403.5

RECEIVED

JUL 18 2023

Chicago County
Dept. of Environmental Services

BG

Galaxy A32 5G

New House sq ft. 1266 + 232 + 168 = 1666



Patty Jo Hagen and Steven Hagen – Property owners Patty Jo Hagen and Steven Hagen are requesting a Variance to Shoreland Management Ordinance Section 5.52 in order to exceed the maximum allowable amount of impervious surface coverage in the Shoreland Management District. The .42± acre subject site is located at 51040 Rush Lake Way in Nessel Township, S14, T37, R22 (PID 06.01183.00).

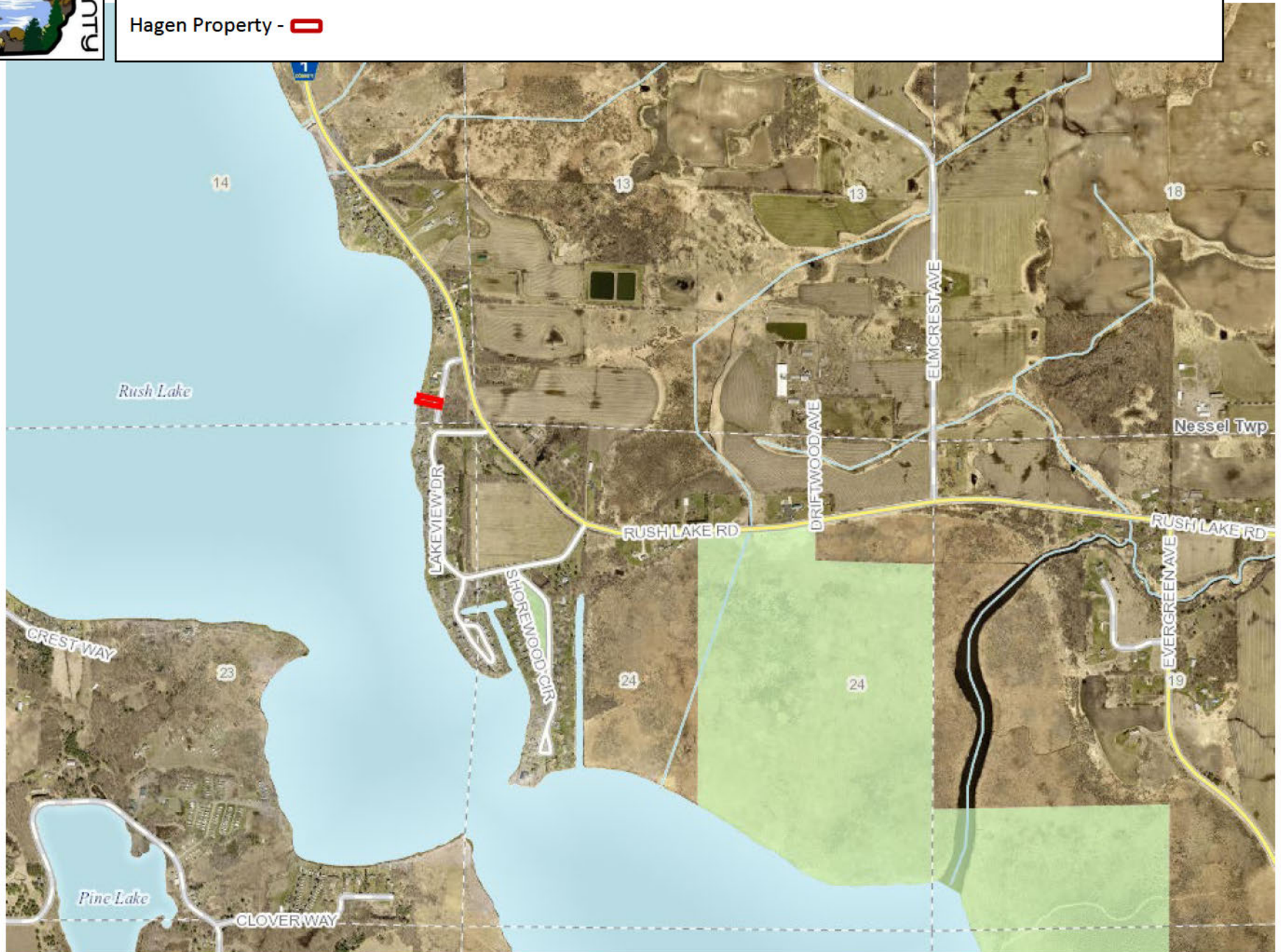
Hagen Property - 





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Hagen Property - 



RESOLUTION NO. BOAA2023-0702

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF IMPERVIOUS SURFACE
COVERAGE ON PROPERTY LOCATED AT 51040 RUSH LAKE WAY IN NESSEL TOWNSHIP**

WHEREAS, property owners Patty Jo Hagen and Steven Hagen submitted an application dated received June 30, 2023 and considered complete on July 6, 2023 for a Variance to Shoreland Management Ordinance Section 5.52 Specific Standards; and

WHEREAS, the property owners wish to expand their dwelling, including the addition of an attached garage, which would reportedly increase the impervious surface coverage from 25.4% to 31.6% where the maximum allowable amount of impervious surface coverage is 25%; 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 06.01183.00

**All that part of Government Lot Four (4), Section Fourteen (14), Township Thirty-seven (37), Range Twenty-two (22), described as follows:
Commencing at a point on the South line of said Section 14, 408.2 feet West of the Southeast corner; thence North 11° 00' East a distance of 166.34 feet to the point of beginning of the property herein to be described; thence continuing North 11° 00' East a distance of 75.13 feet; thence North 75° 40' West a distance of 259.0 feet, more or less, to the shore of Rush Lake; thence Southwesterly along the shore of Rush Lake, 75.0 feet; thence South 75° 40' East a distance of 266.0 feet, more or less, to the point of beginning.**

WHEREAS, notice was provided and on July 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(s) 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 County finds that the proposed Variance relates to the overall amount of impervious surface coverage which has no impact on the supply of light and air to adjacent properties. The County further finds that the proposed addition will meet all required setbacks and, therefore, 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 Neither the proposed amount of impervious surface coverage nor the dwelling addition will create additional bedrooms or otherwise change the use of the subject property. Therefore, the County finds that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion in the immediate vicinity of the subject site.