



Chisago County, MN
BOARD OF ADJUSTMENT AND APPEALS
Meeting Agenda
August 31, 2023 | 7:00 pm

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

Tour Time and Date: Wednesday, August 30, 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. July 27, 2023
- 5. Receive all Materials and Submittals into Record**

Previously Distributed Materials:

 - a. Complete meeting packet including staff reports with attachments for agenda items 6a, 6b and 6c
- 6. Public Hearings – New Applications**
 - a. **Terry & Jennifer Pekula** – Property owners Terry & Jennifer Pekula are requesting a Variance to Zoning Ordinance Section 4.08.2 in order to exceed the maximum allowable amount of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. The 1.02± acre subject site is located at 12133 285th Street in Chisago Lake Township, S8, T33, R20 (PID 02.01799.10).
 - b. **Robert & Jill Ross** – Property owners Robert & Jill Ross are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to build an accessory structure 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. The .21± acre subject site is located at 49755 Afton Avenue in Nessel Township, S28, T37, R22 (PID 06.00748.00).
 - c. **Neal & Donna Deneen and Adam Brown** – Property owners Neal & Donna Deneen and applicant Adam Brown are requesting Variances to Zoning Ordinance Section 5.15 in order to build a dwelling, deck and detached accessory structure closer to the township Right-of-Way than required in the Rural Residential I (RRI) District / Shoreland Management District. The .34± acre subject site is located at 12480 Melody Lane in Chisago Lake Township, S4, T33, R20 (PIDs 02.01029.00 and 02.01030.00).
- 7. Public Hearings – Continued Hearings**

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

The next meeting is scheduled for Thursday, September 28, 2023 at 7:00 pm.

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
July 27, 2023**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, July 27, 2023 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator; and, Diane Sander, Office Manager.

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 Chip Yeager; second by Doug Greene. The **motion passed** and carried unanimously.

APPROVAL OF MINUTES – Motion to approve the June 29, 2023 meeting minutes as presented by John Sutcliffe; second by Becky Strand. 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, including four letters of support received on behalf of the Donelon request; 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: staff reports with attachments and four letters of support for the Donelon request. 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

Trisha & Tim Donelon – Coordinator Gervais provided background information on Trisha & Tim Donelon's Variance request for property located at 49725 Afton Avenue in Nessel Township (PID 06.00751.00), explaining that the property owners were requesting Variance approval 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.

Coordinator Gervais explained that the .25-acre subject site located on the southwest side of West Rush Lake and platted as Lot 7, Bayside Townsite in 1954 was considered to be legal non-conforming as it did not meet the current minimum dimensional requirements. The site was developed with a dwelling, a 640 sf detached garage, and a 120 sf shed. The property owners received Variance approval in 2019 allowing the detached garage to encroach on township Right-of-Way and to exceed the maximum allowable height. Gervais explained that the County's GIS Viewer made it appear as if the existing detached garage was located on the northerly property boundary; however, the property owners had found several property pins and they were confident that the garage was set back 5.5' from the northerly property boundary.

Gervais explained that the Donelons were proposing to demolish the existing dwelling and deck and construct a new 1,088 sf dwelling and 320 sf deck in the same general location. Gervais shared that the proposed location would not exacerbate the existing R-O-W setback encroachment but it may now encroach on the OHWL setback. The applicants reported that the proposed setbacks were consistent with neighboring properties and past Variance approvals.

The Nessel Town Board considered the request on July 11, 2023 and recommended approval with conditions that the dwelling be set back 15' from the Right-of-Way (rather than the proposed 9' setback) and that all drainage go toward the lake. The Technical Review Committee met with Tim Donelon on July 12, 2023. The Committee discussed the possibility of shifting the dwelling to reduce encroachment on the Right-of-Way as recommended by the Town Board, and that drainage going directly toward the lake was less ideal for the health of the lake. The State mandated 60-day review period was scheduled to expire on September 4, 2023.

Gervais commented that staff believed the request to be reasonable based on the property and existing dwelling constituting pre-existing development for which the property owner had no control; the proposed dwelling expansion would not exacerbate the R-O-W setback encroachment and it would meet or exceed all other required side yard setbacks; the proposed dwelling was reasonably sized for the subject site while still meeting the required minimum dwelling size (960 sf required; 1,088 sf proposed); and, it would be impossible to construct a dwelling on the subject site which met all minimum architectural requirements and the required setbacks. Gervais added that, barring any new or unknown evidence of compliance discovered after the completion of the staff report or during the course of the public hearing, staff recommended approval of the requested Variance with recommended Findings of Fact and conditions. Gervais reviewed options available to the Board and requested a motion to adopt a resolution approving the Variance as requested.

Tim Donelon was present and available to address questions and concerns. Donelon provided a brief overview of the request and explained that the Nessel Town Board had expressed concern with the proposed R-O-W setback. Donelon explained that the proposed dwelling would not be located any closer to the R-O-W than the existing dwelling and added that the township had an ordinance to deal with on-street parking issues. Donelon did not believe that on-street parking would be an issue as most people would park in the driveway. Donelon did not want to shift the dwelling closer to the lake due to potential negative impacts to the lake and views of the neighbors, and additional costs associated with backfilling. Donelon provided a PowerPoint presentation which included, among other things, examples of neighboring structures which had similar setbacks as the proposed dwelling. Chair Carlson asked clarifying questions on the location of the property pins and the proposed dwelling. Chair Carlson discussed the proposed setback in relation to the neighboring dwelling to the south (Williams). Chip Yeager spoke about and recollected the recent Variance granted to Foss (two properties to the south) which was similar to the Donelon request. Board members and Donelon discussed the Foss property.

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 requested that Coordinator Gervais read the four letters of support submitted on behalf of the request.

Gary and Lisa Paschke – 350 497th Street, Nessel Township. As a neighboring landowner of the Donelons, we can say they have been wonderful neighbors and have no issues in their requested variance to make improvements on their Rush Lake cabin. We look forward to many more years as neighbors.

Bill and Patti Picha – 49695 Afton Avenue, Nessel Township. This letter is in regard to the Donelon's new cabin proposal. We're in the red cabin at 49695 Afton, which is three lots south of the Donelons. We're in support of them expanding their cabin with a basement which will be safer in a storm. This will also be a great improvement to the neighborhood as well to the community.

Jason Foss – 42185 Afton Avenue, Nessel Township. I am reaching out to you in regards to my neighbor Tim Donelon and his family as they are going through a similar process for a variance. I would like nothing more than to see their request approved next Thursday night and see their new build get started up this fall. As you probably know the lake has changed a lot over the past few years with several rebuilds, etc. It is my opinion this

is a great thing for all involved including the county and the surrounding areas. As a neighbor two doors down from the Donelon family it would be wonderful to have another new build as we see continued growth on our street.

Ken and Linda Williams – 49715 Afton Avenue, Nessel Township. We are emailing in support of the proposed rebuild at 49725 Afton Avenue for the Donelons. My wife Linda and I have been next door at 49715 for four years now. We think it would be a great thing for the Donelons to improve their home not only for more safety with the walk-out but also great for Chisago County and surrounding neighbors. I know at this time Tim would like to keep the alignment from the road the same and we support that also.

Chair Carlson inquired if John Sutcliffe had any insights from attending the July 11, 2023 Nessel Town Board meeting. John Sutcliffe explained that the Town Board wanted to see the dwelling set back farther from the road. Sutcliffe explained that he supported the request but wanted to see water diverted from the roadway and directed toward the lake through some type of settlement pond or drainage system. Sutcliffe added that the elevation of the yard should not be higher than the road. Donelon sought clarification on the use of gutters and drainage options. Chair Carlson discussed positioning of the proposed dwelling in relation to neighboring dwellings and desires of the neighbors. The Board had no other comments or questions.

Motion by John Sutcliffe to adopt 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, with the added condition that all water from the roof be diverted to the lake through a sub-surface drainage system (i.e., rain garden, drain tile, French drain, etc.) rather than directed to the road and that the yard elevation shall not change from its current elevation; second by Becky Strand. The **motion passed** and carried unanimously.

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. All water from the roof shall be diverted to the lake through a sub-surface drainage system (i.e., rain garden, drain tile, French drain, etc.) rather than directed to the road, and the yard elevation shall not change from its current elevation.
4. The permit holder shall obtain a building permit prior to construction and, further, the dwelling shall comply with all applicable codes and regulations.
5. The permit holder shall obtain a compliance inspection for the existing holding tank prior to or in conjunction with the building permit application process.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Patty Jo Hagen and Steven Hagen – Coordinator Gervais provided background information on Patty Jo Hagen and Steven Hagen’s Variance request for property located at 51040 Rush Lake Way in Nessel Township (PID 06.01183.00), explaining that the property owners were requesting Variance approval to exceed the maximum allowable amount of impervious surface coverage in the Shoreland Management District.

Coordinator Gervais explained that the .42± acre subject site was located on the east side of Rush Lake in the Rural Residential I (RRI) District / Shoreland Management District. The property was considered legal non-conforming as it did not meet current minimum dimensional requirements. The site was currently developed with a dwelling and two detached accessory structures but no garage. The dwelling appeared to have been constructed in 1971 and it met all required setbacks.

Gervais explained that the property owners were proposing to construct a dwelling addition which would include an attached two-stall garage. The property owners initially reported 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, staff visited the site on July 11, 2023 to gain a better understanding of current conditions. Staff confirmed that the worksheets were not entirely accurate and the property owners were informed that they needed to provide updated worksheets. The property owners submitted updated worksheets showing that the existing amount of impervious surface coverage was 25.4% and the proposed addition would result in coverage increasing to 31.6%. Therefore, the property owners amended their original request for Variance to exceed the maximum allowable amount of impervious surface coverage by 6.6% rather than 1.4%.

Gervais further explained that the subject site included the private roadway known as Rush Lake Way and the improved surface of the roadway accounted for approximately 951 sf of impervious surface. Because the property owners were required to include the improved road surface as impervious surface where most property owners in the same zoning district did not, staff found this to be an exceptional or extraordinary circumstance for which the current property owners had no control. The property owners also cited the private road as a unique circumstance within their written narrative. Gervais noted 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; however, it was one factor for the Board’s consideration.

The Technical Review Committee met on July 12, 2023. The Committee discussed the accuracy of the impervious surface calculation worksheets and the need for updated worksheets, but no other concerns were identified. The Nessel Town Board considered the request on July 11, 2023 and recommended approval with no conditions. The State mandated 60-day review period was scheduled to expire on September 4, 2023.

Gervais explained that staff was concerned about the accuracy of the impervious surface calculation worksheets and ensuring that the request was sufficient to support the proposed project, adding that, if the Board shared this concern, it may wish to consider requiring the property owners 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 supported the request as presented, Gervais provided Findings of Fact to support approval as well as suggested conditions of approval. Gervais concluded by reviewing options available to the Board.

Chair Carlson invited the property owners to address the Board. Patty Jo Hagen was present and available to address questions and concerns. Hagen stated that she needed a garage and believed it would increase her property value. Chair Carlson reviewed the impervious surface calculation worksheets and discrepancies between the original submittal and the updated submittal. Hagen spoke about her efforts to complete the

worksheets and acknowledged that she made miscalculations in the original worksheets. Hagen spoke about a survey which she recently had prepared and impervious surface detail provided on that survey, believing that the survey detail was not entirely accurate which led to inaccurate worksheets. Hagen added that she personally measured impervious surfaces for the updated worksheets and utilized some detail from the survey as well. Hagen spoke about the challenges of measuring her irregularly shaped driveway and her intent to reconstruct the driveway in a more standard configuration. Hagen concluded by stating that she needed a garage due to lake effects and winter conditions. Chair Carlson continued his review of the worksheets, seeking clarification from Hagen. Chip Yeager inquired about and received clarification on the locations of the private road and the township R-O-W.

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 John Sutcliffe. The **motion passed** and carried unanimously.