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 The property owner will be required to obtain a building permit 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. Further, the proposed increase in amount of impervious surface coverage, for which the request is being made, will have no impact on public safety.*
- Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
- Finding #4 The subject site is currently developed with a dwelling and related detached accessory structures and the proposed action will not change the primary use of the property. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties. In fact, the County finds that the addition of an attached garage may benefit surrounding properties by improving storage on and aesthetics of the subject site.*
- 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 / Shoreland Management District. While the Zoning Ordinance identifies dwellings and related accessory structures as Permitted Uses in this District, the Shoreland Management Ordinance limits the overall amount of impervious surface coverage to 25%. However, the Zoning Ordinance also 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. The County finds that the request is reasonable in that the property owners desire to have a garage on a property where there currently is*

no garage; that the subject site is unique in that it has a private road located on the property and the property owners are therefore required to count this road against their total amount of impervious surface; and, that the proposed dwelling addition (providing an attached garage) will fit the essential character of the surrounding area as most properties in the general vicinity have attached and/or detached garages.

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 a 6.6% Variance to the maximum amount of impervious surface coverage in the Shoreland Management District allowing the total amount of impervious surface to be no greater than 31.6%.
- 2. The size and location of the dwelling / garage addition shall be in general conformance with the application materials dated received June 30, 2023 (with exception of the impervious surface calculation worksheets) and the updated impervious surface calculation worksheets dated received July 18, 2023, so as not to impact the overall amount of impervious surface coverage. 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 and, further, the dwelling expansion 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 July, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST: _____
Beth Gervais
Land Services Coordinator