Chair Carlson sought comment from the Board. John Sutcliffe indicated that there were pervious materials, such as pervious pavers, that could help reduce the total amount of impervious surface coverage. Hagen discussed potentially removing the 8' x 10' (80 square feet) shed once the addition was complete. Chip Yeager commented that, if the Variance was granted, it would result in the impervious surface coverage exceeding the maximum allowed by 6.6%, but the property owners had options to reduce the overall amount of impervious surface coverage to bring the total amount closer to 25%. Doug Greene commented that it was to the property owners benefit and the whole community's benefit to reduce the overall amount of impervious surface, suggesting that the property owners keep this in mind moving forward. The Board had no other comments or questions.

Motion by John Sutcliffe to adopt 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, with the added condition that the property owners install gutters on the addition to prevent water from the roof infringing upon adjacent properties; second by Doug Greene. The **motion passed** and carried unanimously.

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 install gutters on the addition to prevent water from the roof infringing upon adjacent properties.
4. The property owner shall obtain a building permit prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUISNESS

None

NEW BUISNESS

None

MISCELLANEOUS

None

ADJOURN MEETING – ***Motion*** to adjourn by Becky Strand; second by John Sutcliffe. The **motion passed** and carried unanimously. With no further business the meeting was adjourned at 7:53 p.m.

Gregg Carlson
Chair

ATTEST: _____

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Exceed Maximum Allowable Amount of Accessory Storage Space
 12133 285th Street, Chisago Lake Township
 DATE: August 31, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing a total of 2,439 square feet of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District where the maximum allowable amount is 2,000 square feet.

SITE & APPLICATION INFORMATION

Applicant(s):	Terry & Jennifer Pekula
Property Owner(s):	Terry & Jennifer Pekula
Property Address:	12133 285 th Street
	Chisago Lake Township
General Location:	Section 8, Township 33, Range 20
PID:	02.01799.10
Property Area:	1.02± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	Rural Residential I (RRI) District / Shoreland Management District
South:	Chisago Lake / Rural Residential I (RRI) District / Shoreland Management District
East:	Rural Residential I (RRI) District / Shoreland Management District
West:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	July 28, 2023
Date Application Complete:	August 3, 2023
60-Day Review Period:	October 2, 2023

BACKGROUND

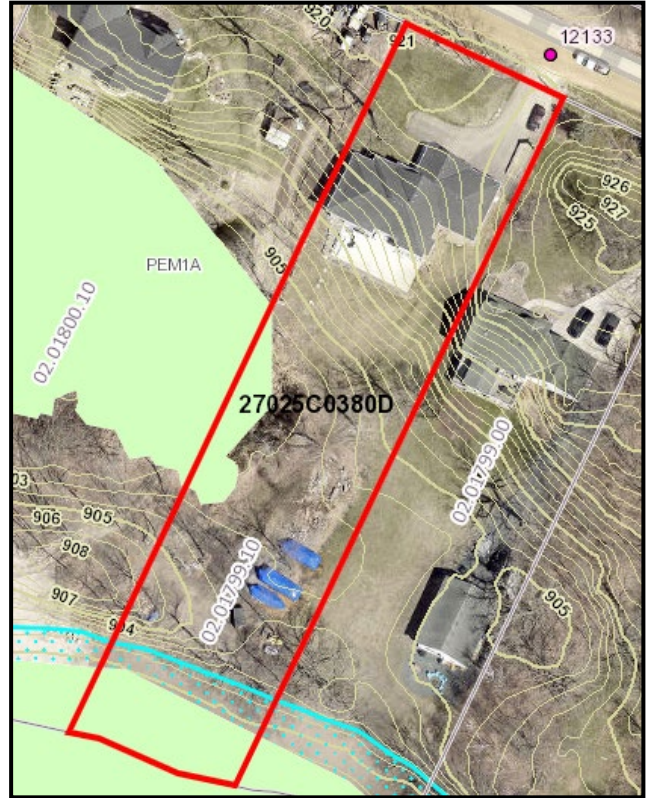
Property owners Terry & Jennifer Pekula wish to construct a 30' x 40' (1,200 sf) detached accessory structure on property located at 12133 285th Street in Chisago Lake Township. In addition to the proposed detached accessory structure, the subject site has been developed with a dwelling and 1,239 sf attached garage. In total, the applicants wish to have 2,439 sf of accessory storage space. The subject site is located in the Rural Residential I (RRI) District, where – based on the size of the property – the maximum allowable amount of accessory storage space is 2,000 sf.



SITE ANALYSIS

The Pekula's 1.02± acre property is generally located approximately one-quarter mile northwesterly of the intersection of Lakelawn Drive and 285th Street on the southerly side of 285th Street in Chisago Lake Township. The property was platted as Lot 23, Woodlawn Beach in 1910 and is considered legal non-conforming being that it doesn't meet current dimensional requirements of the Shoreland Management Ordinance, specifically in terms of lot width. The site has been developed with a dwelling and 1,239 sf attached garage, and there does not appear to be any detached accessory structures currently on the property. The subject site and all properties to the west, east, and north are zoned Rural Residential I (RRI) District / Shoreland Management District. Chisago Lake is located immediately south of the subject site. Surrounding lakeshore properties range in size from 1 acre to 3.5 acres and are similarly developed.

As shown on the adjacent image, topography of the subject site includes elevations ranging from 922' at the northerly property boundary to 897' at the southerly property boundary and a wetland area located along the western property boundary approximately halfway between the dwelling and the lake.



PROPOSAL ANALYSIS

The attached site plan / survey shows that the proposed 30' x 40' (1,200 sf) detached accessory structure will be situated approximately 150' southerly of the dwelling, 75' northerly of the OHWL / lake, and 10' from the easterly property boundary. Staff notes that the subject site is 100'± wide and, if the intent is to maintain a 10' setback from the easterly property boundary and construct a 30' wide structure, then the proposed westerly side yard setback is approximately 60'. There should be no issue with the ability of the proposed detached accessory structure to meet all required setbacks.

The attached written narrative states that the property owners believe that the proposed structure will reduce the need for outdoor storage and they believe it will improve the appearance of the property from the adjacent street and lake. Additionally, the property owners note that the neighboring property (presumably 12147 285th Street / PID 02.01799.00) has a 30' x 40' detached accessory structure and they believe the properties will look very similar (i.e., essential character) if the Variance is approved and they're allowed to construct the 1,200 sf structure.

Staff did look into circumstances related to the neighboring accessory structure. Based on a 2002 building permit, it appears that the property has been developed with a 3-stall attached garage as well as a 1,200 sf detached accessory structure. However, there was no record of a Variance having been applied for or approved by the Board which would have allowed the property owners to exceed the maximum allowable amount of accessory storage space. Staff does not know all of the circumstances which led to approval of the building permit; however, whether that building permit was issued correctly or issued in error, it does not provide justification for the Pekula's Variance request.

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

	RRI District Allowable Accessory Storage Space	Existing Accessory Storage Space	Proposed Accessory Storage Space	Total Proposed Accessory Storage Space	Maximum Number of Detached Accessory Structures Allowed	Proposed Number of Detached Accessory Structures
Pekula Variance Request	1,000 sf or 5% of lot area, whichever is greater, but in no case to exceed 2,000 sf *2,000 sf*	Attached Garage = 1,239 sf	30' x 40' detached accessory structure = 1,200 sf	2,439 sf	2	1

REVIEW PROCESS

The Technical Review Committee met with property owners Terry & Jennifer Pekula on August 9, 2023. Aside from the County Sanitarian commenting that a septic compliance inspection will be required in conjunction with the Variance, the Committee did not identify any concerns with the request. While the proposed structure will have no direct impact on the septic system, the County's SSTS Ordinance requires a septic compliance inspection based on the fact that a building permit is required for a project / subject site located within the Shoreland Management District.

The Chisago Lake Town Board considered the request on August 15, 2023 and recommended approval noting that the "garage mirrors neighborhood garage, fits on site, meets DNR setbacks".

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

VARIANCE ANALYSIS

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

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

The applicants have not cited any exceptional or extraordinary circumstances which apply to their property. Rather, the written narrative primarily focuses on need for storage of personal property, aesthetics, and having a similar appearance as one neighboring property.
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 RRI District properties. Property owners located in the RRI District have the right to accessory storage in compliance with Zoning Ordinance Section 4.08.2. The subject site, based on lot size, is allowed a maximum of 2,000 sf of accessory storage space, which is the largest amount of accessory storage space permitted in the RRI District. The site has been developed with a 1,239 sf attached garage, leaving the property owners with 761 sf for additional accessory storage purposes. The property owners have not verbalized or otherwise indicated that they've considered a smaller detached accessory structure; however, staff believes that 761 sf would allow a reasonably sized detached accessory structure without the need for a Variance (i.e., 20' x 30' = 600 sf; 20' x 35' = 700 sf; 25' x 30' = 750 sf).

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

As mentioned above, the applicants have not cited any special conditions or circumstances uniquely related to their property. Instead, the application materials reference a desire for indoor storage and improved aesthetics as a basis for their request. While staff can appreciate the property owners' desire for more accessory storage space, the justification provided seems to be based more on personal preferences and personal circumstances rather than special conditions or unique circumstances related to the property.

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

Detached accessory structures are a permitted use in the RRI District; therefore, the Variance is not considered a use Variance.

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

There has been no written or verbal indication that a smaller structure – thereby requiring a lesser Variance – has been considered. As noted above, the property owners currently have 761 sf available for additional accessory storage space, which would allow a structure such as 20' x 30' = 600 sf, 20' x 35' = 700 sf, or 25' x 30' = 750 sf without the need for a Variance.

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

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance related to the property, and when it will not alter the essential character of the surrounding area. Staff does not believe that the Variance, if approved, would be detrimental to other properties in the RRI District; however, staff does not believe that the application fully or satisfactorily addresses the State mandated practical difficulty standard, specifically in terms of reasonableness (i.e., staff believes the property owners have other reasonable options for an accessory structure which does not require a Variance) and uniqueness (i.e., staff does not believe that there are any unique characteristics related to the property itself which prohibit the property owners from complying with the maximum allowable amount of accessory storage space).

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

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

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

While the southerly 55'-60' of the subject site is located within a flood district, the proposed detached accessory structure will be 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; |
| <i>Finding #1</i> | <i>The County finds that the proposed detached accessory structure will be situated in a manner that complies with all required setbacks so as not to impair an adequate supply of light and air to adjacent properties.</i> |
| Criteria #2 | The proposed action will not unreasonably increase the congestion in the public right-of-way; |
| <i>Finding #2</i> | <i>The proposed detached accessory structure will not have any direct impact on the number of occupants residing in the existing dwelling and, therefore, the County finds that it will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on 285th Street or surrounding roadways.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| <i>Finding #3</i> | <i>The property owner will be required to obtain a building permit prior to construction of the proposed detached accessory structure and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.</i> |
| Criteria #4 | The proposed action will not unreasonably cause undue negative impact to surrounding properties; |
| <i>Finding #4</i> | <i>The application materials state and show that the proposed detached accessory structure will be constructed to match the exterior building materials of the existing dwelling and it will meet all required setbacks. Therefore, the County finds that the proposed action will not cause undue negative impact to surrounding properties.</i> |
| Criteria #5 | The proposed action will not cause an unreasonable strain upon existing facilities and services; |
| <i>Finding #5</i> | <i>The proposed accessory structure will not create additional bedrooms and will not increase the number of occupants in the existing dwelling or the need for additional facilities and services; therefore, the County finds that the proposed detached accessory structure will not have any strain or increased impact upon existing facilities and services.</i> |
| Criteria #6 | The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and |
| <i>Finding #6</i> | <i>The proposed detached accessory structure will not have any negative fiscal impact on the County or school district. The County finds that the proposed structure will increase</i> |

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

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

Finding #7 *The intent of Zoning Ordinance Section 4.08.2, F. is to establish a maximum amount of accessory storage space in the County's various zoning districts, including the Rural Residential I (RRI) District. However, the Zoning Ordinance also allows for Variances, including Variances to exceed the maximum amount of accessory storage space, 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 satisfies the three-factor test of uniqueness, reasonableness and essential character.*

-OR-

Finding #7 *The intent of Zoning Ordinance Section 4.08.2, F. is to establish a maximum amount of accessory storage space in the County's various zoning districts, including the Rural Residential I (RRI) District, and allows accessory storage space in proportion to lot size. The County finds that the proposed action is contrary to the intent of Zoning Ordinance Section 4.08.2, F. and finds that the application fails to fully or satisfactorily address the State mandated practical difficulty standard, specifically in terms of reasonableness and uniqueness. The County further finds that the property owners have other reasonable options for constructing a detached accessory structure which complies with the maximum allowable amount of accessory storage space, and that there are no unique characteristics related to the property which are preventing the property owners from complying with the maximum amount of accessory storage space.*

STAFF RECOMMENDATION

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

Alternatively, should the Board determine that the request for Variance satisfies the State mandated practical difficulty standard and the Board adopts Findings of Fact (all those Findings shown in *black italics* and excluding the Finding shown in *red italics*) to support approval of the request for Variance, staff encourages the Board to consider the following conditions of approval:

1. This approval grants a 439 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the property to have a total of 2,439 square feet of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. In addition to the existing 1,239 square foot attached garage, this approval allows the construction of a detached accessory structure up to 1,200 sf in size. The detached accessory structure shall meet all required setbacks.
2. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received July 28, 2023. Any significant deviation from the approved request and site plan, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.

3. The permit holder shall obtain a building permit prior to construction and, further, the accessory structure shall comply with all applicable codes and regulations except as permitted by this Variance.
4. The permit holder shall apply for and ensure completion of a septic compliance inspection prior to or in conjunction with the building permit application process for the approved detached accessory structure.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to adopt all draft Findings shown in black italics.*
2. **Deny** the Variance based on the Findings of Fact presented or amended. *Note: this option will require the Board to adopt draft Findings #1 - #6 shown in black italics and draft Finding #7 shown in red italics.*
3. **Table** action to allow for further review and consideration. The current review period expires on October 2, 2023, allowing for further review and consideration at the Board's September 28, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0801, a resolution denying a Variance to Zoning Ordinance Section 4.08.2, F. to exceed the maximum allowable amount of accessory storage space on property located at 12133 285th Street in Chisago Lake Township, as presented or amended.

If the Board chooses to approve the request for Variance, staff has prepared an alternate resolution which includes Findings of Fact to support approval as well as conditions of approval for the Board's consideration.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plan / survey
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0801 (denial)
5. Draft Resolution No. BOAA2023-0801 (approval)

CC: Terry & Jennifer Pekula, property owners
County file



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 23-1297

Township CHISAGO LAKES S/T/R 8/33/20 PID# 02.01799.10

Project Address 12133 285TH ST LINDSTROM MN 55045

Property Owner(s) TERRY & JENNIFER PEKULA

Mailing Address (If Different from Project Address) Same

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Same

Mailing Address (If Different from Project Address) Same

Phone# Same Email Same

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

[Signature]
Applicant Signature

7/28/23
Date of Application

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

Fees	Dates
Base Fee	Application Received
Recording Fee	Application Complete
Plat Fee— No Road(s) / With Road(s)	60 / 120 Day Review Period
Septic Compliance Fee	Extended Review Period
Wetland Fee	
TOTAL FEE	

\$ 500
\$ 46.
\$ _____
\$ _____
\$ _____
\$ 546.00

7-28-23



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township CHISAGO LAKES S/T/R _____ PID# 02.01799.10
Project Address 12133 285TH ST LINDSTROM MN 55045
Property Owner(s) TERRY & JENNIFER PEKULA
Mailing Address (If Different from Project Address) Same
Phone# [REDACTED] Email [REDACTED]
Applicant(s) Same
Mailing Address (If Different from Project Address) Same
Phone# Same Email Same

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

☒ Variance

☐ Administrative Appeal

Planning Commission

☐ Conditional Use Permit (CUP)

☐ Interim Use Permit (IUP)

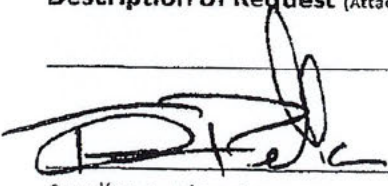
☐ Amendment to CUP or IUP

☐ Preliminary Plat

☐ Rezoning

☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) SEE ATTACHED


Applicant Signature

7/28/23
Date of Application

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

Date of County Public Hearing _____

Date of Township Presentation Aug 15, 2023

Township Action Taken (Township Use Only)

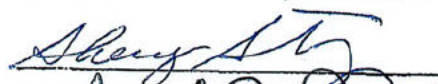
☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

garage mirrors neighborhood garage - pit on site
meets DNR setbacks

Signatures of Township Officials or Authorized Personnel


Sheryl A. Reed

Description of Request: Terry & Jennifer Pekula 12133 285th St., Lindstrom, MN 55045

Add an additional 439 sq. ft to the max of 2000 sq. ft per zoning regulations.

Request to build a 30' w x 40' d (1200 sq. ft) detached garage. Existing attached garage is 1239 sq. ft for a total of 2439 sq. ft. The structure would meet all of the required setbacks.

The property is 1 acre in size and this would allow ample space to reduced outdoor storage without crowding the property. It will also improve the overall look of the property from the street and lake views.

The house next door has the same size lot and a 1200 sq. ft detached garage (30' w x 40' d). It lays perfectly on their lot and gives a very organized, pleasant look to the property. The 2 properties will look very similar to each other with the same size garages. The structure would be built to match all aspects of the existing home.

There are many beautiful lakefront properties on the chain of lakes. We are just asking to keep our lake views pretty and organized, versus having clutter in the yard.



Certificate of Survey for: SHARPER HOMES, INC.

House Address:
12147 - 285th St., Lindstrom, MN

12133
ACTUAL
ADDRESS

House Model:
Frasier II-B

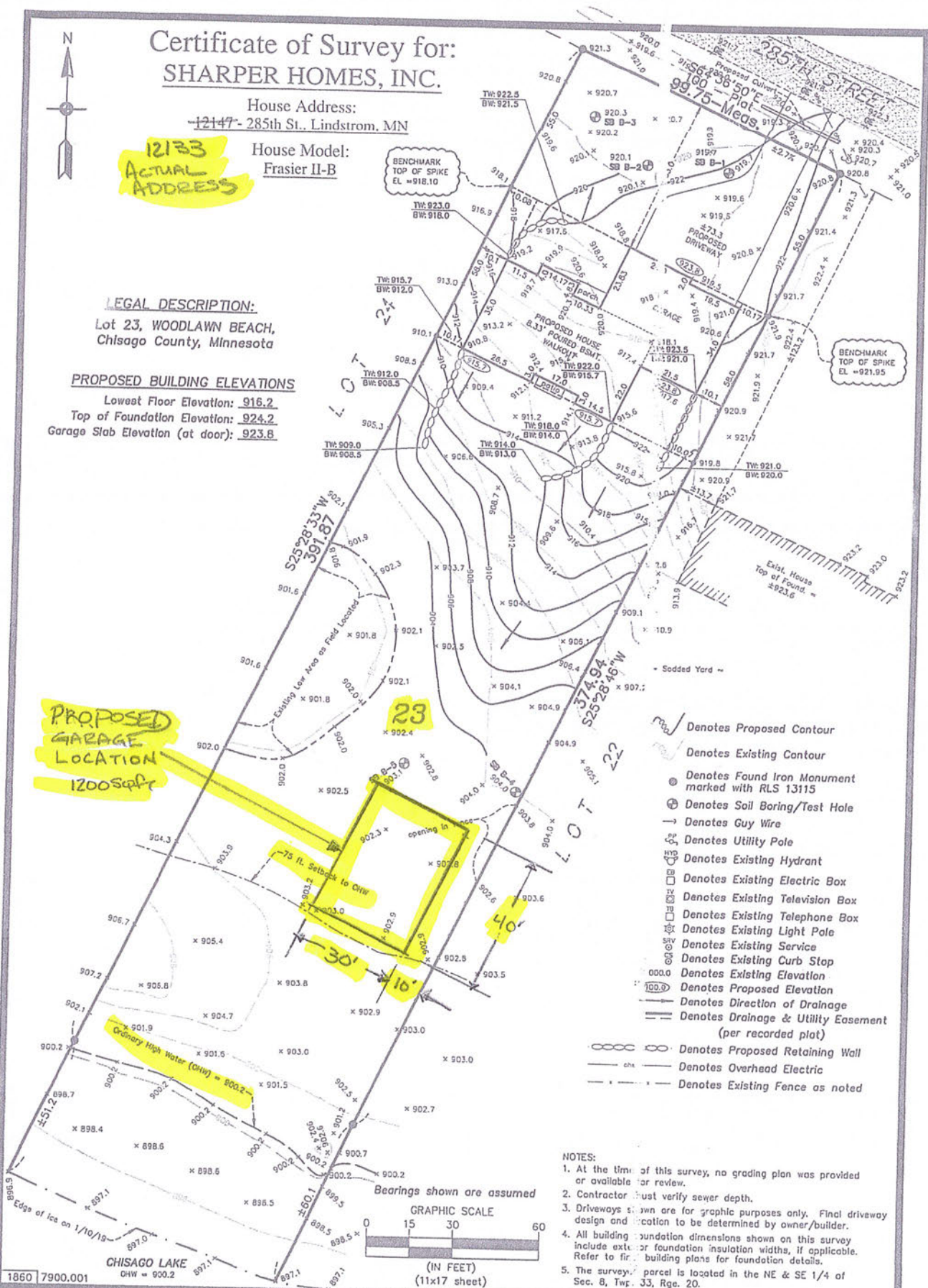
LEGAL DESCRIPTION:

Lot 23, WOODLAWN BEACH,
Chisago County, Minnesota

PROPOSED BUILDING ELEVATIONS

Lowest Floor Elevation: 916.2
Top of Foundation Elevation: 924.2
Garage Slab Elevation (at door): 923.8

PROPOSED
GARAGE
LOCATION
1200sqft



- Denotes Proposed Contour
- Denotes Existing Contour
- Denotes Found Iron Monument marked with RLS 13115
- Denotes Soil Boring/Test Hole
- Denotes Guy Wire
- Denotes Utility Pole
- Denotes Existing Hydrant
- Denotes Existing Electric Box
- Denotes Existing Television Box
- Denotes Existing Telephone Box
- Denotes Existing Light Pole
- Denotes Existing Service
- Denotes Existing Curb Stop
- Denotes Existing Elevation
- Denotes Proposed Elevation
- Denotes Direction of Drainage
- Denotes Drainage & Utility Easement (per recorded plat)
- Denotes Proposed Retaining Wall
- Denotes Overhead Electric
- Denotes Existing Fence as noted

NOTES:

- At the time of this survey, no grading plan was provided or available for review.
- Contractor must verify sewer depth.
- Driveways shown are for graphic purposes only. Final driveway design and location to be determined by owner/builder.
- All building foundation dimensions shown on this survey include exterior foundation insulation widths, if applicable. Refer to final building plans for foundation details.
- The surveyed parcel is located in the NE & SE 1/4 of Sec. 8, Twp. 33, Rge. 20.

I hereby certify to Sharper Homes, Inc. that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly licensed land surveyor under the laws of the State of Minnesota.

Dated this 10th day of January, 2019.

Carlson McCain

ENVIRONMENTAL • ENGINEERING • SURVEYING
3890 Pheasant Ridge Drive NE,
Suite 100, Blaine, MN 55449
Phone: 763-489-7900 Fax: 763-489-7959

Signed: Carlson McCain, Inc.

By: *Peter J. Blomquist*
Thomas R. Bluff, L.S. Reg. No. 40361
Peter J. Blomquist, L.S. Reg. No. 51676



Terry & Jennifer Pekula – Property owners Terry & Jennifer Pekula are requesting a Variance to Zoning Ordinance Section 4.08.2 in order to exceed the maximum allowable amount of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. The 1.02± acre subject site is located at 12133 285th Street in Chisago Lake Township, S8, T33, R20 (PID 02.01799.10).

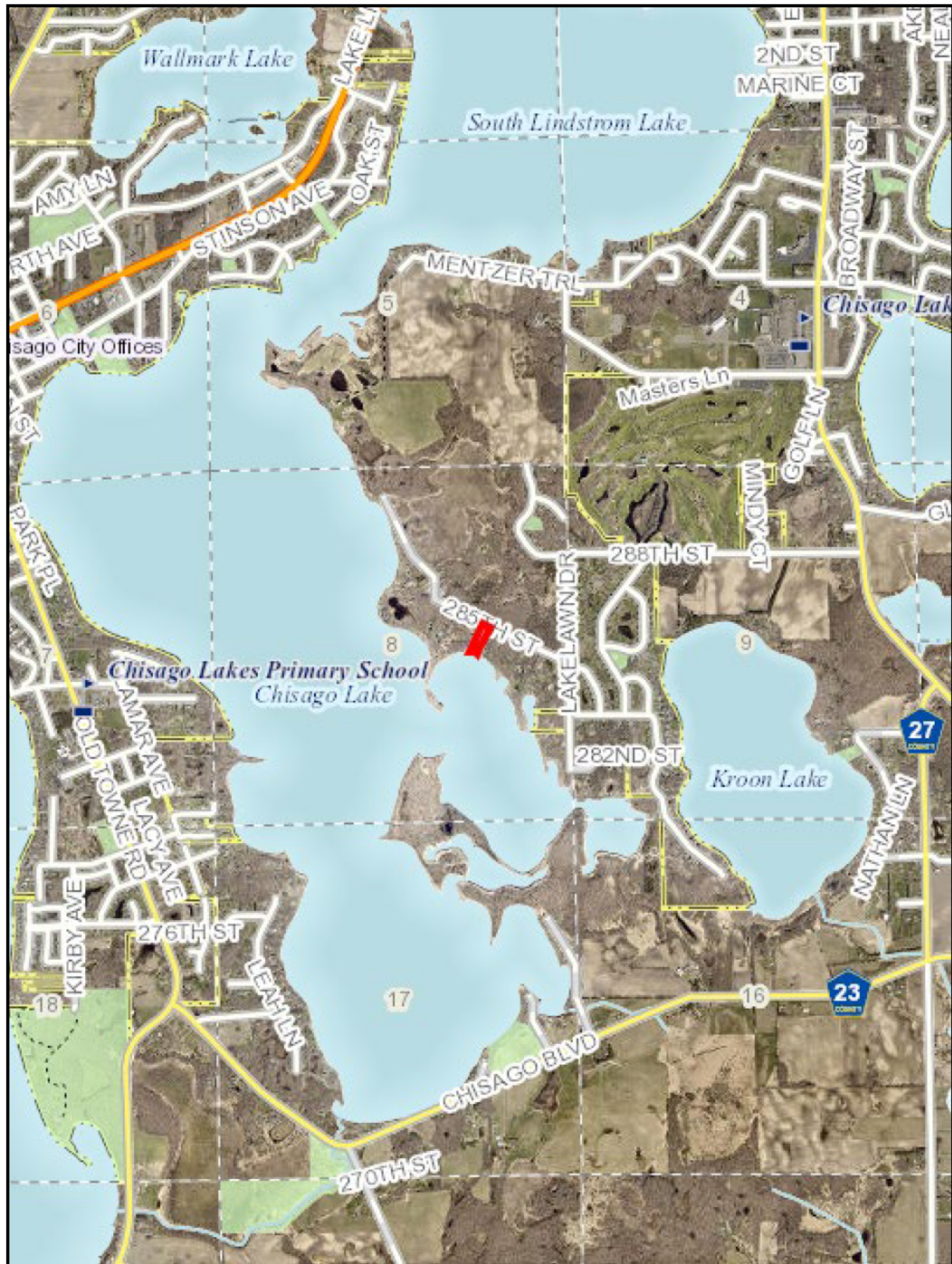
Pekula Property - 





Terry & Jennifer Pekula – Property owners Terry & Jennifer Pekula are requesting a Variance to Zoning Ordinance Section 4.08.2 in order to exceed the maximum allowable amount of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. The 1.02± acre subject site is located at 12133 285th Street in Chisago Lake Township, S8, T33, R20 (PID 02.01799.10).

Pekula Property - 



RESOLUTION NO. BOAA2023-0801

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
DENYING A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF ACCESSORY STORAGE
SPACE ON PROPERTY LOCATED AT 12133 285TH STREET IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owners Terry Pekula & Jennifer Pekula submitted an application dated received July 28, 2023 and considered complete on August 3, 2023 for a Variance to Zoning Ordinance Section 4.08.2 Accessory Structures and Uses in UR, RRI, and RRII Districts; and

WHEREAS, the property owners wish to construct a 1,200 sf detached accessory structure in addition to their existing 1,239 sf attached garage (proposed total of 2,439 sf of accessory storage space) where the maximum allowable amount of accessory storage space is 2,000 sf; and

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

WHEREAS, the subject site is legally described as:

PID 02.01799.10

Lot Twenty-three (23) of Woodlawn Beach, Chisago County, Minnesota.

WHEREAS, notice was provided and on August 31, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s), 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 detached accessory structure will be situated in a manner that complies with all required setbacks 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 detached accessory structure will not have any direct impact on the number of occupants residing in the existing dwelling and, therefore, the County finds that it will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on 285th Street or 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 detached accessory structure and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.*

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

- Finding #4 The application materials state and show that the proposed detached accessory structure will be constructed to match the exterior building materials of the existing dwelling and it will meet all required setbacks. Therefore, the County finds that the proposed action will not cause undue negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 The proposed accessory structure will not create additional bedrooms and will not increase the number of occupants in the existing dwelling or the need for additional facilities and services; therefore, the County finds that the proposed detached accessory structure 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 detached accessory structure will not have any negative fiscal impact on the County or school district. The County finds that the proposed structure will increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 The intent of Zoning Ordinance Section 4.08.2, F. is to establish a maximum amount of accessory storage space in the County's various zoning districts, including the Rural Residential I (RRI) District, and allows accessory storage space in proportion to lot size. The County finds that the proposed action is contrary to the intent of Zoning Ordinance Section 4.08.2, F. and finds that the application fails to fully or satisfactorily address the State mandated practical difficulty standard, specifically in terms of reasonableness and uniqueness. The County further finds that the property owners have other reasonable options for constructing a detached accessory structure which complies with the maximum allowable amount of accessory storage space, and that there are no unique characteristics related to the property which are preventing the property owners from complying with the maximum amount of accessory storage space.*

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

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 31st day of August, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator

RESOLUTION NO. BOAA2023-0801

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF ACCESSORY STORAGE
SPACE ON PROPERTY LOCATED AT 12133 285TH STREET IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owners Terry Pekula & Jennifer Pekula submitted an application dated received July 28, 2023 and considered complete on August 3, 2023 for a Variance to Zoning Ordinance Section 4.08.2 Accessory Structures and Uses in UR, RRI, and RRII Districts; and

WHEREAS, the property owners wish to construct a 1,200 sf detached accessory structure in addition to their existing 1,239 sf attached garage (proposed total of 2,439 sf of accessory storage space) where the maximum allowable amount of accessory storage space is 2,000 sf; and

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

WHEREAS, the subject site is legally described as:

PID 02.01799.10

Lot Twenty-three (23) of Woodlawn Beach, Chisago County, Minnesota.

WHEREAS, notice was provided and on August 31, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s), 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 detached accessory structure will be situated in a manner that complies with all required setbacks 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 detached accessory structure will not have any direct impact on the number of occupants residing in the existing dwelling and, therefore, the County finds that it will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on 285th Street or 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 detached accessory structure and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.*

- Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
- Finding #4 *The application materials state and show that the proposed detached accessory structure will be constructed to match the exterior building materials of the existing dwelling and it will meet all required setbacks. Therefore, the County finds that the proposed action will not cause undue negative impact to surrounding properties.*
-
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed accessory structure will not create additional bedrooms and will not increase the number of occupants in the existing dwelling or the need for additional facilities and services; therefore, the County finds that the proposed detached accessory structure 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 detached accessory structure will not have any negative fiscal impact on the County or school district. The County finds that the proposed structure will increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*
-
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The intent of Zoning Ordinance Section 4.08.2, F. is to establish a maximum amount of accessory storage space in the County's various zoning districts, including the Rural Residential I (RRI) District. However, the Zoning Ordinance also allows for Variances, including Variances to exceed the maximum amount of accessory storage space, 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 satisfies the three-factor test of uniqueness, reasonableness and essential character.*

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

1. This approval grants a 439 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the property to have a total of 2,439 square feet of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. In addition to the existing 1,239 square foot attached garage, this approval allows the construction of a detached accessory structure up to 1,200 sf in size. The detached accessory structure shall meet all required setbacks.
2. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received July 28, 2023. Any significant deviation from the approved request and site plan, as determined by Department of Environmental Services staff, shall

require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.

3. The permit holder shall obtain a building permit prior to construction and, further, the accessory structure shall comply with all applicable codes and regulations except as permitted by this Variance.
4. The permit holder shall apply for and ensure completion of a septic compliance inspection prior to or in conjunction with the building permit application process for the approved detached accessory structure.
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 31st day of August, 2023.

Gregg Carlson
Douglas Greene
Becky Strand

John Sutcliffe
Charles Yeager

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
 49755 Afton Avenue, Nessel Township
 DATE: August 31, 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 owners to construct a detached accessory structure (garage) 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):	Robert & Jill Ross
Property Owner(s):	Robert & Jill Ross
Property Address:	49755 Afton Avenue Nessel Township
General Location:	Section 28, Township 37, Range 22
PID:	06.00748.00
Property Area:	.21± 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:	August 1, 2023
Date Application Complete:	August 3, 2023
60-Day Review Period:	October 2, 2023

BACKGROUND

Property owners Robert & Jill Ross are proposing to construct a 16' x 30' (480 sf measured at foundation) two-level detached accessory structure (garage) on their lakeshore property located at 49755 Afton Avenue in Nessel Township. The subject site is currently developed with an approximate 659 sf dwelling but no other structures. The subject site was platted as Lot 4, Bayside Townsite in 1954.



SITE ANALYSIS

The subject site is located approximately 400' 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 928' at the western property boundary. The attached survey shows that the subject site is 80' wide and approximately 115' deep (average) or 9,200 sf. 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 an approximate 659 sf dwelling and approximate 110 sf deck (staff is guesstimating the deck to be 18.3' wide x 6' deep based on the survey) with the dwelling situated 10' from the township Right-of-Way and the deck situated 62' from the OHWL. The required setbacks are 40' from township Right-of-Way and 75' from OHWL. Staff is not entirely certain of when the dwelling was constructed but, based on when the property was platted and records from the Chisago County Assessor's Office, staff believes that the dwelling is considered a legal non-conforming structure. The existing impervious surface coverage is reported by the property owners to be 14.26%.

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.

PROPOSAL ANALYSIS

The property owners are requesting a Variance in order to construct a two-level garage on their lakeshore property, with the upper level serving as a one-stall garage and the lower level serving as storage space for yard equipment, winter boat storage, recreational equipment, and similar items. The attached survey shows that the proposed garage will be 16' wide x 30' deep and the written narrative explains that it will have the same roof pitch and same or similar exterior building materials as the dwelling. The proposed garage is shown to be situated 10' from the township Right-of-Way, 68.7' from the OHWL, 5' from the southerly property boundary, and approximately 58.5' from northerly property boundary / 4.5' from the south wall of the dwelling. Ultimately, the property owners are requesting a 30' setback Variance from the township Right-of-Way and a 6.3' setback Variance from the OHWL. The proposed garage will not be located any closer to the township Right-of-Way than the dwelling and it will not be located any closer to the OHWL than the existing deck.

The property owners report that the proposed impervious surface coverage will be 16.5%; however, staff notes that the "proposed" impervious surface calculation worksheet does not include a driveway. Staff recalculated the impervious surface coverage with a 10' x 16' driveway (with 10' being the distance between the structure and the Right-of-Way and 16' being the full width of the proposed garage) and the total amount of impervious surface coverage was 18.3%, which is still well below the maximum amount allowed (25%).

To explain and provide justification for their request, the property owners provided the following comments in their written narrative:

- There are currently no detached accessory structures on the subject site;
- The lot dimensions do not allow for a new structure to meet both the required township Right-of-Way and OHWL setbacks and the only option to alleviate this circumstance is Variance approval;
- The proposed garage will not be any closer to the township Right-of-Way or OHWL than the existing dwelling and deck;
- Most properties on Afton Avenue have garages with similar setbacks, with some or all of those properties having been granted Variances;
- The proposed garage is similar to and in keeping with other properties / setbacks on Afton Avenue; and,
- Having a garage is viewed as a necessity in Minnesota.

Staff believes that the written narrative addresses all three factors of the State mandated practical difficulty standard, including: reasonableness (garages may be viewed as a necessity in Minnesota), uniqueness (lot dimensions do not allow any structure to meet all required setbacks), and essential character (proposed garage is in keeping with other properties on Afton Avenue). Staff would also 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.

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	Proposed Accessory Structure
Road Setback	40' to township Right-of-Way	10' from township Right-of-Way (30' setback Variance)
Ordinary High Water Level (OHWL) Setback	75' for structures; 50' for septic systems	68.7' from OHWL (6.3' setback Variance)
Side Yard Setback	10' for dwelling + attached garage; 5' for detached accessory structures	5' from southerly property boundary and approximately 58.5' from northerly property boundary
Impervious Surface Coverage	14.26%	16.5%

REVIEW PROCESS

The Nessel Town Board considered the request on August 8, 2023 and recommended denial. No details or legal findings were provided to the Department of Environmental Services to support the recommendation; however, the Town Board has expressed concern with and provided similar recommendations for the past two Variance requests on Afton Avenue.

The Technical Review Committee met with the property owners on August 9, 2023. The Committee identified the following concerns / provided the following:

- The Building Official stated that the north wall of the proposed garage will need to be fire rated being that there will be less than 6' of separation between the dwelling and the garage. *(This item will be addressed at time of building permit application and does not need to be included as a condition of approval.)*
- The Code Enforcement Officer commented that the garage cannot be taller than the dwelling. *(This item will be addressed at time of building permit application and does not need to be included as a condition of approval.)*
- The Sanitarian stated that a septic certification will be required for the holding tank in conjunction with the Variance request being that the subject site is located in the Shoreland Management District.

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

VARIANCE ANALYSIS

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

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

The property owners have explained and staff agrees that it would not be possible to construct a reasonably sized detached accessory structure on the subject site without Variance approval due to lot dimensions. And, 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 owners 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;

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 property owners 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;

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 (i.e., lot size and lot dimensions).

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

Detached accessory structures 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;

Staff believes that the property owners have made an effort to make the minimum Variance request necessary to alleviate the hardship. Examples of their efforts include the proposal of a modest one-stall garage rather than a larger structure, meeting the 5' southerly side yard setback requirement despite the closeness of the dwelling and proposed garage and added construction expenses due to the closeness (i.e., the need for a fire rated wall), and efforts to not encroach any closer to the township Right-of-Way or OHWL than the existing structure.

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 18'-46' (approximate dimensions) of the subject site are located in a flood district, the proposed garage 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; |
| <i>Finding #1</i> | <i>The proposed detached accessory structure will be situated approximately 58.5’ from the northerly property boundary and 5’ from the southerly property boundary where the required side yard setback is 5’, 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 structure 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>The proposed use of the property will not change from the existing use and the proposed action will not result in structures being any closer to the Right-of-Way or OHWL 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</i> |

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 owners will be required to obtain a building permit prior to construction of the proposed structure, and it will therefore be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. 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 *The subject site is currently developed with a dwelling and the proposed action will not change the use of the property. Additionally, the proposed structure will comply with the required side yard setbacks which would have the greatest impact on properties immediately adjacent to the subject site. 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 a 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 and the Zoning Ordinance allows detached accessory structures as a permitted use in the RRI District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements for structures; 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 property owners have provided application materials which address reasonableness, uniqueness, and essential character. Therefore, the County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance and satisfies the three-factor test of uniqueness, reasonableness and essential character.*

STAFF RECOMMENDATION

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

- The subject site was platted in 1954 and constitutes pre-existing development, a circumstance for which the property owners had no control.
- The proposed garage will not exacerbate the township Right-of-Way or OHWL setback encroachments and it will meet or exceed the required side yard setbacks.
- The proposed garage is reasonably sized for the subject site.
- It would be impossible to construct a garage on the subject site which meets all required setbacks and the Board has historically viewed garages as a necessity.

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 30' Variance to the township Right-of-Way setback requirement allowing the proposed detached accessory structure to be no closer than 10' from the Afton Avenue Right-of-Way. This Variance will allow the proposed structure to be located no closer to the township Right-of-Way than the existing dwelling.
 - b. A 6.3' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed detached accessory structure to be no closer than 68.7' from the OHWL of Rush Lake.
2. Except as specifically required herein, the detached accessory structure shall be constructed in general conformance with the application materials dated received August 1, 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 structure 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 October 2, 2023, allowing the Board to further review and consider the request at its September 28, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0802, a resolution approving a Variance allowing reduced Right-of-Way and Ordinary High Water Level setbacks on property located at 49755 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 photos / renderings
 - d. Survey showing proposed garage location
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0802

CC: Robert & Jill Ross, property owners
County file



Chisago County Department of Environmental Services
Planning & Zoning Application

Permit # 23-1338

Township Nessel S/T/R 28-037-022 PID# 06.007.48.00

Project Address 49755 AFTON AVE STANCHFIELD MN 55080

Property Owner(s) Robert G. Ross and Jill L. Ross

Mailing Address (If Different from Project Address) 240-130th AVE NE Blaine MN 55434

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Robert and Jill Ross

Mailing Address (If Different from Project Address) 240-130th AVE NE Blaine MN 55434

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) A variance is requested for lake and roadway setbacks to build a 16x30 garage with a walkout towards the lake

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

☒ Full Legal Description

☒ Detailed Site Plan

☒ Detailed Written Narrative

☐ Plat Drawings

Robert G. Ross for Ross
Applicant Signature

7.25.23
Date of Application

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

Fees		Dates	
Base Fee	\$ <u>500.00</u>	Application Received	<u>8/1/23 NA</u>
Recording Fee	\$ <u>46.00</u>	Application Complete	<u>8-3-23</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	60/ 120 Day Review Period	<u>10-2-23</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ _____		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Nessel S/T/R 28-037-022 PID# 06-007-48-00

Project Address 49755 Afton Ave Standfield MN 55080

Property Owner(s) Robert G. Ross and Jill L. Ross

Mailing Address (if different from Project Address) 240-130th Ave NE Blaine MN 55434

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Robert Ross and Jill Ross

Mailing Address (if different from Project Address) 240-130th Ave NE Blaine MN 55434

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) Requesting a variance for roadway and lake setbacks to build a 16'x30' garage with a walkout on the lake side

Robert G. Ross for [REDACTED]
Applicant Signature

7.25.23
Date of Application

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

Date of County Public Hearing _____

Date of Township Presentation 8-8-23

Township Action Taken (Township Use Only)

☐ Recommendation of Approval

☒ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Signatures of Township Officials or Authorized Personnel

Michelle Meis Steve [REDACTED] [REDACTED]
Brian [REDACTED] Betsy Rising H.S.

Narrative for 49755 Afton Ave Stanchfield, MN 55080 variance application

Currently, we have a small, one-story lake house, with a walkout, 659 sq. ft., 2-bedroom house on 80ft.wide by approximately 110 ft. deep lot on the SW corner of West Rush Lake in the Bayside Townsite neighborhood. Currently, there is no outside storage building and no garage to park a vehicle in the winter, on this property.

The lot size does not allow for the minimum setbacks from the lake and roadway. The only option to alleviate this need would be to seek a variance to build a garage/storage building on the south side of our lot. We are requesting this variance to build a 16' x 30', 480 sq. ft. garage. Since the lot has an 8' elevation change from the lake to the road, we would like to build the garage with a walkout basement, just like the house. The garage would be at the same distance from the lake and the center of the road as the existing house and should have no effect on Flood Protection Elevation, since it will at the same elevation.

Most of houses in the neighborhood, that have similar lot restrictions do have garages now--by applying for this variance, we would be keeping with character of the neighborhood. Having a garage would allow us to more fully utilize our cabin and help keep the yard more orderly.

In the event that we were ever to sell not having a garage would make that more difficult. Having a garage to park your vehicle is pretty much of a necessity in the cold, snowy Minnesota winters.

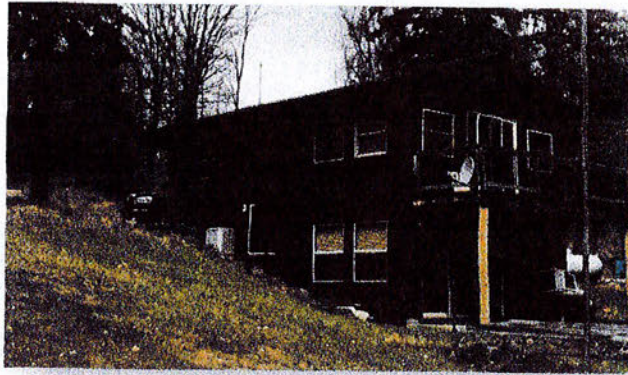
The building would be ~5 ft from the house and 5 ft. from the south property line. We would remove the current landscaping/blocks on the south side of the house and create a stairway between the two buildings. The garage would be built with the same roof pitch as the house and would be sided with a similar/same siding as the house. The 16' width is approximately half the width of the cabin and the same depth, so it should blend tastefully with the neighborhood.

We have talked with Keegan from KO Concrete in Stanchfield and he would be able to do the concrete and block work. We have also spoken with Moline Concrete Products and they would make and install the concrete planks for the main level of the garage floor. We would have a 9' wide garage door on the main level, facing the road and also on the walkout level facing the lake to allow for storage of yard equipment, winter boat storage, life jackets, fishing apparatus and recreational equipment.

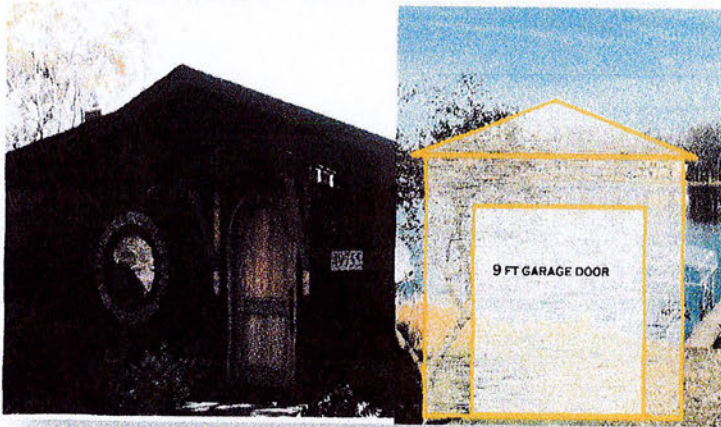
Respectfully submitted,

Robert and Jill Ross

Robert and Jill Ross variance application for:
49755 Afton AVE, Stanchfield, MN 55080



This is the view of the house from the south east. There is an 8' drop in elevation from the street side of the house to the lakeside. Below are some rough sketches of where the proposed would be built.



From the street, this is the cabin with a general idea mockup of where the proposed garage would be.



From the lake, this is the cabin with a general idea mockup of where the proposed garage with the walkout would be.

CONCEPT PLAN

FOR: ROBERT & JILL ROSS

ADDRESS: #49755 AFTON AVENUE, NESSEL TWP.

AREA CALCULATIONS

TOTAL LOT = ±8,812 sq. ft. (above OHWL)
Existing House = ±659 Sq. Ft.
Existing Concrete = ±318 Sq. Ft.
Proposed Garage = ±480 Sq. Ft.
Proposed Impervious = ±16.5%

LEGEND

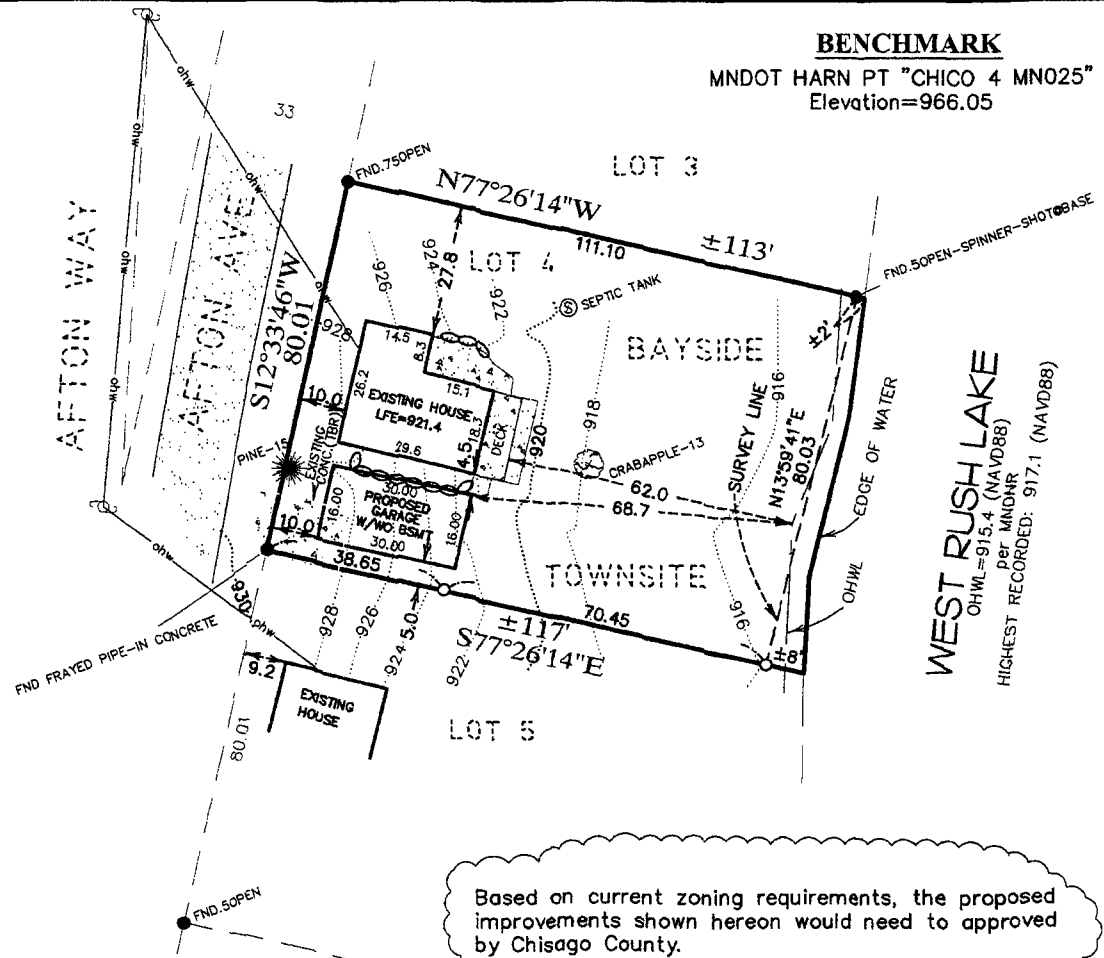
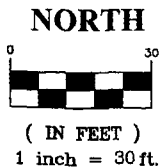
- DENOTES EXISTING CONTOUR
- DENOTES EXISTING WALL
- DENOTES IRON MONUMENT FOUND
- DENOTES IRON MONUMENT SET
- DENOTES OVERHEAD WIRE
- DENOTES EXISTING FENCE
- DENOTES UTILITY POLE
- DENOTES GRAVEL
- DENOTES CONCRETE

NOTES

- ELEVATIONS BASED ON NAVD88 DATUM.
- BEARINGS BASED ON ASSUMED DATUM.
- This survey was prepared without the benefit of title work. Easements, appurtenances, and encumbrances may exist in addition to those shown hereon. This survey is subject to revision upon receipt of a title insurance commitment or attorneys title opinion.

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

JOSHUA P. SCHNEIDER Date: 7-19-23 Reg. No. 44655



BENCHMARK

MNDOT HARN PT "CHICO 4 MN025"
Elevation=966.05

WEST RUSH LAKE
OHWL=915.4 (NAVD88)
per MNDNR
HIGHEST RECORDED: 917.1 (NAVD88)

LEGAL DESCRIPTION

Lot 4, BAYSIDE TOWNSITE, Chisago County,
Minnesota.

JOB#23102

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

Robert & Jill Ross – Property owners Robert & Jill Ross are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to build an accessory structure 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. The .21± acre subject site is located at 49755 Afton Avenue in Nessel Township, S28, T37, R22 (PID 06.00748.00).

Ross Property - 



Robert & Jill Ross – Property owners Robert & Jill Ross are requesting Variances to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to build an accessory structure 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. The .21± acre subject site is located at 49755 Afton Avenue in Nessel Township, S28, T37, R22 (PID 06.00748.00).

Ross Property - 



RESOLUTION NO. BOAA2023-0802

**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 49755 AFTON AVENUE IN NESSEL TOWNSHIP**

WHEREAS, property owners Robert Ross & Jill Ross submitted an application dated received August 1, 2023 and considered complete on August 3, 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 property owners wish to construct a detached accessory structure 10' from the Afton Avenue Right-of-Way where the required setback is 40' and 68.7' from the Ordinary High Water Level (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 06.00748.00
Lot 4 of Bayside Townsite, Chisago County, Minnesota.

WHEREAS, notice was provided and on August 31, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s), 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 detached accessory structure will be situated approximately 58.5' from the northerly property boundary and 5' from the southerly property boundary where the required side yard setback is 5', 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 structure 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 structures being any closer to the Right-of-Way or OHWL 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 The proposed action will not increase the danger of fire or endanger the public safety;
 Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed structure, and it will therefore be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. 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 *The subject site is currently developed with a dwelling and the proposed action will not change the use of the property. Additionally, the proposed structure will comply with the required side yard setbacks which would have the greatest impact on properties immediately adjacent to the subject site. 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 a 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 and the Zoning Ordinance allows detached accessory structures as a permitted use in the RRI District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements for structures; 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 property owners have provided application materials which address reasonableness, uniqueness, and essential character. Therefore, the County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance and satisfies the three-factor test of uniqueness, reasonableness and essential character.*

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

1. This approval grants the following Variances:
 - a. A 30' Variance to the township Right-of-Way setback requirement allowing the proposed detached accessory structure to be no closer than 10' from the Afton Avenue Right-of-Way. This Variance will allow the proposed structure to be located no closer to the township Right-of-Way than the existing dwelling.
 - b. A 6.3' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed detached accessory structure to be no closer than 68.7' from the OHWL of Rush Lake.
2. Except as specifically required herein, the detached accessory structure shall be constructed in general conformance with the application materials dated received August 1, 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 structure 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 31st day of August, 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 Encroach on Required Right-of-Way Setback Requirements
 12480 Melody Lane, Chisago Lake Township
 DATE: August 31, 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) allowing construction of a dwelling, deck and detached accessory structure (garage) closer to township Right-of-Way than required in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s):	Adam Brown
Property Owner(s):	Neal & Donna Deneen
Property Address:	12480 Melody Lane Chisago Lake Township
General Location:	Section 4, Township 33, Range 20
PIDs:	02.001029.00 and 02.01030.00
Property Area:	.34± Acres (combined)
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:	South Lindstrom Lake
Date Application Received:	August 1, 2023
Date Application Complete:	August 3, 2023
60-Day Review Period:	October 2, 2023



BACKGROUND

The subject site includes two separate parcels. Given that they're both considered legal non-conforming and they're held in common ownership, MN Statute and County ordinance requires that they remain together for purposes of sale and/or development. The attached site plan shows that the site is being treated as a single parcel for the purposes of development (i.e., dwelling is shown crossing the shared property boundary, proposed detached accessory structure may or may not meet the required side yard setback from the shared property boundary, etc.). If the Board grants approval of the requested Variance, staff would recommend that the two parcels be formally combined prior to application for building permit.

Applicant Adam Brown wishes to further develop the properties located at 12480 Melody Lane by constructing a 35' x 40' (1,400 sf) dwelling, a 40' x 8' (320 sf) deck, and a 24' x 24' (576 sf) detached accessory structure (garage) closer to the northerly township Right-of-Way than required by the Zoning Ordinance. While the site was previously developed with a dwelling, that dwelling was demolished several years ago leaving a 16' x 18' (288 sf) detached accessory structure mostly situated on the southern parcel.

SITE ANALYSIS

The subject site is located on the south shore of South Lindstrom Lake approximately 330' north of Mentzer Trail on the west side of Melody Lane. The two subject parcels were platted as part of the Bethel Grove Addition subdivision in 1917. The combined .34± acre site is 60' wide with an average depth of approximately 240'. Being that the subject site does not meet current minimum dimensional standards as established by the Chisago County Shoreland Management Ordinance, the site is considered legal non-conforming.

Topography of the site includes elevations ranging from approximately 898' near the shoreline to 919' in the southeast corner of the southern parcel, and roughly one-third to one-half of the site is located within a flood district where no development activity is allowed. The image below shows elevations (yellow lines) and the flood district (aqua line and dots).

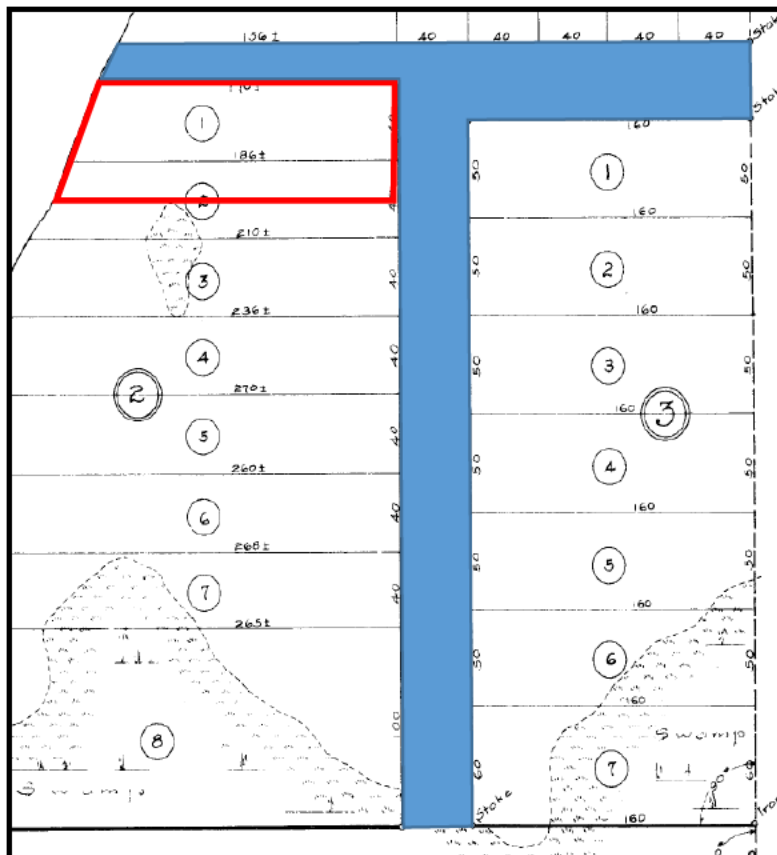


The subject site is located in the Rural Residential I (RRI) District / Shoreland Management District and is surrounded by the RRI District / Shoreland Management District to the north, south and east, and bordered by South Lindstrom Lake to the west. Surrounding properties to the north are primarily developed with dwellings and related accessory structures, whereas properties to the south and east appear to be either vacant or more sparsely developed with year-round dwellings or seasonal cabins. There are several surrounding properties with structures which do not meet the current setback

requirements, with some properties presumably having been granted setback Variances while other properties were likely developed prior to the County's adoption of official land use controls.

As shown on the adjacent image, the subject site is bordered by two township Rights-of-Way (shown in blue), including a 40' wide Right-of-Way to the east and a 20' wide Right-of-Way to the north. While Melody Lane (to the east) is an improved roadway, the Right-of-Way directly north is unimproved and believed to be used primarily as a lake access and access to the developed parcel located immediately north of the Right-of-Way. Being that the subject site is located adjacent to two Rights-of-Way, there is a required 40' structure setback from the north and east.

Being that the subject site is 60' wide with a required 40' structure setback from the north property boundary and a 10' structure setback from the south property boundary (for dwellings and attached garages), there would only be a 10' wide pocket for a dwelling. Based on property dimensions, setback requirements and architectural requirements, the site is likely unbuildable unless setback Variances are granted by the Board.



PROPOSAL ANALYSIS

The applicant submitted the original application materials on August 1, 2023 and the application was deemed complete by staff on August 3, 2023. The original request described and illustrated a 10' setback (requiring a 30' setback Variance) from the north property boundary and a 25' setback (requiring a 15' setback Variance) from the east property boundary. Additionally, the site plan showed the proposed septic system south of the proposed garage. Based on concerns identified by the Technical Review Committee on August 9, 2023, the applicant submitted amended materials on August 10, 2023. The amended request reduced the Variance needed from the north property boundary (now requiring a 25' setback Variance), completely eliminated the need for a Variance from the east property boundary, and relocated the septic system so that it will be directly east of the garage. Originally, the driveway was shown to access Melody Lane from the east property boundary, and the amended request will require – based on location of the septic system – that the driveway will be accessed from the northerly Right-of-Way. The proposal analysis and staff recommendation are based on the amended request.

As previously mentioned, the applicant is proposing to further develop the subject site by constructing a 35' x 40' (1,400 sf) dwelling, a 40' x 8' (320 sf) deck, and 24' x 24' (576 sf) detached garage. The attached site plan illustrates that all structures will meet the required setbacks from the west (OHWL), east (township Right-of-Way) and south (side yard) but will encroach on the required Right-of-Way setback to the north. As proposed, all structures will be set back 15' from the northerly Right-of-Way where the

required setback is 40' (requiring a 25' setback Variance). The proposed septic system is shown to be located 10' from the east property boundary, between the detached garage and Melody Lane, which means that access to the site / garage will need to be gained from the northerly Right-of-Way.

As justification for the proposed Variance, the attached written narrative explains that the applicant is proposing to construct a single family dwelling on a site which is challenging to develop due to its 60' width, required 40' Right-of-Way setbacks on two sides, and topography. The narrative also states that several neighboring properties have significantly reduced Right-of-Way setbacks, which means that the proposed structures would conform to the character of the neighborhood. Staff recognizes that this stated justification addresses all three factors of the State mandated practical difficulty standard, including reasonableness (the proposed use is a single family dwelling and garage which is a reasonable use in the RRI District and there are no other reasonable options which would result in meeting all required setbacks), uniqueness (60' wide site with two Right-of-Way setbacks makes it impossible to meet all required setbacks), and essential character (the reduced setbacks are similar to the setbacks of several other properties in the surrounding area).

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

	RRI District / Shoreland Management District Standards	Proposed Setbacks
Right-of-Way Setback	40' to township Right-of-Way	Dwelling, deck, and detached accessory structure = 15' to northerly township Right-of-Way and 40'+ to easterly township Right-of-Way
Side Yard Setback	10' for dwelling and attached garage; 5' for detached accessory structures	Dwelling = 10' from south property boundary; detached accessory structure (garage) = 20'+
OHWL Setback	75' for structures; 50' for septic systems	Dwelling = 90'+ from OHWL; detached accessory structure (garage) and septic system = 143'+ from OHWL
Number of Detached Accessory Structures	2	2
Total Amount of Accessory Storage Space	1,000 sf or 5% of total lot area, whichever is greater, with a maximum of 2,000 sf	Existing structure = 288 sf Proposed structure = 576 sf Total = 864 sf
Impervious Surface Coverage	25%	19.8%

REVIEW PROCESS

The Technical Review Committee met on August 9, 2023. The Committee expressed concern about the proposed location of the septic system, noting that the proposed location could not accommodate the proposed system. Based on the Committee's conversation, the applicant considered options and ultimately revised the site plan which resulted in an amended Variance request. The revised site plan showed the proposed structures shifted westerly so that the septic system could be located adjacent to

the eastern property boundary. This shift resulted in the elimination of one setback encroachment / Variance request. The Committee did not identify any other concerns.

The Chisago Lake Town Board considered the amended request on August 15, 2023 and recommended approval with no conditions. The Town Board commented that there is “no room for error – very tight fit”.

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

WRITTEN TESTIMONY

Written testimony was received from Chester Boike of 12500 Melody Lane, Chisago Lake Township on August 22, 2023 (see attached).

VARIANCE ANALYSIS

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

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

The written narrative cites, and the site plan illustrates, that the dimensions of the subject site (specifically the 60’ width) create a circumstance in which no dwelling meeting the County’s minimum architectural requirements or the proposed two-stall garage could meet all required setbacks. Being that the subject parcels were platted in 1917, neither the property owners nor the applicant have had no control over this circumstance.

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

Staff believes that literal interpretation of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other RRI District / Shoreland Management District properties. Properties in the RRI District / Shoreland Management District have the right to be developed for single family dwelling purposes, in addition to other uses identified by the Zoning Ordinance, with the required minimum dwelling size being 960 sf. Based on the 60’ width of the property and all required setbacks, staff believes that it would be impossible to develop the subject site but for Variance approval.

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;

Being that the subject parcels were platted in 1917, the subject site constitutes “pre-existing” development. Neither the property owners nor the applicant have had no control over this circumstance.

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

Dwellings and detached accessory structures are Permitted Uses in the RRI District / Shoreland Management District; therefore, the Variance is not considered a use Variance.

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

The exceptional or extraordinary circumstances for this particular request are primarily related to the dimensions of the subject site, the required setbacks (including two Right-of-Way setbacks), and the inability to further develop the site without approval of setback Variances. Staff believes that the applicant has demonstrated, through an amended Variance request submitted on August 10, 2023, that he is requesting the least amount of Variance needed to alleviate the hardship. Staff's opinion is based on the fact that the applicant reduced the setback Variance from the northerly property boundary / Right-of-Way and completed eliminated the need for setback Variance from the easterly property boundary / Right-of-Way.

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

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

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

The applicant has not cited economic circumstances as a factor.

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

While a significant portion of the subject site is located in a flood district, the proposed dwelling, deck, detached accessory structure (garage), and septic locations are located entirely outside of the flood district.

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

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

The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official

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

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

1. Reasonableness

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

2. Uniqueness

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

3. Essential Character

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

FINDINGS OF FACT

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

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

<i>Finding #1</i>	<i>The proposed dwelling, deck, and detached accessory structure (garage) will be situated 10' or more from the southern property boundary (side yard), bordered by township Rights-of-Way along the north and east property boundaries, and bordered by a public body of water along the west property boundary. The County finds that the proposed structures will be sufficiently distanced from neighboring private properties so as not to impair an adequate supply of light and air.</i>
Criteria #2	The proposed action will not unreasonably increase the congestion in the public right-of-way;
<i>Finding #2</i>	<i>The subject site is located within the Bethel Grove Addition subdivision – platted in 1917 – and the site was presumably created with the intention of it being developed for residential purposes. The road authority, being Chisago Lake Township, has not expressed any concern specifically related to traffic or congestion as a result of the proposed action. Therefore, the County finds that the proposed action will not cause an unreasonable amount of traffic or congestion within the public Right-of-Way.</i>
Criteria #3	The proposed action will not increase the danger of fire or endanger the public safety;
<i>Finding #3</i>	<i>The property owner will be required to obtain a building permit prior to construction of the proposed dwelling, deck and detached accessory structure (garage), and they will therefore be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County finds that the proposed action will have no impact on the danger of fire or public endangerment.</i>
Criteria #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties;
<i>Finding #4</i>	<i>Being that the subject site was presumably platted with the intention of creating a site for residential development and the applicant is proposing to develop the site with uses which are classified as Permitted Uses in the RRI District / Shoreland Management District and because the proposed structures will meet all required side yard setbacks, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.</i>
Criteria #5	The proposed action will not cause an unreasonable strain upon existing facilities and services;
<i>Finding #5</i>	<i>The subject site is served by an improved township road (Melody Lane), will be served by a private septic system and well, and has access to all other standard services (i.e., utilities and emergency services). The County finds that the impact of the proposed action on existing facilities and services is negligible.</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 allow for the further development of a site which currently has no dwelling; therefore, the County finds that the proposed action will only increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.</i>

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

STAFF RECOMMENDATION

Staff believes that the proposed uses – including dwelling, deck, and detached accessory structure (garage) – are reasonable uses in the RRI District / Shoreland Management District and consistent with the essential character of the neighborhood. Further, based on property dimensions, setback requirements and architectural requirements, the site is likely unbuildable unless setback Variances are granted by the Board.

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing and for sake of discussion, **staff recommends approval** of the proposed 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 a 25’ Variance allowing a dwelling, deck, and detached accessory structure (garage) to be no closer than 15’ from the north property boundary / Right-of-Way.
2. The subject site shall be developed in general conformance with the application materials dated received August 10, 2023 and the updated impervious surface calculation worksheet dated received August 23, 2023 and kept on file with the Department of Environmental Services. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the applicant’s expense.
3. The permit holder shall submit request to the Chisago County Auditor-Treasurer’s Office for the combination of the two subject parcels (PIDs 02.01029.00 and 02.01030.00) prior to submitting application for building and/or septic permits. Said permits will not be issued until such time that the lot combination is complete.
4. The permit holder shall obtain a building permit prior to construction and, further, the structures shall comply with all applicable codes and regulations.
5. The permit holder shall obtain a septic permit prior to installation of the septic system and, further, the system shall comply with all applicable codes and regulations.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the 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 October 2, 2023, allowing for further review and consideration at the Board’s September 28, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0803, a resolution approving a Variance allowing reduced Right-of-Way setbacks on property located at 12480 Melody Lane in Chisago Lake 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 plan
 - d. Impervious surface calculation worksheet
2. Written testimony from Chester Boike
3. Aerial photo (1) – subject site
4. Aerial photo (2) – vicinity map
5. Draft Resolution No. BOAA2023-0803

CC: Neal & Donna Deneen, property owners
Adam Brown, applicant
County file



Chisago County Department of Environmental Services
Planning & Zoning Application

Permit # 23-1343

Township Chisago S/T/R Township PID# 02.01029.00 \$ 020103.00

Project Address 12480 Melody Lane, Lullstom MN 55045

Property Owner(s) Adam Brown - Buyer sale owner Neal & Dana Decker

Mailing Address (if Different from Project Address) P.O. Box 32684, Juneau, AK 99803

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Adam Brown

Mailing Address (if Different from Project Address) P.O. Box 32684, Juneau, AK 99803

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) North - Township Right of Way
setback of 40' reduction to 15'. *

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

- ☒ Full Legal Description ☒ Detailed Site Plan ☒ Detailed Written Narrative ☒ Plat Drawings

[Signature]
Applicant Signature

7/25/23
Date of Application

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

Fees		Dates	
Base Fee	\$ <u>500-</u>	Application Received	<u>8-1-23</u>
Recording Fee	\$ <u>46-</u>	Application Complete	<u>8-3-23</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	☒ 60/ 120 Day Review Period	<u>10-2-23</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>546-</u>		

* AMENDED REQUEST
RECEIVED ON 8-10-23



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Chisago S/T/R Township PID# 02.01029.00 & 02.01030.00

Project Address 12480 melody lane Lindstrom MN 55045

Property Owner(s) Buyer: Adam Brown seller/owner: Neal & Donna Deneen

Mailing Address (If Different from Project Address) P.O. Box 32684 Juneau AK 99803

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Adam Brown

Mailing Address (If Different from Project Address) P.O. Box 32684 Juneau AK 99803

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) NORTH - Township Right of way
of 40' reduction to 10' setback and East Right of way reduction
from 40' to 25' setback.

[Signature]
Applicant Signature

7/25/23
Date of Application

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

Date of County Public Hearing _____

Date of Township Presentation Aug 15, 2023

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

no room for error - very tight fit

Signatures of Township Officials or Authorized Personnel

[Signature] [Signature]
Will Reed

Narrative for Variance of Setback request

12480 Melody Lane Lindstrom MN 55045 Parcel ID 02.01029.00 and 02.01030.00 in the Bethel Grove Addition has some unique challenges to make these adjoined lots buildable due the narrow lot, the North side Township Right-of-Way of an unimproved gravel access to the lake, the Flood Zone, and the septic requirements. We would like to build a single family home for our family of 4. This is very challenging with a lot that its 60' wide at its widest point when combining the two parcels with a 40' setback on the North and a 10' Setback on the South for a dwelling, leaving approximately 10' of useable property. The 2 neighboring lots PID #02.01028.00 and 02.01031.00 to the South both utilize a zero foot setback to the East side to Melody Lane and the property PID #02.01025.00 to the North is approximately 5' away from the Township Right-of-Way of the unimproved gravel access to the lake, then continuing to the East the next adjacent property PID # 02.01032.00 is approximately 8' setback from Melody Lane. We believe that reducing our North setback to 15' for the dwelling would allow us the adequate setbacks to build a reasonable size home and to conform to the Neighborhoods character of the area. The reduction in setback on the North of property is requested due the proximity of the flood zone, septic requirements, topography of the property and large 40' setback to unimproved lake access road.



IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

acres:	square feet per acre:	Total area of parcel in square feet
0.34	x 43,560	= 14,810

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	35' x 40'	=	1400
garage	24' x 24'	=	576
deck	8' x 40'	=	320
patio	0	=	0
sidewalk	0	=	0
driveway	15' x 24'	=	360
other; list:		=	
Existing structure	18' x 16'	=	288
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2944

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			0

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	0
landscaping with plastic barrier		=	0
other; list:		=	
		=	
TOTAL OTHER ITEMS			0

Calculate:

Total from "Residential Structures":	2944	+
Total from "Agricultural Structures":	0	+
Total from "Other Items":	0	+
Total square footage of coverage:	2944	=
(divide by total area of parcel, above)	14,810	=
TOTAL IMPERVIOUS SURFACE	19.8	%

signature

date

corresponding permit number

Beth M. Gervais

From: Chet Boike [REDACTED]
Sent: Tuesday, August 22, 2023 10:23 AM
To: Beth M. Gervais
Subject: Deneen variance request for setback reduction on a non buildable lot

This is an external email message!

This message originated from outside the Chisago County email system. Use caution when clicking hyperlinks, downloading pictures or opening attachments.

This hearing is to discuss a single request for a variance to the setback ordinance section 5.15 from 40 feet down to 15 feet on a non buildable lot.

This is an amended request. I would like to know what was removed from the original application and why.

The reason being given is a setback of 15 feet would allow for building a dwelling that would supposedly conform to the character of the neighborhood . A dwelling half way down a hill built sideways and a 40 foot wide septic mound parallel to Melody Lane conforms to a first impression of a neighborhood character?

I am opposed to granting variances to requests from owners of non buildable lots in violation of set ordinances to simply make changes to bring them into compliance with buildable lots.

I'm sure Environmental Services/Zoning had a valid concern for writing Zoning Ordinance Section 5.15. To grant variances to these ordinances is something not to be taken lightly. The impact of the ordinance on the immediate neighbors and the neighborhood required foresight on the part of the board. Hind sight is 20/20.

This is designated a non buildable lot and to grant variances to make it a buildable lot is not the solution.

To me this does not pass the smell test.

Chester Boike
12500Melody Lane
Lindstrom, MN 55045

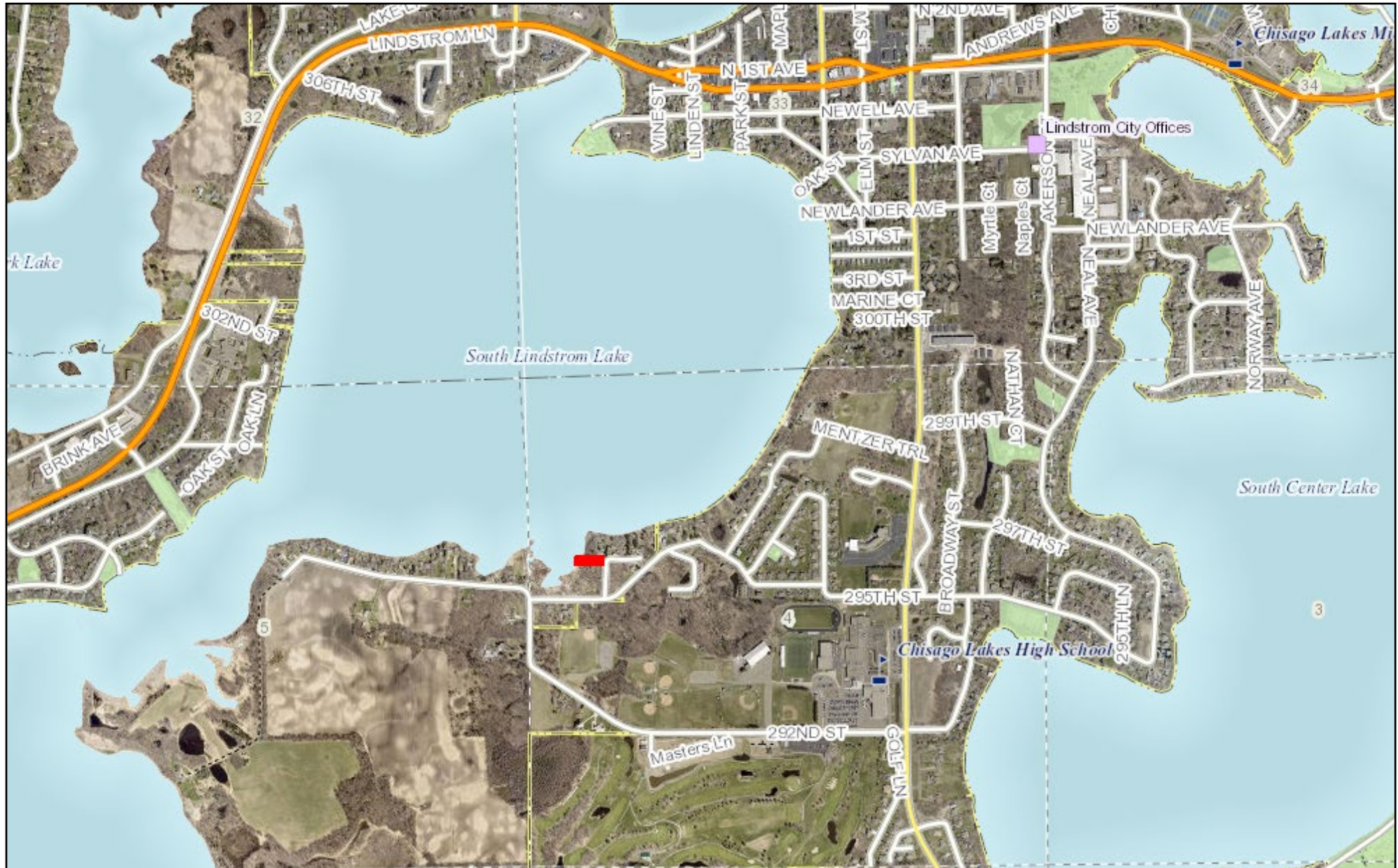
Neal & Donna Deneen and Adam Brown – Property owners Neal & Donna Deneen and applicant Adam Brown are requesting Variances to Zoning Ordinance Section 5.15 in order to build a dwelling and detached accessory structure closer to two township Rights-of-Way than required in the Rural Residential I (RRI) District / Shoreland Management District. The .34± acre subject site is located at 12480 Melody Lane in Chisago Lake Township, S4, T33, R20 (PIDs 02.01029.00 and 02.01030.00).

Deneen / Brown Property - 



Neal & Donna Deneen and Adam Brown – Property owners Neal & Donna Deneen and applicant Adam Brown are requesting Variances to Zoning Ordinance Section 5.15 in order to build a dwelling and detached accessory structure closer to two township Rights-of-Way than required in the Rural Residential I (RRI) District / Shoreland Management District. The .34± acre subject site is located at 12480 Melody Lane in Chisago Lake Township, S4, T33, R20 (PIDs 02.01029.00 and 02.01030.00).

Deneen / Brown Property - 



RESOLUTION NO. BOAA2023-0803

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE ALLOWING REDUCED RIGHT-OF-WAY SETBACKS ON PROPERTY LOCATED AT
12480 MELODY LANE IN CHISAGO LAKE TOWNSHIP**

WHEREAS, applicant Adam Brown and property owners Neal Deneen & Donna Deneen submitted an application dated received August 1, 2023 and considered complete on August 3, 2023 for a Variance to Zoning Ordinance Section 5.15 Dimensional Standards; and

WHEREAS, the applicant submitted an amended application on August 10, 2023, which showed a reduction in the amount of Variance requested; and

WHEREAS, the applicant wishes to construct a dwelling, deck, and detached accessory structure (garage) 15' from the northerly township Right-of-Way where the required setback is 40'; 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:

PIDs 02.01029.00 and 02.01030.00
Lot One (1) and the North One-half (N1/2) of Lot Two (2), Block Two (2), Bethel Grove Addition,
Chisago County, Minnesota.

WHEREAS, notice was provided and on August 31, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the applicant and/or property owners, and invited members of the public to comment; and

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

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

Finding #1 The proposed dwelling, deck, and detached accessory structure (garage) will be situated 10' or more from the southern property boundary (side yard), bordered by township Rights-of-Way along the north and east property boundaries, and bordered by a public body of water along the west property boundary. The County finds that the proposed structures will be sufficiently distanced from neighboring private properties so as not to impair an adequate supply of light and air.

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

Finding #2 The subject site is located within the Bethel Grove Addition subdivision – platted in 1917 – and the site was presumably created with the intention of it being developed for residential purposes. The road authority, being Chisago Lake Township, has not expressed any concern specifically related to traffic or congestion as a result of the

proposed action. Therefore, the County finds that the proposed action will not cause an unreasonable amount of traffic or congestion within the public Right-of-Way.

- Criteria #3
Finding #3
- The proposed action will not increase the danger of fire or endanger the public safety; *The property owner will be required to obtain a building permit prior to construction of the proposed dwelling, deck and detached accessory structure (garage), and they will therefore be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County finds that the proposed action will have no impact on the danger of fire or public endangerment.*
- Criteria #4
Finding #4
- The proposed action will not unreasonably cause undue negative impact to surrounding properties; *Being that the subject site was presumably platted with the intention of creating a site for residential development and the applicant is proposing to develop the site with uses which are classified as Permitted Uses in the RRI District / Shoreland Management District and because the proposed structures will meet all required side yard setbacks, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*
- Criteria #5
Finding #5
- The proposed action will not cause an unreasonable strain upon existing facilities and services; *The subject site is served by an improved township road (Melody Lane), will be served by a private septic system and well, and has access to all other standard services (i.e., utilities and emergency services). The County finds that the impact of the proposed action on existing facilities and services is negligible.*
- 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 *The proposed action will allow for the further development of a site which currently has no dwelling; therefore, the County finds that the proposed action will only increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*
- Criteria #7
Finding #7
- The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls. *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 identifies dwellings and accessory structures as Permitted Uses in the RRI District. The Zoning Ordinance does provide minimum Right-of-Way setback requirements; however, the Zoning Ordinance also allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning and Shoreland Management Ordinances and satisfies the State mandated practical difficulty standard, which includes factors relating to uniqueness, reasonableness and essential character.*

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

1. This approval grants a 25' Variance allowing a dwelling, deck, and detached accessory structure (garage) to be no closer than 15' from the north property boundary / Right-of-Way.
2. The subject site shall be developed in general conformance with the application materials dated received August 10, 2023 and the updated impervious surface calculation worksheet dated received August 23, 2023 and kept on file with the Department of Environmental Services. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the applicant's expense.
3. The permit holder shall submit request to the Chisago County Auditor-Treasurer's Office for the combination of the two subject parcels (PIDs 02.01029.00 and 02.01030.00) prior to submitting application for building and/or septic permits. Said permits will not be issued until such time that the lot combination is complete.
4. The permit holder shall obtain a building permit prior to construction and, further, the structures shall comply with all applicable codes and regulations.
5. The permit holder shall obtain a septic permit prior to installation of the septic system and, further, the system shall comply with all applicable codes and regulations.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 31st day of August, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator