Chisago County, MN

BOARD OF ADJUSTMENT AND APPEALS

Meeting Agenda

September 28, 2023 | 7:00 pm

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

Tour Time and Date: Wednesday, September 27, 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. August 31, 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, 6c, 6d and 6e
6. **Public Hearings – New Applications**
   a. **Kyle & Laura Beste** – Property owners Kyle & Laura Beste are requesting an after-the-fact Variance to Shoreland Management Ordinance Sections 5.21 and 5.52 in order for a recently constructed deck to encroach on the required Ordinary High Water Level setback and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District. The .22± acre subject site is located at 44050 Maple Lane in Fish Lake Township, S23, T36, R22 (PID 03.01315.00).
   b. **John & Marie Keefe** – Property owners John & Marie Keefe are requesting a Variance to Zoning Ordinance Section 4.09 in order to construct a six (6) foot tall fence along a side lot line in the Rural Residential I (RRI) District where the maximum allowable height is four (4) feet. The 3.93± acre subject site is located at 32442 Northshire Court in Chisago Lake Township, S21, T34, R20 (PID 02.01316.03).
   c. **Garrett & Carrie Mueller** – Property owners Garrett & Carrie Mueller 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 II (RRII) District. The 7.90± acre subject site is located at 30583 Lofton Avenue / CSAH 24 in Chisago Lake Township, S31, T34, R20 (PID 02.00848.10).
   d. **Cindy Petty and Bear Roofing & Exteriors** – Property owner Cindy Petty and applicant Bear Roofing & Exteriors are requesting a Variance to Zoning Ordinance Sections 4.03 and 5.15 in order to expand a non-conforming structure closer to the centerline of a County State Aide Highway than required in the Rural Residential I (RRI) District / Shoreland Management District. The 3.30± acre subject site is located at 3400 Stark Road / CSAH 10 in Fish Lake Township, S25, T36, R22 (PID 03.00337.00).
   e. **Shaun Kane & Julie Keyes Kane** – Property owners Shaun Kane & Julie Keyes Kane are requesting a Variance to Zoning Ordinance Section 4.09 in order to construct a six (6) foot tall fence in the front (roadside) setback area where the maximum allowable height is three (3) feet. The .48± acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District at 51955 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00991.00).
7. **Public Hearings – Continued Hearings**
   None
8. **Old Business**
9. **New Business**

10. **Miscellaneous**

11. **Adjourn Meeting**

    The next meeting is scheduled for Thursday, October 26, 2023 at 7:00 pm.

Board of Adjustment and Appeals
Tour Date and Time:
Wednesday, September 27, 2023 at 8:15 am
Departing from Chisago County Highway Department
31325 Oasis Road, Center City, MN 55012

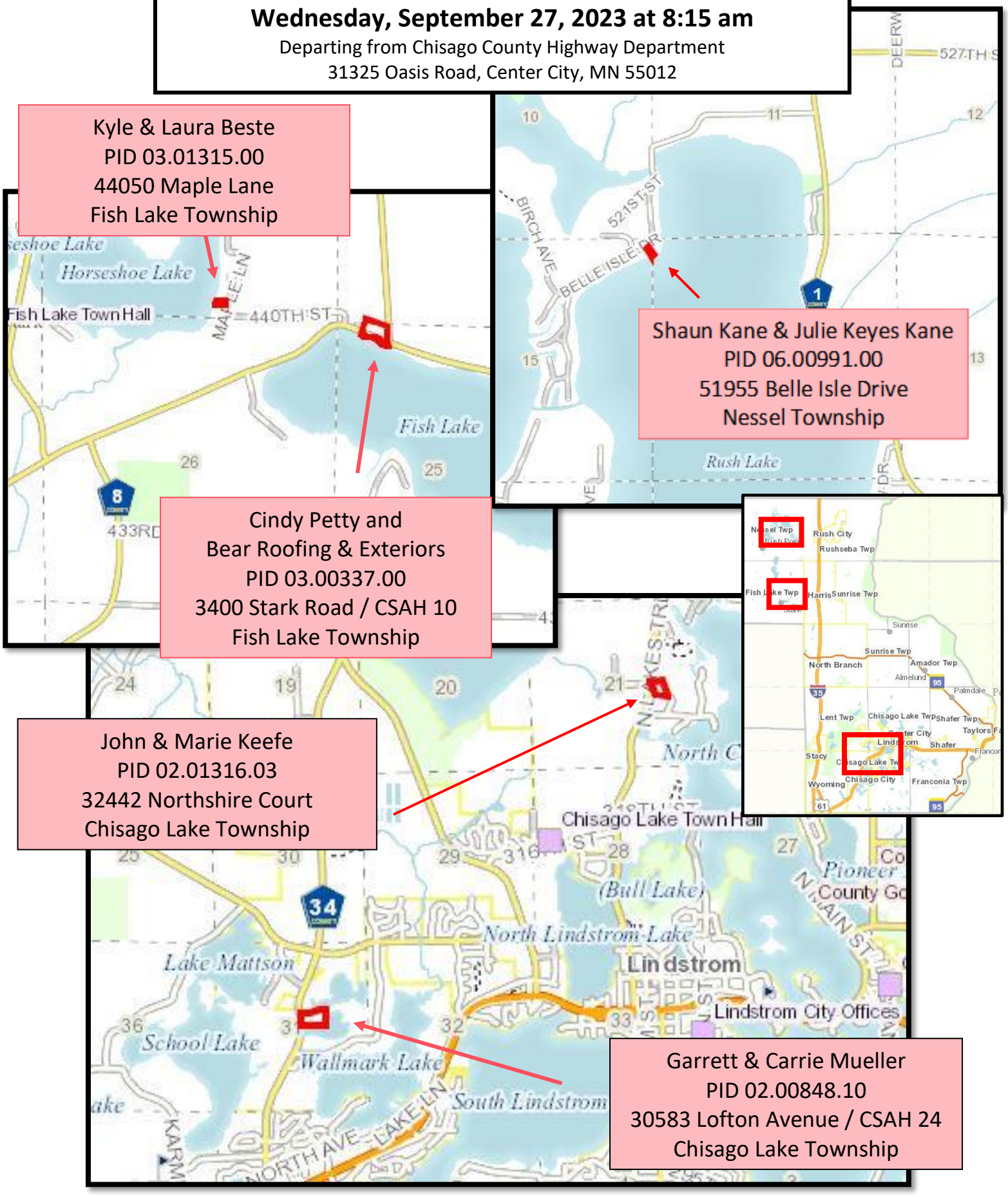
Kyle & Laura Beste
PID 03.01315.00
44050 Maple Lane
Fish Lake Township

Shaun Kane & Julie Keyes Kane
PID 06.00991.00
51955 Belle Isle Drive
Nessel Township

Cindy Petty and
Bear Roofing & Exteriors
PID 03.00337.00
3400 Stark Road / CSAH 10
Fish Lake Township

John & Marie Keefe
PID 02.01316.03
32442 Northshire Court
Chisago Lake Township

Garrett & Carrie Mueller
PID 02.00848.10
30583 Lofton Avenue / CSAH 24
Chisago Lake Township



CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
August 31, 2023

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, August 31, 2023 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator; and, Nikki Garner, Office Support Specialist.

Chair Carlson called the meeting to order and led the assembly in the Pledge of Allegiance. A roll call of Board members was then taken. Board members present: Doug Greene, Gregg Carlson, John Sutcliffe, Becky Strand, and Chip Yeager. Absent: None. A quorum was established with all members present.

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

APPROVAL OF MINUTES – ***Motion*** to approve the July 27, 2023, meeting minutes as presented by Sutcliffe; second by Greene. The **motion passed** and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECOD – ***Motion*** to receive all applications, submittals, reports, and other materials, including written comments received from four individuals, into the record by Strand; second by Sutcliffe. 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 written comments from four individuals. 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
Terry & Jennifer Pekula – Coordinator Gervais provided background information on Terry & Jennifer Pekula's Variance request for property located at 12133 285th Street in Chisago Lake Township (PID 02.01799.10), explaining that the property owners were proposing to exceed the maximum allowable amount of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. Gervais reviewed details about the subject site and surrounding areas, explaining that the site was considered legal non-conforming as it was platted in 1910 and did not meet current minimum dimensional requirements.

Gervais explained that the Pekulas were proposing to construct a 30' x 40' (1,200 sf) detached accessory structure in a location which met all required setbacks. The proposed structure would result in a total of 2,439 sf of accessory storage space where the maximum amount allowed was 2,000 sf. The application materials suggested that the proposed structure would reduce the need for outdoor storage, improve the appearance of the property from the street and lake, and would provide a similar look to a neighboring property immediately east of the subject site.

The Technical Review Committee met with property owners Terry & Jennifer Pekula on August 9, 2023. The Committee discussed the need for a septic compliance inspection but did not identify any other concerns. 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 was scheduled to expire on October 2, 2023.

Gervais noted that staff had a number of concerns with the request, including that the stated justification seemed to be based on personal preferences and personal circumstances rather than special conditions or unique circumstances related to the property; staff believed the property owners had other reasonable options to utilize their available 761 sf of accessory storage space; and, staff did not believe that the application materials fully or satisfactorily addressed the State mandated practical difficulty standard in terms of reasonableness and uniqueness.

Gervais concluded by offering a recommendation of denial with Findings of Fact to support denial, and, if the Board determined that the request satisfied the practical difficulty standard, staff provided alternate Findings of Fact and recommended conditions of approval for the Board's consideration. Gervais reviewed options available to the Board.

Chair Carlson invited the property owners to address the Board. Property owners Terry & Jennifer Pekula stepped forward. T. Pekula stated that the proposed 30' x 40' (1,200 sf) detached accessory structure would provide centrally located storage, match the existing house, and clean up yard space. J. Pekula added that since their property was on a hill, the location of the proposed structure would make that space more manageable to use as they aged.

Greene asked if the proposed structure was a two-story structure. T. Pekula clarified that it would be a one-story structure with 13' tall walls with no overhead storage. Chair Carlson asked if the property owners had considered a smaller structure. T. Pekula replied that he didn't believe a 761 sf building would be sufficient for the storage of their boat and other belongings.

Chair Carlson opened the public hearing and sought public comment.

Gervais read one written comment into the public record:

Paul & KaTrina Wentzel of 12081 285th Street, Chisago Lake Township:

Dear Chisago County Board of Adjustment and Appeals,

We received notice regarding a variance to zoning ordinance section 4.08.2 request from Terry and Jennifer Pekula at 12133 285th Street.

While we cannot make Thursdays meeting, we did want to write to express some concern. We support the Pekulas and all who are looking to make enhancements to their properties and homes, and we are not directly impacted by this request. However, our concern in this particular matter is two-fold:

1. *We are unclear on how much larger the accessory storage space is going to be, but especially because it is being built toward the shore (vs towards the road), this feels important. We are worried about the precedent on the lake; it is the responsibility of lakefront owners to find a way to live carefully within these natural surroundings. We believe lake residents can have the dwelling and accessory units we need and want while still minimizing the disruption of the natural environment we have all chosen to embrace and protect. If the Pakula request is for more than 10% above the maximum allowable amount of accessory storage space allowed in the RRI/Shoreland management district, we have serious concerns about precedent and the ongoing overbuilding along our lakes. It seems to us a larger or taller (more than single story) structure should require a larger setback from the shoreline.*
2. *We are two doors down from 12133 285th Street and not directly impacted by the space the Pekula's are looking to build. However, they have direct neighbors on both sides of them and whether supportive or*

concerned, we hope those voices will be amplified in this process. These neighbors may be impacted by sightlines, change in micro-environments, and more.

Living on a lake and the additional responsibilities and care required make any variance request important to all of us. Thank you for soliciting feedback.

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

Because the application materials had stated that the Pekula's next door neighbor had a similar 30' x 40' detached accessory structure, Yeager commented that it was unknown whether the neighbor's accessory structure was approved by Variance or if the total amount of accessory storage space was in compliance and this should not go against the applicants. In response to Yeager's comments, Gervais stated that, when the Board toured the subject site on August 30, 2023, the group visualized that the subject site had a four-stall attached garage whereas the neighboring property had a three-stall attached garage and it was therefore unknown if the neighboring property would have needed a Variance as they may have been under the 2,000 sf threshold.

Motion by Chair Carlson to adopt 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, as presented; second by Yeager. Greene and Strand both expressed concern for the proposed size of the structure in relation to past approvals and the surrounding area. The **motion failed** (Ayes: Carlson and Yeager; Nays: Strand, Sutcliffe and Greene).

Motion by Strand to adopt 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, with Findings of Fact as presented; second by Sutcliffe. Following discussion and clarification from Gervais about the applicants' ability to modify their request to decrease the amount of Variance requested, the **motion was withdrawn** by Strand and the second was withdrawn by Sutcliffe.

Terry & Jennifer Pekula verbally amended their request to exceed the maximum allowable amount of accessory storage space with a total of 2,239 sf rather than 2,439 sf (a decrease of 200 sf). Gervais restated that the amended request was a Variance to allow a total of 2,239 sf of accessory storage space where the maximum allowed was 2,000 sf.

Motion by Sutcliffe to adopt 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, as amended by the applicants and with the Findings of Fact as presented; second by Yeager. The **motion passed** and carried unanimously.

Conditions:

1. This approval grants a ~~439 square foot~~ 239 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the property to have a total of ~~2,439 square feet~~ 2,239 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~~ 1,000 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, except as required herein. 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.

Robert & Jill Ross – Coordinator Gervais provided background information on Robert & Jill Ross' Variance request for property located at 49755 Afton Avenue in Nessel Township (PID 06.00748.00), explaining that the property owners were requesting a Variance to construct a detached accessory structure with reduced township Right-of-Way (R-O-W) and Ordinary High Water Level (OHWL) setbacks than required in the Rural Residential I (RRI) District / Shoreland Management District. Gervais reviewed details about the subject site and surrounding areas, explaining that the site was considered legal non-conforming as it was platted in 1954 and did not meet current minimum dimensional requirements.

Gervais explained that the Ross' desired to construct a 16' x 30' two-level detached garage situated 10' from township R-O-W and 68.7' from the OHWL of Rush Lake. The proposed garage would not be located any closer to R-O-W or OHWL than the existing dwelling. The application materials explained that there were currently no detached accessory structures on the subject site; the lot dimensions did not allow for a new structure to meet both the required township R-O-W and OHWL setbacks and the only option to alleviate this circumstance was Variance approval; the proposed garage would not be any closer to the township R-O-W or OHWL than the existing dwelling and deck; most properties on Afton Avenue had garages with similar setbacks, with some or all of those properties having been granted Variances; the proposed garage was similar to and in keeping with other properties / setbacks on Afton Avenue; and, having a garage is viewed as a necessity in Minnesota.

The Technical Review Committee met with property owners Robert & Jill Ross on August 9, 2023. Given the distance between the existing dwelling and proposed detached accessory structure, the Building Official stated that the north wall of the accessory structure would need to be fire rated. The Committee also discussed that the accessory structure could not be taller than the dwelling and a septic compliance inspection would be required. The Nessel Town Board considered the request on August 8, 2023 and recommended denial. Gervais noted that the Town Board did not provide details or legal findings to support the recommendation; however, the Town Board had expressed concern with and/or recommended denial of similar Variance requests on Afton Avenue in the recent past. The State mandated 60-day review period was scheduled to expire on October 2, 2023.

Gervais concluded by offering a recommendation of approval with five conditions and reviewed options available to the Board.

Chair Carlson invited the property owners to address the Board. Property owners Robert & Jill Ross stepped forward. Chair Carlson asked if the existing slab on the south side of dwelling was going to be removed. R. Ross clarified that the slab would be removed during construction.

Chair Carlson opened the public hearing and sought public comment.

Brad Resch of 49750 Afton Avenue, Nessel Township – Resch shared that he lived across the street from the

Ross'. Resch's family had owned the home for over 50 years and he had lived there for more than 30 years. He explained that the previous owners tried to obtain a similar Variance to build a garage and it was turned down. He felt that the current proposal should also be turned down. He believed the property was too small and it would change the view from his property. Resch lived there year-round and felt the Ross' didn't use the property enough to justify building a garage. Resch also believed that the Ross' survey was inaccurate.

Gervais read two written comments into the public record:

Wendy Foss-Graves of 49765 Afton Avenue, Nessel Township:

I wanted to respond to the variance request notice that we received from our neighbors Bob and Jill Ross at 49755 Afton Ave in Stanchfield.

My husband Joe and I fully support approving this variance. The garage will allow our neighbors to store tools and yard equipment in a tidy and secure manner. This would only be an asset to our little road neighborhood. In addition, almost everyone on the road has either a garage, pole barn, or permanent boat covering on their property, I cannot think of a reason to deny this request which will only make their property more appealing and functional.

Please approve this variance so that our wonderful neighbors can add this to their property.

Joe Graves of 49765 Afton Avenue, Nessel Township:

Just wanted to follow up to my wife's comments. The Ross' have been ideal and caring neighbors, the garage will be an improvement to their property and the neighborhood.

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

Motion by Sutcliffe to adopt 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, as presented; second by Strand with the added condition that the property owners address water mitigation through the use of gutters with water diverted away from the road. Sutcliffe accepted the amendment. The **motion passed** and carried unanimously.

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. <u>The property owner shall install gutters on the detached accessory structure and drainage shall be directed</u>

away from the township Right-of-Way.

4. The permit holder shall obtain a building permit prior to construction and, further, the structure 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.

Neal & Donna Deneen and Adam Brown – Coordinator Gervais provided background information on current owners Neal & Donna Deneen's and prospective buyer Adam Brown's Variance request for property located at 12480 Melody Lane in Chisago Lake Township (PIDs 02.01029.00 and 02.01030.00), explaining that the applicant was requesting the Variance 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. Gervais reviewed details about the subject site and surrounding areas, explaining that the site was considered legal non-conforming as it was platted in 1917 and did not meet current minimum dimensional requirements.

Gervais shared that Brown was seeking Variance approval in order to construct a 35' x 40' dwelling, 40' x 8' deck, and 24' x 24' garage 10' from platted township Right-of-Way where the required setback was 40'. Gervais added that the original request included reduced setbacks from two township Rights-of-Way but Brown had revised his request after shifting the location of the septic system and shifting the structures westerly. The application materials explained that the applicant was proposing to construct a single family dwelling on a site which was challenging to develop due to its 60' width, the required 40' Right-of-Way setbacks on two sides, and topography. The narrative also stated that several neighboring properties had significantly reduced Right-of-Way setbacks, which meant that the proposed structures would conform to the character of the neighborhood.

The Technical Review Committee met on August 9, 2023. The Sanitarian expressed concern about the proposed location of the septic system and, based on that concern, the applicant revised his site plan which resulted in an amended (reduced) Variance request (as noted above). The Chisago Lake Town Board considered the amended request on August 15, 2023 and recommended approval, commenting that there was "no room for error - very tight fit". The State mandated 60-day review period was scheduled to expire on October 2, 2023.

Gervais concluded by offering a recommendation of approval with six conditions and reviewed options available to the Board.

Chair Carlson invited the property owners and/or applicant to address the Board. Applicant Adam Brown stepped forward. Brown shared that he considered several options to develop the property and he believed that he had presented the best option.

Sutcliffe inquired about the existing septic system. Brown responded that it was a sealed system. Gervais clarified that the property was previously developed with a dwelling and septic system; the house had been demolished roughly 20 years ago but the non-compliant septic system remained. Chair Carlson asked if the non-compliant septic system would need to be removed. Sutcliffe responded that it would need to be abandoned. Chair Carlson asked Brown about the existing 14' x 18' structure located on the subject site and his intentions for that structure. Brown responded that it would be used for storage purposes but not as a dwelling. Chair Carlson briefly reviewed differences between the original and amended requests.

Chair Carlson opened the public hearing and sought public comment.

Gervais read two written comments into the public record:

Chester Boike of 12500 Melody Lane, Chisago Lake Township:
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 halfway down a hill, built sideways and a 40' wide septic mound parallel to Melody Lane conforms to a first impression of a neighborhood character?

I am apposed to granting variances to requests from owners of non-buildable lots in violation of set ordinances to simply makes 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 require foresight on the part of the board. Hindsight 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.

Dana & Brenna Wojtowicz and Mike & Karla Krick of 12490 Melody Lane, Chisago Lake Township:

We Appreciate the opportunity to give feedback as neighbors on the request of variances to zoning ordinance section 5.15.

Our answer "respectively" is NO to variance, No to easement and No to vacate the road on Melody Lane either direction on that property.

The numbers just don't add up…

Chair Carlson invited members of the audience to provide comment.

Bob Vance of 14862 Oak Hill Road N., Scandia – Vance voiced concerns on behalf of his mother-in-law who resided at 12460 Melody Lane. Vance inquired about the required distance between the septic system and neighboring wells. Chair Carlson asked Gervais to respond. Gervais was not certain of the required distance but noted that it would be reviewed at time of septic permit application. Vance inquired about the ability of his mother-in-law to expand her structures in the future and if the current request would impact that ability. Gervais commented that her structures would be evaluated against her own property boundaries and not surrounding structures.

Steve Kidrowski of 5017 W. 98th Street, Bloomington – Kidrowski explained that he owned property at the intersection of Melody Lane and Mentzer Trail. He requested that the Board table the request because he wasn't notified by the township before the Town Board meeting. Strand responded by explaining that townships were not required to send out notices when considering Variance requests, only the County. Kidrowski questioned whether the applicant had a topographical survey prepared to verify location of the Ordinary High Water Level and also questioned why the applicant did not need to identify an alternate septic system location. Chair Carlson requested that Gervais respond. Gervais stated that she believed, as a legal lot of record, the applicant only needed to show that the site could accommodate a Type I septic system. Kidrowski commented

that he was making these inquiries because he was looking to build on his property and wanted to make sure he understood what would be required.

Brenna Wojtowicz of 12490 Melody Lane, Chisago Lake Township – Wojtowicz explained that she lived immediately north of the subject site and commented that the parking and winter plowing made travel on Melody Lane difficult. She was concerned that emergency vehicles may not be able to get through with added congestion on Melody Lane. Wojtowicz shared that the subject site became very wet every spring; expressed concern with the physical size of the proposed septic system and other septic systems in the immediate area; expressed concern about ability to install a well on the subject site; reiterated her concern with snow plowing; and, expressed concern with proposed travel on the unnamed township Right-of-Way.

Chester Boike of 12500 Melody Lane, Chisago Lake Township – Boike shared that there was a petition seven years prior to Vacate the unnamed township Right-of-Way and the township denied that request. Boike shared that he was upset that the township didn't provide notice to residents before considering the request. Gervais explained that the township did not conduct public hearings for Variance requests and was not required to provide notice to residents and was only responsible for providing a recommendation. Gervais added that it was the County's Board of Adjustment and Appeals that was responsible for conducting the public hearing and property owners were notified in compliance with Minnesota statute. Boike also expressed concern about snowplowing and maintenance of the roadway. Chair Carlson informed audience members that maintenance and plowing of the roadway was managed by Chisago Lake Township.

Nick Kirvida of 28175 Lamar Avenue, Chisago Lake Township – Kirvida asked clarifying questions about the original proposal and inquired why the original location of the septic system wasn't adequate.

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

Yeager reviewed details from the Technical Review Committee meeting. Strand inquired if the two subject properties would need to be combined. Gervais responded that the draft resolution presented to the Board included a condition requiring a lot combination prior to submitting a building permit application and/or septic permit application.

Motion by Yeager to adopt 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, as presented; second by Strand. The **motion passed** and carried unanimously.

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.

PUBLIC HEARINGS – CONTINUED HEARINGS
None

OLD BUISNESS
None

NEW BUISNESS
None

MISCELLANEOUS
None

ADJOURN MEETING – ***Motion*** to adjourn by Strand; second by Yeager. The **motion passed** and carried unanimously. With no further business the meeting was adjourned at 8:35 p.m.

_____ ATTEST: _____

Gregg Carlson
Chair

Beth Gervais
Land Services Coordinator

DRAFT

Staff Report

TO: Board of Adjustment and Appeals
FROM: Beth Gervais, Land Services Coordinator
SUBJECT: After-the-Fact Variance to Encroach on the Required OHWL Setback and to Exceed the Maximum Allowable Amount of Impervious Surface Coverage
44050 Maple Lane, Fish Lake Township
DATE: September 28, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider an after-the-fact Variance in order for a recently constructed deck to encroach on the required Ordinary High Water (OHWL) Level setback and for the subject site to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s):	Kyle & Laura Beste
Property Owner(s):	Kyle & Laura Beste
Property Address:	44050 Maple Lane Fish Lake Township
General Location:	Section 23, Township 36, Range 22
PID:	03.01315.00
Property Area:	.32± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	Rural Residential I (RRI) District / Shoreland Management District
South:	Rural Residential I (RRI) District / Shoreland Management District
East:	Rural Residential I (RRI) District / Shoreland Management District
West:	Horseshoe Lake
Date Application Received:	August 3, 2023
Date Application Complete:	August 10, 2023
60-Day Review Period:	October 9, 2023

BACKGROUND

Property owners Kyle & Laura Beste are requesting an after-the-fact Variance allowing for a recently constructed deck to encroach on the required OHWL setback by 14' and allowing the subject site to exceed the maximum allowable amount of impervious surface coverage by 6.6%.

The previous property owner (Prokop) had submitted application for a similar request (encroachment on the OHWL setback with a deck addition and exceeding the maximum allowable amount of impervious surface coverage) in 2017 and records show, that due to a non-compliant septic system, County staff withdrew the request from the Board's consideration. Records further show that a septic compliance inspection was completed in 2022 and the system was deemed compliant at that time.

The request for Variance is a direct result of code enforcement efforts. The Department of Environmental Services received a complaint in or around June of this year that a deck was being constructed and the boat house was being rebuilt without the necessary building permit(s). The Bestes were provided with a written notification dated June 30, 2023 that the work must stop until the necessary permits had been issued and, further, that the deck did not appear to meet the required OHWL setback. The property owners or their contractor applied for a building permit; however, it was established through the site approval process that the deck was approximately 60' from OHWL where the required setback is 75'. The property owners were advised in a second written notification dated July 10, 2023 that the deck would either need to be reduced in size or they could apply for a Variance. The building permit has not been issued.

SITE ANALYSIS

The .32-acre subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and located on the southeast shore of Horseshoe Lake. The subject site is currently developed with a 1,502 sf dwelling, a 25' x 38' (950 sf) detached garage, and a 15' x 20' (300 sf) boathouse located approximately 13' – 15' from the OHWL.

Properties to the north, south and east are similarly zoned. Properties directly north and south appear to be similarly sized and developed with dwellings / seasonal cabins, whereas properties to the east are significantly larger in size and appear to be used for both residential and agricultural purposes. Topography of the subject site includes elevations ranging from 922' near the shore of Horseshoe Lake to 941' near the southeastern corner of the property / roadway.

PROPOSAL ANALYSIS

The property owners are seeking after-the-fact Variance approval allowing their recently constructed deck to encroach on the required OHWL setback and for their property to exceed the maximum allowable amount of impervious surface coverage. The required OHWL setback is 75' and the attached site plan shows that the deck is situated 61' from OHWL. The maximum allowable amount of impervious surface coverage is 25% and the attached written narrative states that the current amount is 31.6%.

Encroachment on the Required OHWL Setback:
The written narrative explains that the existing dwelling was constructed in two parts: the "original cabin" was reportedly constructed in the early 1900s and the "new cabin" was constructed / reconstructed in 2012. The original cabin has a legal non-conforming setback of 60' from OHWL, whereas the new cabin has a conforming setback of 75'. This difference in setback created a 15' difference between the west walls of the dwelling. The new cabin was designed with a walk-out basement and a door on the second floor which indicated the property owner's intentions for a deck to be added at a later time. As mentioned in the Background section above, the previous property owner had submitted application for a Variance involving the addition of a deck in 2017, but that request was withdrawn due to issues with a non-compliant septic system.

The written narrative states that, when the Bestes purchased the subject site in 2022, they were aware of the previous property owner's intentions to construct a deck and that there were complications due

to the septic system. Given that the septic system was deemed compliant in April 2022, they believed that they were able to proceed with the deck.

The narrative explains and the site plan shows that the deck was constructed within the 15' difference of the west walls of the original cabin and the new cabin – or, in other words, the deck connects the two dwelling sections – and does not extend closer to the OHWL than the original cabin or closer to the south property boundary than the new cabin. The narrative suggests that because the new cabin was constructed at the OHWL setback line, it would not allow for "any usable outdoor space off the existing second floor walkout door". However, this statement isn't entirely accurate. Historically, based on Shoreland Management Ordinance Section 5.21, the County has allowed decks which encroach on the OHWL setback with a maximum depth of 4' without need for Variance.

As justification for the after-the-fact OHWL setback encroachment Variance request, the written narrative offers the following:

- The deck does not extend closer to the OHWL or south property boundary than the existing dwelling.
- With the knowledge that the previous property owner intended to construct a deck in the same location but was waiting for the septic system to be compliant, they believed that a Variance had been approved and, with a compliant system, they could proceed with construction.
- The site is unique in that one portion of the dwelling is situated 60' from OHWL (original cabin) and the other section is 75' from OHWL (new cabin) and this offset creates a natural area for joining the two sections with a deck without further encroaching on the OHWL setback.
- The deck is no closer to the OHWL than the two neighboring decks to the south.
- The property owners believe that the deck and other improvements have improved the aesthetic of the dwelling and add to the overall essential character of Maple Lane. They believe that the improvements do not look out of place next to the neighboring properties.

Note: While the attached site plan shows that the deck is 14' x 27' (378 sf) in size, K. Beste confirmed during the Technical Review Committee meeting that the deck is 14' x 28' (392 sf) in size. This slight difference does not impact the setback encroachment, and the deck appears to meet all other required setbacks.

Exceeding the Maximum Amount of Impervious Surface Coverage:
The written narrative explains and the impervious surface calculation worksheet shows that the current amount of impervious surface is 31.6%, where the maximum allowed is 25%. The narrative further explains that the property was over the 25% threshold when the Bestes purchased it in July 2022. This statement can be verified by the previous property owners' attempt to obtain Variance approval in 2017.

Factors contributing to the overall amount of impervious surface coverage include the dwelling, detached garage and driveway, walkway, boathouse, as well as a paver patio under the recently constructed deck and a recently constructed semi-circular patio immediately west of the deck. K. Beste confirmed during the Technical Review Committee meeting that he and his wife added the semi-circular patio since purchasing the property in 2022 but have otherwise not increased the overall amount of impervious surface. Based on the attached site plan and the impervious surface calculation worksheet, staff believes that the semi-circular patio constitutes 265 sf of impervious surface. The written narrative explains that the patio underneath the deck existed when they purchased the property but they have since replaced the pre-existing wood patio with a paver patio.

As justification for the after-the-fact impervious surface coverage Variance request, the written narrative offers the following:

- The patio underneath the deck existed when the Bestes purchased the property in 2022.
- The patio, like the deck itself, unifies the space between the original cabin and the new cabin.
- The materials used for the patio underneath the deck have been improved (wood to pavers) and the patio (presumably the pre-existing patio as well as the new semi-circular patio) improve the aesthetics.

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

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	40' to Township Right-of-Way	Deck is approximately 105' from R-O-W
OHWL Setback	75' for Structures	Deck is approximately 61' from OHWL
Side Yard Setback	10' for Dwelling + Attached Garage; 5' for Detached Non-Ag Accessory Structures	Deck is approximately 20' from south property boundary and approximately 25' from north property boundary
Impervious Surface Coverage	25%	31.6%

REVIEW PROCESS

The Technical Review Committee met with property owner Kyle Beste on September 13, 2023. The group discussed dimensions of the deck, the Bestes' addition of the semi-circular patio, and unrelated improvements to the boathouse. The Committee did not identify any concerns.

The Fish Lake Town Board considered the request on September 11, 2023 and recommended approval with no conditions.

The State mandated 60-day review period expires on October 9, 2023.

WRITTEN TESTIMONY

Written testimony was received from Brian O'Donnell of 44020 Maple Lane, Fish Lake Township on September 18, 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 alludes to pre-existing development as an exceptional or extraordinary circumstance, in that the recently constructed deck essentially filled a void created by the pre-existing "original cabin" and "new cabin". If this factor is to be accepted as an exceptional or extraordinary circumstance, the current property owners have had no control over this circumstance; however, previous property owners did create this circumstance.

The written narrative also explains that the property owners believed that Variance approval for the OHWL setback encroachment had been granted in the past for the previous property owner (2017) and they were acting on that approval given that the septic system had since been brought into compliance. This factor does not constitute an exceptional or extraordinary circumstance as it was the property owners' responsibility to verify setbacks and Variance status prior to construction. Further, if the property owners had obtained a building permit prior to construction, they would have been made aware of the setback encroachment issue and status of the Variance which was requested and withdrawn in 2017. The property owners had complete control over this circumstance.

In regard to the amount of impervious surface coverage, the application materials explain – and staff has verified – that the total amount exceeded 25% when the Bestes purchased the property in 2022. However, the application materials do not offer any exceptional or extraordinary circumstance relating to the new semi-circular patio (265 sf) added since the Bestes acquired the 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 / Shoreland Management District properties. Properties in the RRI District / Shoreland Management District have the right to be developed with dwellings, in addition to other uses identified by the Zoning Ordinance, and the subject site is presently developed with a dwelling and related detached accessory structures.

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

   If the special condition or circumstance relates to the configuration of the dwelling, this condition was not created by the current property owners but it is a condition created by a previous property owner. The previous property owner chose to expand the legal non-conforming structure into its current configuration and style (walk-out basement and door on upper level indicating an intention to add a deck at a later time).

   If the special condition or circumstance relates to the current property owners' misunderstanding that a Variance had been approved for the OHWL setback encroachment in 2017, this condition is a direct result of the actions of the current property owners.

   In regard to the total amount of impervious surface coverage, the property owners have stated that they added the semi-circular patio which did exacerbate the pre-existing illegal non-conforming amount of impervious surface coverage. This circumstance was a direct result of the current property owners' actions as well as the actions of previous property owners. It's unknown to staff when the subject site first exceeded the maximum allowable amount of impervious surface coverage.

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

   Being that decks are allowed in the RRI / Shoreland Management District and the amount of impervious surface coverage does not relate to a specific use, the requested Variance is not considered a use Variance.

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

   The requested Variance is an after-the-fact Variance, which means that the request is based on existing conditions. Despite the required setback from OHWL, the property owners would have been allowed to construct a 4' deep deck without need for Variance; however, the recently constructed deck is 14' deep. In regard to the total amount of impervious surface coverage, the property owners could remove some impervious surface to bring the total amount down to or closer to 25%. For reference, removing the semi-circular patio and patio underneath the deck would result in approximately 27% impervious surface coverage. Getting the total amount down to or below 25% would require removing the patios as well as a portion of the approximate 46' wide driveway (as measured at the roadway) or walkway, or replace these surfaces with pervious materials to the extent that the total amount of impervious surface coverage is at or below 25%.

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

   The County has granted similar Variances in the distant and recent past, which suggests that the County has determined that the requested Variance would not be detrimental to the purposes of the Zoning Ordinance or to properties within the RRI / Shoreland Management District.

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

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

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

   While a very small portion of the subject site is located in a flood zone (areas along the shoreline), the developed areas are located entirely outside of the flood zone.

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

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

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

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

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

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

FINDINGS OF FACT

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

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

Finding #1 *Given that the recently constructed deck encroaches on the required OHWL setback and meets all other setbacks, the County finds that the encroachment will not have any impact on the supply or light and air to adjacent properties. Further, the County finds that the total amount of impervious surface coverage is due in large part to land covered by patios, the walkway, and the driveway, which again the County finds to have no impact on the supply of light and air to adjacent properties. The existing structures – including the dwelling and detached garage – appear to meet the required side yard setbacks, thereby suggesting that they won’t impair the 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 County finds that the proposed action has no correlation to the use of or congestion within the public Right-of-Way. Rather, the proposed action relates to encroachment on the OHWL and lot coverage.*

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 an after-the-fact building permit for the recently constructed deck, which will require that it be constructed in compliance with all applicable building and fire codes. The County finds that being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County further finds that the total amount of impervious surface coverage – which is due in large part to land covered by patios, the walkway, and the driveway – will have no impact on the danger of fire or endangerment of the public's safety.*

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

Finding #4 *Being that the subject site is currently developed with a dwelling and related detached accessory structures and the proposed action will not change how the property is being used or encroach on side yard setbacks / neighboring properties, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*

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

Finding #5 *The proposed action will not change the use of the subject site or intensify the use of / need for facilities and services; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.*

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

Finding #6 *The 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 intents of Shoreland Management Ordinance Sections 5.21 and 5.52 are to establish minimum setback requirements for structures and septic systems in relation to the OHWL and the maximum amount of impervious surface coverage; however, the Ordinance also allows for Variances from these requirements when the requested action is found to satisfy the State mandated practical difficulty standard.*

The County finds that the request to encroach on the required OHWL setback satisfies this standard given that the proposed encroachment is not exacerbating the existing OHWL setback encroachment of the dwelling and it's consistent with development in the surrounding area.

However, the County further finds that the request to exceed the maximum allowable amount of impervious surface coverage fails to satisfactorily address the practical difficulty standard. The County recognizes that the subject site exceeded the maximum

allowable amount of impervious surface coverage when the current property owners purchased the property in 2022; however, the current property owners exacerbated the pre-existing illegal non-conforming amount of impervious surface coverage by adding 265 sf of additional impervious surface through construction of a semi-circular patio with the primary stated justification for the patio being aesthetics. Without sufficient demonstration of compliance with the practical difficulty standard, the County has determined that the property owners must reduce the overall amount of impervious surface coverage to no more than 25%.

-OR-

Finding #7 *The subject site is located in the Shoreland Management District and the Shoreland Management Ordinance establishes minimum setback requirements for structures and the maximum allowable amount of impervious surface coverage; however, the Ordinance also allows for Variances from these 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's official land use controls and satisfies the three-factor test of uniqueness, reasonableness and essential character, in that the proposed encroachment is not exacerbating the existing OHWL setback encroachment of the dwelling and it's consistent with development in the surrounding area and the proposed amount of impervious surface coverage was in large part a pre-existing condition.*

STAFF RECOMMENDATION

Staff believes that the requested Variance to encroach on the required OHWL setback is reasonable and supports this portion of the request based on the following considerations:

- The recently constructed deck does not exacerbate the OHWL setback encroachment.
- The deck and OHWL setback encroachment are in keeping with lakeshore development in the immediate area.

However, staff reluctantly cannot support the request to exceed the maximum allowable amount of impervious surface coverage, based on the stated justification included in the application materials, and would encourage the Board to deny this portion of the request. Ideally, staff would like to recommend that the Board approve a reduced amount of impervious surface coverage to restore the subject site to its pre-2022 condition (prior to construction of the 265 sf semi-circular patio); however, the Board must wholly approve or deny this portion of the request. Denying this portion of the request would require that the property owners reduce the total amount of impervious surface to 3,484.75 sf (lot area of 13,939 sf x 25% = 3,484.75 sf) through elimination of existing impervious surfaces or replacement of existing impervious materials with new pervious materials.

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff supports approval of an after-the-fact Variance to encroach on the required OHWL setback and denial of an after-the-fact Variance to exceed the maximum allowable amount of impervious surface coverage** 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. **The after-the-fact Variance request to encroach on the required Ordinary High Water Level (OHWL) setback by 14' is approved**, allowing for a recently constructed deck to be situated 61' from the OHWL of Horseshoe Lake.

2. **The after-the-fact Variance request to exceed the maximum allowable amount of impervious surface coverage by 6.6% is <u>denied</u>**, requiring that the property owners reduce the total amount of impervious surface to an amount no greater than 3,484.75 sf (lot area of 13,939 sf x 25% = 3,484.75 sf) through elimination of existing impervious surfaces or replacement of existing impervious materials with new pervious materials. Further, reduction of impervious surface coverage to an amount no greater than 3,484.75 sf shall be complete within one year from the date of this resolution (September 28, 2024).
3. The subject site shall be developed in general conformance with the updated application materials dated received August 14, 2023, except as specifically conditioned herein (specifically in relation to condition no. 2 above). 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 property owner's expense.
4. The property owner shall obtain an after-the-fact building permit for construction of the deck.

OPTIONS

1. **Approve the after-the-fact Variance as requested** based on the Findings of Fact as presented and conditions as amended. *Note: this option will require the Board to adopt all draft Findings shown in black italics AND modify the conditions accordingly (refer to draft conditions in the attached resolution).*

2. **Approve / Deny the after-the-fact Variance as recommended by staff** based on the Findings of Fact and conditions as 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. **Deny the after-the-fact 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 and/or Shoreland Management Ordinance(s) due to _____.
   b. The proposed Variance will have a negative impact to surrounding properties due to _____.
   c. The request for Variances, as presented, does not meet the threshold for "practical difficulty" as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.

4. **Table action** to allow for further review and consideration. Being that the current review period expires on October 9, 2023, the Board should also include in its motion a **60-day extension** of the review period.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0901, a resolution <u>approving</u> an after-the-fact Variance to encroach on the required Ordinary High Water Level setback and <u>denying</u> an after-the-fact Variance to exceed the maximum allowable amount of impervious surface coverage on property located at 44050 Maple Lane in Fish Lake Township, as presented or amended.

If the Board chooses to approve the after-the-fact Variance as requested, 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.

If the Board chooses to deny the after-the-fact Variance as requested, 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. Site photo
    e. Impervious surface calculation worksheet
2. Written testimony from Brian O'Donnell
3. Aerial photo (1) – subject site
4. Aerial photo (2) – vicinity map
5. Draft Resolution No. BOAA2023-0901 (approval and denial)
6. Draft Resolution No. BOAA2023-0901 (approval)

CC: Kyle & Laura Beste, property owners
County file

Planning Zoning Application Form

Chisago County Department of Environmental Services
Planning & Zoning Application

Permit # 23-1364

Township Fish Lake **S/T/R** 23/34/22 **PID#** 03.01315.00

Project Address 44050 Maple Lane Harris MN ~~55403~~ 55032

Property Owner(s) Kyle and Laura Beste

Mailing Address (If Different from Project Address)

Phone# [redacted] **Email** [redacted]

Applicant(s) Kyle Beste

Mailing Address (If Different from Project Address)

Phone# **Email**

Type of Request (Check All That Apply)

Board of Adjustment & Appeals	Planning Commission	
☒ Variance	☐ Conditional Use Permit (CUP)	☐ Preliminary Plat
☐ Administrative Appeal	☐ Interim Use Permit (IUP)	☐ Rezoning
	☐ Amendment to CUP or IUP	☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary)

Variance application attached for 2 variance requests:

1. Encroachment on OHWM for new Deck 2. Exceeding Maximum Impervious %

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

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

Kyle Beste

Applicant Signature

8/1/2023

Date of Application

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

Fees		Dates	
Base Fee PLUS AFTER-THE-FACT	$ 1,000 —	Application Received	8-3-23
Recording Fee	$ 46 —	Application Complete	8-10-23
Plat Fee – No Road(s) / With Road(s)	$	(60) / 120 Day Review Period	10-9-23
Septic Compliance Fee	$	Extended Review Period	
Wetland Fee	$		
TOTAL FEE	$ 1,046 —		

Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Fish Lake **S/T/R** 23/36/22 **PID#** 03.01315.00

Project Address 44050 Maple Lane Harris MN ~~55403~~ 55032

Property Owner(s) Kyle and Laura Beste

Mailing Address (If Different from Project Address) _____

Phone# [redacted] **Email** [redacted]

Applicant(s) Kyle Beste

Mailing Address (If Different from Project Address) _____

Phone# _____ **Email** _____

Type of Request (Check All That Apply)

Board of Adjustment & Appeals	Planning Commission	
☒ Variance	☐ Conditional Use Permit (CUP)	☐ Preliminary Plat
☐ Administrative Appeal	☐ Interim Use Permit (IUP)	☐ Rezoning
	☐ Amendment to CUP or IUP	☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) Variance application attached for 2 variance requests:
1. Encroachment on OHWM for new Deck 2. Exceeding Maximum Impervious %

_____ 8/1/2023

Applicant Signature **Date of Application**

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

Date of County Public Hearing 9-28-23 **Date of Township Presentation** 9-11-23

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 Official(s) or Authorized Personnel

_____ _____ _____

With NO conditions

_____ _____

2023

Chisago County Variance Application

44050 MAPLE LANE, HARRIS MN 55032 (PID 03.031315.00)

V2 - MODIFIED 8.14.2023

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Variance Request Summary

Variance Request Address / PID

This is an official variance request at the address of 44050 Maple Lane, Harris, MN 55032 (PID 03.031315.00).

Variance Requests Descriptions

1. Variance for Encroaching on OHWM Setback of 75 feet by 14 Feet

Requesting a variance to encroach on the ordinary setback of 75' from the OHWM to 61' (14 feet of encroachment) for new deck

2. Variance for Exceeding the Impervious Coverage Maximum of 25% by 7%- to 31.6%

Requesting a variance to exceed the impervious surface coverage maximum of 25% up to 31.6%

After-the-Fact Variance for OHWM Setback is for a Permeable Deck

The variance request is to encroach on the OHWM setback for a permeable deck

- Setback
    - The deck is currently constructed 61 feet from the Ordinary High Water Mark (OHWM)
    - Additionally, the deck is 24 feet from the nearest and visible property line
- Permeable structure
    - Deck boards are spaced such that water can permeate the floor
    - There is an under-deck, however it is a slat construction also allowing water to permeate
    - Therefore, this does not add to the impervious surface calculation
    - That said, there is a paver patio below the new deck structure which does calculate into the permeable surface area calculation
- The deck connects two structures
    - The original cabin (setback of 60' from OHWM)
    - The new cabin reconstructed in 2012 (setback of 75' from OHWM)
- The deck was constructed in order to align within the natural footprint of the existing structures (see site survey below)
    - The water-side of the deck is not closer to the water than the original cabin structure
    - The property-line side of the deck is not closer to the property line than the newer cabin construction
- The deck is no closer to the OHWM than neighboring cabin deck structures to the South

After-the-Fact Variance for Exceeding Impervious Coverage

- Requesting a variance for exceeding the impervious surface area maximum of 25%
- The current coverage on the property is 31.6% which is roughly 7% over the allowed maximum
- Replaced existing green-treat deck patio (that was on the property when purchased in July 2022) with a paver patio
- Note: the property was above the 25% threshold when we purchased it, however we have recently redone the patio on the lake side of the property

Variance Justification Using the Practical Difficulty Standard

Reasonableness

Definition

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.

Justification

We purchased the home in July, 2022.

The home is constructed in two parts: the original cabin and the new cabin. These two portions of the home have different setbacks from the OHWM given the time of their construction.

Additionally the new cabin was constructed with a walk-out basement and a door on the second floor intended for a deck.

During the purchase process we understood that the previous owner intended to build a deck in this location, but was waiting for the septic system to be compliant. The selling agent informed us the system was compliant as of April, 2022. From this we incorrectly assumed that the deck variance had been approved previously.

That said, our intention with the deck construction was to unify the two parts of the cabin (old and new) with the deck. The deck does not extend past either of the existing sides of the cabin structures:

- Not closer to the water than the original cabin
- Not closer to the southern property line than the new cabin

Given the construction of the new cabin – which is constructed nearly on the 75' setback – we could not build any usable outdoor space off the existing second floor walkout door.

Regarding the permeable paver patio, this was simply a reconstruction of the existing patio with new materials. That said, the total coverage area was still above the allowable maximum % when the home was purchased. The patio is also unifying the space between the two parts of the cabin.

Therefore, given the explanation above, we believe the application for the setback variance is reasonable.

Uniqueness

Definition

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.

Justification

The uniqueness of this property is in relation to the existing structures already on the property. The original cabin – which is setback just over 60' from the OHWM – is an original structure from early 1900s. The new cabin – which was constructed adjacent to the original cabin with the updated 75' setback – was rebuilt in 2012.

Given the existing cabin construction there is a natural area between the two structures that is unique and can add value to the home both in enjoyment and value by adjoining these existing structures, without intruding on the OHWM more than the existing cabin already does.

Moreover, the excess of the impervious maximum was already there at purchase, however we have improved the materials used and aesthetics (as described below).

Essential Character

Definition

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.

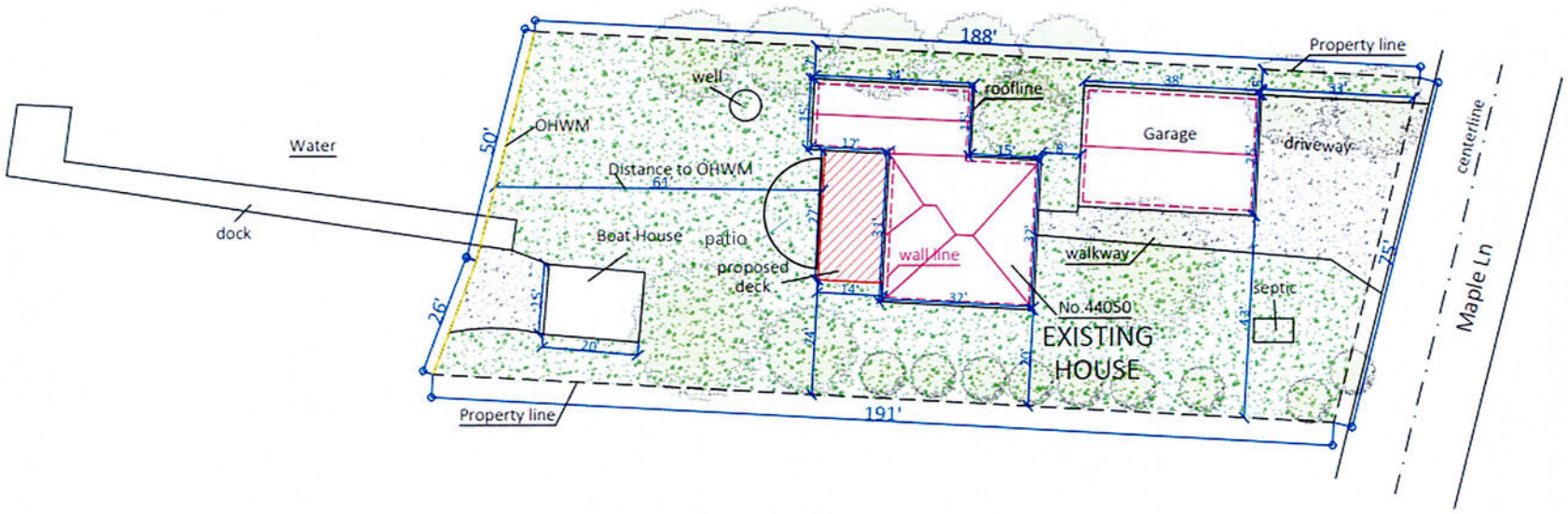
For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

Justification

As stated above, the new deck is not closer to the OHWM than the original cabin. Moreover, the new deck is as close to the OHWM setback as the two decks on the properties immediately to the South. Moreover, the improvement to the overall home aesthetic in both the deck and the patio are markedly improved and add to the overall essential character of Maple Lane. Said differently, it will not look out of place next to the neighboring properties.

Site Survey

SITE PLAN
44050 Maple Ln
Harris, MN 55032
Parcel ID: 03-01315-00
Lot area: 0.32 Acres
Paper Size: 11"x17"



Calculating Building and Lot Coverage Percentages
Lot area: 13,939 sq.ft.
Total building coverage (gross floor area): 1,524 sq.ft.
Building Coverage Percentage: 1,524. sq.ft / 13,939 sq.ft = 0.10933 = 11.0%
Total Lot Coverage: 4,404 sq.ft.
Lot Coverage Percentage(Excluding pervious deck): 4,404 sq.ft / 13,939 sq.ft = 31.6%

Picture of Deck Construction

Impervious Surface Calculation

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
.32	x	43,560	=	13,939

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	(34x15) + (31x32)	=	1,502
garage	(38x25)	=	950
deck		=	
patio	(27x14) + (pi x 13^2 x 1/2)	=	643
sidewalk	(46x4)	=	184
driveway	(33x25)	=	825
other; list:			
Boat House	(20x15)	=	300
		=	13,939
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			4,404

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

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

Calculate:

Total from "Residential Structures":	4,404	+
Total from "Agricultural Structures":		+
Total from "Other Items":		+
Total square footage of coverage:	4,404	=
(divide by total area of parcel, above)	13,939	/
		=
TOTAL IMPERVIOUS SURFACE	31.6	%

signature

8/1/2023

date

corresponding permit number

Beth M. Gervais

From: Brian [redacted]
Sent: Monday, September 18, 2023 7:09 PM
To: Beth M. Gervais
Subject: Variance request for property 44050 Maple Lane, in Fish Lake Township PID 30.01315.00

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.

Hello Beth,

I am responding to the postcard I received last week regarding the Chisago County Board of Adjustment and Appeals meeting notice for Kyle & Laura Beste's after-the-fact Variance request.

I will start by saying that I have a 2009 variance related to repairing and replacing my lakeside deck. This was due to the severe hail storms and as part of a larger project rebuilding my damaged home. My contractor miscalculated the high water setback and we stopped construction for 2 months to request a variance that allowed us to place a single post hole footing slightly within the required Ordinary High Water Level setback. I also had planned on putting in a cement driveway but I was told up front that it would exceed the allowable amount of impervious surface. I do appreciate the approved variance for my deck footing.

With that said, I am wondering why this request is even being considered. The deck is easily 13-15 feet inside the high water setback. Whether due to arrogance or ignorance, it is astonishing to me that the owners totally disregard the building permit process and the required inspections. I am also wondering how the property owner was allowed to continue and finish their deck construction even after the inspector had notified them of the violations.

I do not know yet if I can make the board meeting scheduled for September 28th as I currently expect to be out of town. In the meantime, I wish to express my objection to the entire request and encourage the board to deny the variance. In my opinion, the property should be brought into compliance with both ordinances.

Please forward my letter to the board members.

Thank you,

Brian

Brian O'Donnell
44020 Maple Lane
Fish Lake Township PID 03.01313.00

Kyle & Laura Beste – Property owners Kyle & Laura Beste are requesting an after-the-fact Variance to Shoreland Management Ordinance Sections 5.21 and 5.52 in order for a recently constructed deck to encroach on the required Ordinary High Water Level setback and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District. The .22± acre subject site is located at 44050 Maple Lane in Fish Lake Township, S23, T36, R22 (PID 03.01315.00).

Beste Property -

Kyle & Laura Beste – Property owners Kyle & Laura Beste are requesting an after-the-fact Variance to Shoreland Management Ordinance Sections 5.21 and 5.52 in order for a recently constructed deck to encroach on the required Ordinary High Water Level setback and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District. The .22± acre subject site is located at 44050 Maple Lane in Fish Lake Township, S23, T36, R22 (PID 03.01315.00).

Beste Property -

RESOLUTION NO. BOAA2023-0901

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, APPROVING AN AFTER-THE-FACT VARIANCE TO ENCROACH ON THE REQUIRED ORDINARY HIGH WATER LEVEL SETBACK AND DENYING AN AFTER-THE-FACT VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF IMPERVIOUS SURFACE COVERAGE ON PROPERTY LOCATED AT 44050 MAPLE LANE IN FISH LAKE TOWNSHIP

WHEREAS, property owners Kyle Beste & Laura Beste submitted an application dated received August 3, 2023 and considered complete on August 10, 2023 for a Variance to Shoreland Management Ordinance Section 5.21 Placement of Structures and Sewage Treatment Systems on Lots and Section 5.52 Specific Standards; and

WHEREAS, the property owners are seeking after-the-Fact Variance approval for a recently constructed deck to encroach on the required Ordinary High Water Level (OHWL) setback by 14' (proposed setback of 61') and to exceed the maximum allowable amount of impervious surface coverage by 6.6% (proposed coverage of 31.6%); and

WHEREAS, the subject site is located in the Rural Residential I (RRI) District / Shoreland Management District where the required OHWL setback is 75' and the maximum allowable amount of impervious surface coverage is 25%; and

WHEREAS, the subject site is legally described as:

PID 03.01315.00
Lot 3, Maple Knoll, Chisago County, Minnesota.

WHEREAS, notice was provided and on September 28, 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 *Given that the recently constructed deck encroaches on the required OHWL setback and meets all other setbacks, the County finds that the encroachment will not have any impact on the supply or light and air to adjacent properties. Further, the County finds that the total amount of impervious surface coverage is due in large part to land covered by patios, the walkway, and the driveway, which again the County finds to have no impact on the supply of light and air to adjacent properties. The existing structures – including the dwelling and detached garage – appear to meet the required side yard setbacks, thereby suggesting that they won't impair the 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;

Approval & Denial

Finding #2 *The County finds that the proposed action has no correlation to the use of or congestion within the public Right-of-Way. Rather, the proposed action relates to encroachment on the OHWL and lot coverage.*

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 an after-the-fact building permit for the recently constructed deck, which will require that it be constructed in compliance with all applicable building and fire codes. The County finds that being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County further finds that the total amount of impervious surface coverage – which is due in large part to land covered by patios, the walkway, and the driveway – will have no impact on the danger of fire or endangerment of the public's safety.*

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

Finding #4 *Being that the subject site is currently developed with a dwelling and related detached accessory structures and the proposed action will not change how the property is being used or encroach on side yard setbacks / neighboring properties, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*

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

Finding #5 *The proposed action will not change the use of the subject site or intensify the use of / need for facilities and services; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.*

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

Finding #6 *The 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 intents of Shoreland Management Ordinance Sections 5.21 and 5.52 are to establish minimum setback requirements for structures and septic systems in relation to the OHWL and the maximum amount of impervious surface coverage; however, the Ordinance also allows for Variances from these requirements when the requested action is found to satisfy the State mandated practical difficulty standard.*

The County finds that the request to encroach on the required OHWL setback satisfies this standard given that the proposed encroachment is not exacerbating the existing OHWL setback encroachment of the dwelling and it's consistent with development in the surrounding area.

However, the County further finds that the request to exceed the maximum allowable amount of impervious surface coverage fails to satisfactorily address the practical

Approval & Denial

difficulty standard. The County recognizes that the subject site exceeded the maximum allowable amount of impervious surface coverage when the current property owners purchased the property in 2022; however, the current property owners exacerbated the pre-existing illegal non-conforming amount of impervious surface coverage by adding 265 sf of additional impervious surface through construction of a semi-circular patio with the primary stated justification for the patio being aesthetics. Without sufficient demonstration of compliance with the practical difficulty standard, the County has determined that the property owners must reduce the overall amount of impervious surface coverage to no more than 25%.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for an after-the-fact Variance to encroach on the required OHWL setback is hereby **approved** and the request for an after-the-fact Variance to exceed the maximum allowable amount of impervious surface coverage is hereby **denied**, subject to the following conditions:

1. **The after-the-fact Variance request to encroach on the required Ordinary High Water Level (OHWL) setback by 14' is approved**, allowing for a recently constructed deck to be situated 61' from the OHWL of Horseshoe Lake.
2. **The after-the-fact Variance request to exceed the maximum allowable amount of impervious surface coverage by 6.6% is denied**, requiring that the property owners reduce the total amount of impervious surface to an amount no greater than 3,484.75 sf (lot area of 13,939 sf x 25% = 3,484.75 sf) through elimination of existing impervious surfaces or replacement of existing impervious materials with new pervious materials. Further, reduction of impervious surface coverage to an amount no greater than 3,484.75 sf shall be complete within one year from the date of this resolution (September 28, 2024).
3. The subject site shall be developed in general conformance with the updated application materials dated received August 14, 2023, except as specifically conditioned herein (specifically in relation to condition no. 2 above). 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 property owner's expense.
4. The property owner shall obtain an after-the-fact building permit for construction of the deck.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

Approval & Denial

RESOLUTION NO. BOAA2023-0901

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, APPROVING AN AFTER-THE-FACT VARIANCE TO ENCROACH ON THE REQUIRED ORDINARY HIGH WATER LEVEL SETBACK AND TO EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF IMPERVIOUS SURFACE COVERAGE ON PROPERTY LOCATED AT 44050 MAPLE LANE IN FISH LAKE TOWNSHIP

WHEREAS, property owners Kyle Beste & Laura Beste submitted an application dated received August 3, 2023 and considered complete on August 10, 2023 for a Variance to Shoreland Management Ordinance Section 5.21 Placement of Structures and Sewage Treatment Systems on Lots and Section 5.52 Specific Standards; and

WHEREAS, the property owners are seeking after-the-Fact Variance approval for a recently constructed deck to encroach on the required Ordinary High Water Level (OHWL) setback by 14' (proposed setback of 61') and to exceed the maximum allowable amount of impervious surface coverage by 6.6% (proposed coverage of 31.6%); and

WHEREAS, the subject site is located in the Rural Residential I (RRI) District / Shoreland Management District where the required OHWL structural setback is 75' and the maximum allowable amount of impervious surface coverage is 25%; and

WHEREAS, the subject site is legally described as:

PID 03.01315.00
Lot 3, Maple Knoll, Chisago County, Minnesota.

WHEREAS, notice was provided and on September 28, 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 *Given that the recently constructed deck encroaches on the required OHWL setback and meets all other setbacks, the County finds that the encroachment will not have any impact on the supply or light and air to adjacent properties. Further, the County finds that the total amount of impervious surface coverage is due in large part to land covered by patios, the walkway, and the driveway, which again the County finds to have no impact on the supply of light and air to adjacent properties. The existing structures – including the dwelling and detached garage – appear to meet the required side yard setbacks, thereby suggesting that they won't impair the 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;

Approval

Finding #2 *The County finds that the proposed action has no correlation to the use of or congestion within the public Right-of-Way. Rather, the proposed action relates to encroachment on the OHWL and lot coverage.*

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 an after-the-fact building permit for the recently constructed deck, which will require that it be constructed in compliance with all applicable building and fire codes. The County finds that being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County further finds that the total amount of impervious surface coverage – which is due in large part to land covered by patios, the walkway, and the driveway – will have no impact on the danger of fire or endangerment of the public's safety.*

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

Finding #4 *Being that the subject site is currently developed with a dwelling and related detached accessory structures and the proposed action will not change how the property is being used or encroach on side yard setbacks / neighboring properties, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*

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

Finding #5 *The proposed action will not change the use of the subject site or intensify the use of / need for facilities and services; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.*

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

Finding #6 *The 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 located in the Shoreland Management District and the Shoreland Management Ordinance establishes minimum setback requirements for structures and the maximum allowable amount of impervious surface coverage; however, the Ordinance also allows for Variances from these 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's official land use controls and satisfies the three-factor test of uniqueness, reasonableness and essential character, in that the proposed encroachment is not exacerbating the existing OHWL setback encroachment of the dwelling and it's consistent with development in the surrounding area and the proposed amount of impervious surface coverage was in large part a pre-existing condition.*

Approval

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for an after-the-fact Variance to encroach on the required OHWL setback and to exceed the maximum allowable amount of impervious surface coverage is hereby **approved**, subject to the following conditions:

1. This approval grants the following after-the-fact Variances:
    a. A 14' Variance to the Ordinary High Water Level (OHWL) setback requirement, allowing a recently constructed deck to be situated 61' from the OHWL of Horseshoe Lake.
    b. A 6.6% Variance to the maximum allowable amount of impervious surface coverage, allowing a total coverage of 31.6%.
2. The subject site shall be developed in general conformance with the updated application materials dated received August 14, 2023. 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 property owner's expense.
3. The property owners shall obtain an after-the-fact building permit for construction of the deck.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

Approval

Staff Report

TO: Board of Adjustment and Appeals
FROM: Beth Gervais, Land Services Coordinator
SUBJECT: Variance to Allow Fence Exceeding the Maximum Allowable Height
32442 Northshire Court, Chisago Lake Township
DATE: September 28, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing the construction of a six (6) foot tall fence along a side lot line in the Rural Residential I (RRI) District where the maximum allowable height is four (4) feet.

SITE & APPLICATION INFORMATION

Applicant(s):	John & Marie Keefe
Property Owner(s):	John & Marie Keefe
Property Address:	32442 Northshire Court Chisago Lake Township
General Location:	Section 21, Township 34, Range 20
PID:	02.01316.03
Property Area:	3.93± Acres
Current Zoning:	Rural Residential I (RRI) 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:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	August 24, 2023
Date Application Complete:	August 28, 2023
60-Day Review Period:	October 27, 2023

BACKGROUND

Property owners John & Marie Keefe are requesting a Variance in order to construct a 6’ tall fence along nearly the full length of their southerly property boundary (side yard) where the maximum allowable height is 4’. The length of the southerly property boundary, as platted, is 368.58’ and, after excluding 40’ for the front non-buildable setback area where the fence regulations differ, the length of fence is estimated by staff to be as much as 328.58’.

SITE ANALYSIS

The subject site is 3.93± acres in size and located at the north end of the Northshire Court cul-de-sac in

the Imperial Estates subdivision which was platted in 1980. Topography of the site includes somewhat rolling elevations of 918' to 934', two wetland areas, and heavy vegetation throughout. The site has been developed with a dwelling and attached garage.

The subject site and all surrounding properties are lcoated in the Rural Residential I (RRI) District. All surrounding properties are wholly or partially located in the Shoreland Management District, with approximately one-quarter acre of the Keefe's property – located along the easterly property boundary – being located in the Shoreland Management District. Surrounding properties within the Imperial Estates subdivision range in size from 1.11 acres to 3.93 acres and all properties have been developed with the exception of the property immediately east of the subject site, which is also owned by John & Marie Keefe.

PROPOSAL ANALYSIS

The attached application materials explain and illustrate that the property owners wish to install a 6' tall fence along their southerly side yard where the maximum allowable height is 4'. During the September 13, 2023 Technical Review Committee meeting, J. Keefe clarified that the proposed fence would start at a tree identified on the attached site plan and could potentially run westerly for the full distance of the southerly property boundary to the point where that boundary meets the westerly property boundary. Fence regulations differ within the front non-buildable setback area – which includes the area measured 40' from the township Right-of-Way boundary – and the County's GIS Viewer shows that the tree / easterly end of the fence will be located outside of the front non-buildable setback area.

The written narrative explains that the Keefes are proposing a 6' tall fence in an effort to keep the neighboring property owner from parking vehicles and storing miscellaneous equipment and supplies on the Keefe property but primarily to keep the neighboring Pitbull dog from entering the Keefe property. It should be noted that the narrative acknowledges that a 4' tall fence would address the issue of vehicles and miscellaneous equipment; however, the narrative also cites a blog which suggests that fences for Pitbulls should ideally be at least 6' in height to prevent them from jumping over the top.

The written narrative attempts to address the State mandated practical difficulty standard by offering that the property owners believe this is a reasonable request so that they can enjoy their land with a reasonable level of security from harm; that the situation is unique and not of their doing; and, that the proposed 6' tall fence would not detract from the essential character of the neighborhood given that the proposed fence location is heavily wooded, screened by structures, and located at the end of a cul-de-sac.

The table below provides a comparison of fence regulations for the Rural Residential I (RRI) District and corresponding information for the proposed Variance shown in red.

	RRI District Standards for Fences	**Proposed**
Keefe Property (PID 02.01316.03)	Fences may be located on side or rear lot lines to a height of four (4) feet above finished grade.	6' tall fence along the southerly side yard, outside of the front non-buildable area

REVIEW PROCESS

The Technical Review Committee met with property owners John & Marie Keefe on September 13, 2023. J. Keefe provided clarification on the location of the fence and explained that the primary goal is to prevent the neighboring dog from entering the Keefe property. The group discussed varying fence requirements for the side yard and front yard, but no concerns were identified.

The Chisago Lake Town Board considered the request at its September 19, 2023 meeting and recommended approval with the notation of "very reasonable request".

The State mandated 60-day review period expires on October 27, 2023.

WRITTEN TESTIMONY

Written testimony was received from Doug Nelson of 32405 Northshire Court, Chisago Lake Township on September 13, 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 application materials cite issues with a neighboring property owner and the neighboring property owner's dog as exceptional or extraordinary circumstances relating to this request. Unfortunately, these issues do not relate to the property itself and relate instead to personal circumstances between neighbors.

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

   Literal interpretation of the Zoning Ordinance would not deprive the property owners of rights commonly enjoyed by other RRI District properties. The Zoning Ordinance would allow a fence up to four feet in height along the southerly property boundary but the property owners are choosing to request a Variance in order to increase the height. Staff recognizes that the proposed fence height is primarily intended to prevent a neighboring dog from entering the subject site; however, the fence provisions within the Zoning Ordinance are not intended to address or prevent issues / disputes between neighbors. As discussed below (refer to no. 6), Variances are intended to provide relief from unique circumstances relating to the property itself.

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;

   If the Board accepts the cited issues of the neighbor parking vehicles and storing miscellaneous equipment and supplies on the subject site and the neighboring dog entering the subject site, then these are conditions and circumstances that do not result from actions of the applicants. These are conditions and circumstances which result from the neighboring property owner.

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

   Fences are a permitted accessory use in the RRI District; therefore, this would not be considered a use Variance.

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

   Staff suspects that the property owners have requested the minimum Variance needed to alleviate their stated hardship (neighbor parking vehicles and storing miscellaneous equipment and supplies on the subject site and the neighboring dog entering the subject site).

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

   Zoning Ordinance Section 8.05 states that the Board of Adjustment and Appeals is responsible for considering appeals and Variance requests. In regard to Variances, the Ordinance specifically states that the Board is responsible to "hear and decide requests for Variances from the literal provisions of [the] Ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration. Further, LMC guidance on the State mandated practical difficulty standard – which includes uniqueness – advises that uniqueness relates to physical characteristics of the property(ies) in question, such as sloping topography or other natural features like wetlands or trees. Staff does not believe that the application materials adequately demonstrate compliance with the County's stated purpose of the Variance process and the State mandated practical difficulty standard.

   Staff does not believe that the Variance, if approved, would necessarily be detrimental to other properties in the RRI District but does believe that the Variance would be contrary and detrimental to the purposes and intent of the Zoning Ordinance.

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

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

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

   The subject site is not located in a flood district.

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

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

granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

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

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

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

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

FINDINGS OF FACT

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

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

Finding #1 *Given that the proposed fence is located along a side property boundary and all adjacent structures meet and exceed the required side yard setback of 10', the County finds that the proposed fence will be situated in a location which has no impact on the supply of light or air to adjacent structures and, therefore, properties.*

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

Finding #2 *The proposed action relates to the installation of a fence which the County finds to have no impact on the amount of traffic generated at the subject site or congestion on surrounding roadways. The County further finds that the fence being installed along a*

side property boundary outside of the front non-buildable setback area will not cause traffic obstructions or hazards.

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

Finding #3 *The County finds no evidence to suggest that the proposed fence will have any impact on the danger of fire or public safety.*

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

Finding #4 *Being that proposed fence is intended to provide a physical barrier between two properties and much of the fence will be located in an area which is already heavily wooded, the County finds no evidence to suggest that the proposed fence will cause undue negative impacts to surrounding properties.*

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

Finding #5 *The County finds no correlation between the proposed fence and the impact upon existing facilities and services. Rather, the proposed fence is an accessory use to an existing dwelling.*

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

Finding #6 *The County finds no evidence that the proposed fence will have a negative fiscal impact on the County or school district.*

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

Finding #7 *Zoning Ordinance Section 8.05 states that the Board of Adjustment and Appeals is responsible for considering appeals and Variance requests. In regard to Variances, the Ordinance specifically states that the Board is responsible to "hear and decide requests for Variances from the literal provisions of [the] Ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration. Further, guidance on the State mandated practical difficulty standard – which includes uniqueness – advises that uniqueness relates to physical characteristics of the property(ies) in question, such as sloping topography or other natural features like wetlands or trees. The County finds that the request is based on issues between two neighboring property owners (i.e., a boundary line dispute and a dangerous dog) and fails to demonstrate compliance with the County's stated purpose of the Variance process and, further, fails to demonstrate compliance with the State mandated practical difficulty standard, specifically in terms of uniqueness.*

-OR-

The subject site is zoned Rural Residential I (RRI) District and the Zoning Ordinance allows fences which are located on side and rear lot lines to be up to four (4) feet in height. While the proposed fence is contrary to the RRI District fence regulations, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed

fence is a reasonable accessory use in a residential zoning district, that the circumstances necessitating the proposed fence are unique to the subject site, and that the proposed fence will fit the essential character of the neighborhood given that fences are commonly found in residential neighborhoods.

STAFF RECOMMENDATION

Staff absolutely sympathizes with the circumstances behind the Keefe request; however, staff does not believe that the Variance process is intended to remedy situations such as boundary line disputes and dangerous dogs. Instead, Variances are intended to remedy unique circumstances related to the property itself (i.e., sloping topography, other natural features like wetlands or trees, etc.). Therefore, staff reluctantly cannot support the request for Variance and encourages the property owners to seek another form of relief.

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 denial** of the 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 #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 Variance approval allows for the installation of a six (6') foot tall fence, as measured from the finished grade, on the southerly property boundary (side yard) in the Rural Residential I (RRI) District where the maximum allowable height is four (4') feet.
2. The fence shall not be located within the front non-buildable setback area of the property, which is measured 40' from the township Right-of-Way boundary. Any fence installed in this area shall comply with the Chisago County Zoning Ordinance at time of installation.
3. The approved fence shall be constructed in general conformance with application materials dated received August 24, 2023 and kept on file with the Department of Environmental Services, except as specifically conditioned herein. Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended. *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 27, 2023, allowing for further review and consideration at the Board's October 26, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0902, a resolution denying a Variance to exceed the maximum allowable fence height on property located at 32442 Northshire Court 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 (aerial image)
    d. Site plan (non-aerial image)
2. Written testimony from Doug Nelson
3. Aerial photo (1) – subject site
4. Aerial photo (2) – vicinity map
5. Draft Resolution No. BOAA2023-0902 (denial)
6. Draft Resolution No. BOAA2023-0902 (approval)

CC: John & Marie Keefe, property owners
County file

Chisago County Department of Environmental Services
Planning & Zoning Application

Permit # 23-1546

Township Chisago Lake **S/T/R** 21/034/020 **PID#** 02.01316.03

Project Address 32442 Northshire Ct., Lindstrom, MN 55045

Property Owner(s) John & Marie Keefe

Mailing Address (If Different from Project Address) _____

Phone# [redacted] **Email** [redacted]

Applicant(s) John & Marie Keefe

Mailing Address (If Different from Project Address) _____

Phone# _____ **Email** _____

Type of Request (Check All That Apply)

Legal: Imperial Estates, L3, B1 RP1

Board of Adjustment & Appeals	Planning Commission	
☒ Variance	☐ Conditional Use Permit (CUP)	☐ Preliminary Plat
☐ Administrative Appeal	☐ Interim Use Permit (IUP)	☐ Rezoning
	☐ Amendment to CUP or IUP	☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) Install a 6 foot ~~high~~ ~~chain~~ high yard fence along the south (side-yard) lot rear boundary line.

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

☑ Full Legal Description ☑ Detailed Site Plan ☑ Detailed Written Narrative ☑ Plat Drawings

John & Marie Keefe — **Applicant Signature**

8-21-2023 — **Date of Application**

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

Fees		Dates	
Base Fee	$ 500 —	Application Received	8-24-23
Recording Fee	$ 46 —	Application Complete	8-28-23
Plat Fee – No Road(s) / With Road(s)	$	(60) / 120 Day Review Period	10-27-23
Septic Compliance Fee	$	Extended Review Period	
Wetland Fee	$		
TOTAL FEE	$ 546 —		

V

Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Chisago Lake **S/T/R** 21/034/020 **PID#** 02.01316.03

Project Address 32442 Northshire Ct., Lindstrom, MN 55045

Property Owner(s) John & Marie Keefe

Mailing Address (If Different from Project Address)

Phone# [redacted] **Email** [redacted]

Applicant(s) John & Marie Keefe

Mailing Address (If Different from Project Address)

Phone# **Email**

Type of Request (Check All That Apply)

Board of Adjustment & Appeals
- ☒ Variance
- ☐ Administrative Appeal

Planning Commission
- ☐ Conditional Use Permit (CUP)
- ☐ Interim Use Permit (IUP)
- ☐ Amendment to CUP or IUP
- ☐ Preliminary Plat
- ☐ Rezoning
- ☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) Install a 6 foot high property fence along the south (side yard) lot boundary line

John S. Keefe Marie Keefe
Applicant Signature

8-21-2023
Date of Application

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

****

Date of County Public Hearing SEPT 28, 2023 **Date of Township Presentation** SEPT 29, 2023

Township Action Taken (Township Use Only)

☒ Recommendation of Approval ☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

very reasonable request

Signatures of Township Officials or Authorized Personnel

✓

John & Marie Keefe NARATIVE for FENCE HEIGHT VARIANCE REQUEST

We are seeking a variance to the lot line side yard fence height requirement of four feet (4') to permit a six foot (6') high fence along the side yard lot line.

The current ordinance allows for a four foot high fence along the side yard & rear yard property line, which would be sufficient to keep the neighboring property owner from parking vehicles and storing miscellaneous equipment and supplies on our property. This has been the normal practice of the neighboring property owner over the last three years.

The additional problem is that the neighbor has an American Pit Bull Terrier that too frequently disrupts, intimidates or prohibits our use of our land. The dog attacked our dog on the front steps of our home within weeks of our moving in, and didn't release our dog until his owners pulled him off. He later required stitches to repair the damage.

On another occasion the pit bull killed a woodchuck in our backyard and resisted my approach to run him off. The next morning when I found the dead woodchuck the dog approached me and tried to run me off, and only the intervention of his owner ended the standoff.

Most recently he accosted Marie while we were measuring the lot line for fence placement and grabbed her arm with his mouth. He released her when I approached them yelling, when squared off with me. Again, he didn't back down until his owners pulled him away. I hate to think of the outcome of these instances had his owners not been around. There appears to be times when the dog is loose and the owners are gone. I think it's only a matter time before someone is seriously injured or worse.

The neighbors claim that their invisible fence is all that's necessary to restrain him. So far that hasn't worked. The question is how high does a fence have to be to be adequate? The following are excerpts from the hepper blog https://www.hepper.com/how-high-can-a-pitbull-jump/#How_High_Should_a_Fence_Be_for_a_Pit_Bull for reference:

How High Should a Fence Be for a Pit Bull?

A fence for a Pitbull should ideally be at least 6 feet tall to prevent them from jumping to the top and then struggling to come back down again. You should also consider the type of fence that you choose to put up and what materials it is made from. There are numerous types of fences made with different materials that are suited for dogs which include plastic, wood, metal, stone, brick, and chain links.

Installing a roll bar on the top is an effective trick to prevent your Pitbull from jumping over the fence. Planting hedges or spiky plants may also deter your dog from approaching the fence.

However, installing a large, strong fence may not be an option. It could be because of fussy neighbors or neighborhood restrictions. A wired, electric fence may be helpful since it's invisible, and you can create a barrier with a collar that makes a noise when the dog gets too close. With patience and determination, your Pitbull can be trained not to approach or breach the fence.

Conclusion

Pitbulls have the potential to be excellent jumpers if given the correct training, but in general, they can quickly jump 4–5 feet in height. Compared to other dogs, this height is pretty average. Their muscular bodies and ability to jump high can create an issue for personal boundaries and fence hopping. You need to ensure you have a tall fence that is hard for your Pitbull to jump over, and you must discourage aggressive behavior at the fence line.

A minimum six foot (6') fence height is required according to this blog, which is the reason for this requested variance. The placement along the property line is necessary to prevent encroachments.

I believe, given the circumstances, that it is a reasonable request so we can enjoy our land with a reasonable level of security from harm. This is hopefully a unique situation not of our doing. The current standard is a four foot high fence and we only requesting two more feet for it to be an effective safety barrier. I don't think that the essential character of the neighborhood would be altered in any way given the fence location in a heavily wooded area screened by proximate structures at the end of a culdesac. In other words it's not readily visible.

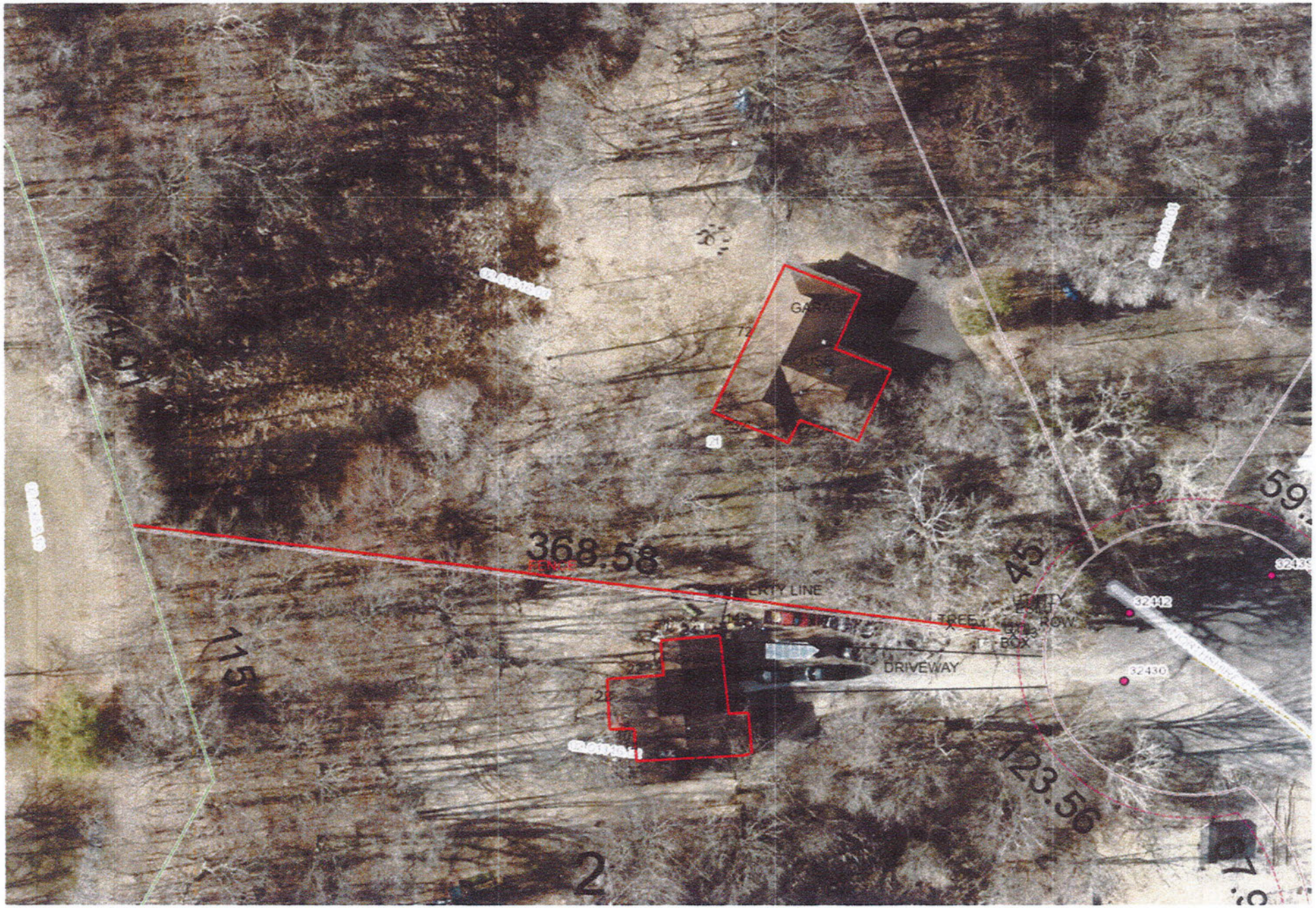
I hope you will give us favorable result of this requested variance, and we thank you for your thoughtful consideration.

Sincerely,

John and Marie Keefe

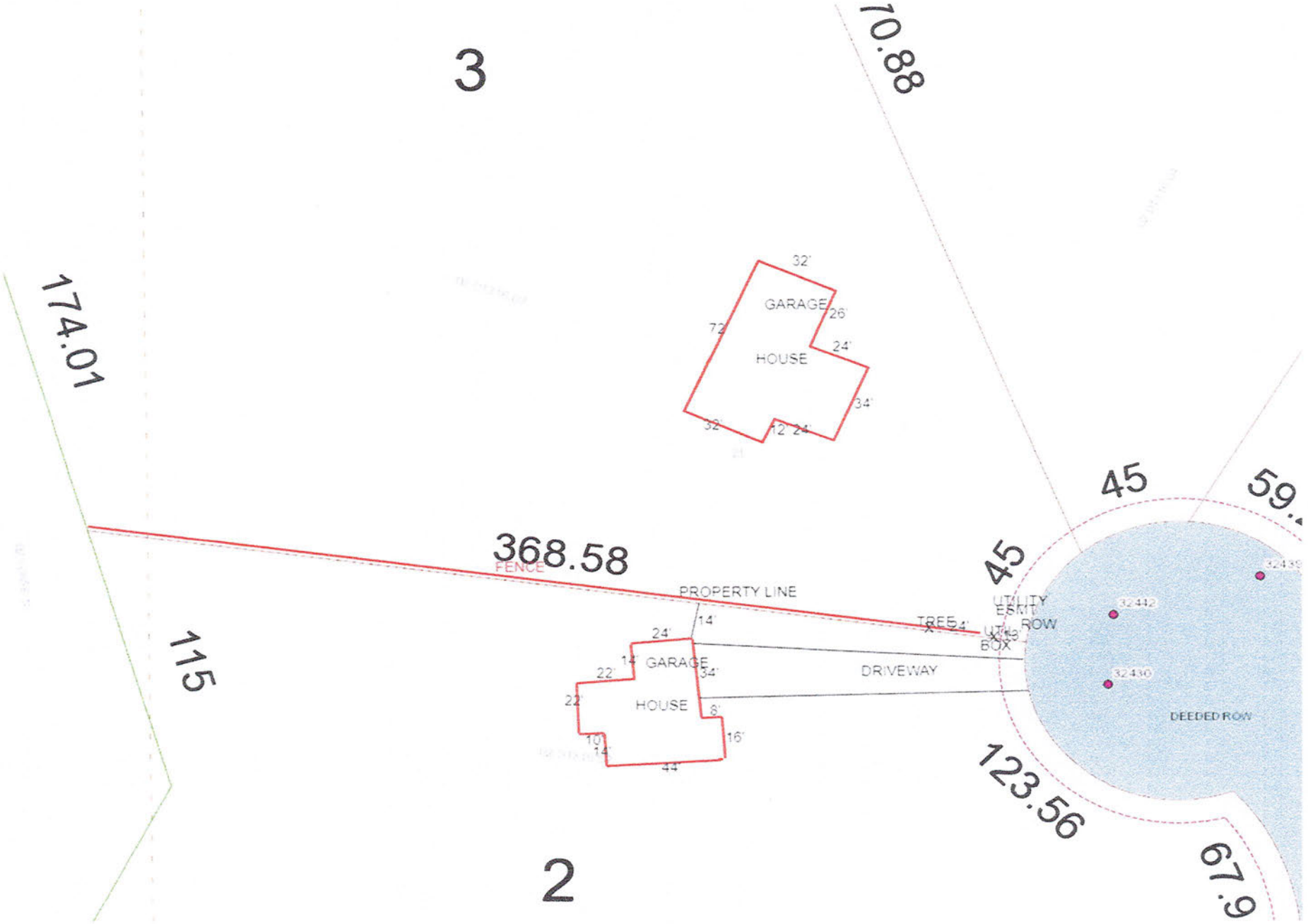
DETAILED AERIAL DRAWING

JOHN & MARIE KEEFE 32442 Northshire Court, Lindstrom, MN 55045



DETAILED PLAT DRAWING

JOHN & MARIE KEEFE 32442 Northshire Court, Lindstrom, MN 55045



Beth M. Gervais

From: Doug Nelson [redacted]
Sent: Wednesday, September 13, 2023 10:47 AM
To: Beth M. Gervais
Subject: Fence variance for neighbor

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.

Hello Beth,

I received a letter in the mail regarding my neighbors John & Marie Keefe requesting a variance for a fence to put between their house and their nextdoor neighbor. Both of these houses are across the street from me. I fully support John and Marie putting the fence up and have no issues with it.

Thanks,

Doug Nelson
32405 Northshire Ct.
Lindstrom, MN 55045
[redacted]

John & Marie Keefe – Property owners John & Marie Keefe are requesting a Variance to Zoning Ordinance Section 4.09 in order to construct a six (6) foot tall fence along a side lot line in the Rural Residential I (RRI) District where the maximum allowable height is four (4) feet. The 3.93± acre subject site is located at 32442 Northshire Court in Chisago Lake Township, S21, T34, R20 (PID 02.01316.03).

Keefe Property -

John & Marie Keefe – Property owners John & Marie Keefe are requesting a Variance to Zoning Ordinance Section 4.09 in order to construct a six (6) foot tall fence along a side lot line in the Rural Residential I (RRI) District where the maximum allowable height is four (4) feet. The 3.93± acre subject site is located at 32442 Northshire Court in Chisago Lake Township, S21, T34, R20 (PID 02.01316.03).

Keefe Property -

RESOLUTION NO. BOAA2023-0902

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, DENYING A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE FENCE HEIGHT ON PROPERTY LOCATED AT 32442 NORTHSHIRE COURT IN CHISAGO LAKE TOWNSHIP

WHEREAS, property owners John Keefe & Marie Keefe submitted an application dated received August 24, 2023 and considered complete on August 28, 2023 for a Variance to Zoning Ordinance Section 4.09 Fences; and

WHEREAS, the property owners wish to construct a 6' tall fence along their southerly property boundary (side yard) where the maximum allowable height is 4'; and

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

WHEREAS, the subject site is legally described as:

PID 02.01316.03
Lot 3, Block 1, Imperial Estates, Chisago County, Minnesota

WHEREAS, notice was provided and on September 28, 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 *Given that the proposed fence is located along a side property boundary and all adjacent structures meet and exceed the required side yard setback of 10', the County finds that the proposed fence will be situated in a location which has no impact on the supply of light or air to adjacent structures and, therefore, properties.*

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

Finding #2 *The proposed action relates to the installation of a fence which the County finds to have no impact on the amount of traffic generated at the subject site or congestion on surrounding roadways. The County further finds that the fence being installed along a side property boundary outside of the front non-buildable setback area will not cause traffic obstructions or hazards.*

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

Finding #3 *The County finds no evidence to suggest that the proposed fence will have any impact on the danger of fire or public safety.*

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

Finding #4 *Being that proposed fence is intended to provide a physical barrier between two properties and much of the fence will be located in an area which is already heavily*

DENIAL

wooded, the County finds no evidence to suggest that the proposed fence will cause undue negative impacts to surrounding properties.

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

Finding #5 *The County finds no correlation between the proposed fence and the impact upon existing facilities and services. Rather, the proposed fence is an accessory use to an existing dwelling.*

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

Finding #6 *The County finds no evidence that the proposed fence will have a negative fiscal impact on the County or school district.*

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

Finding #7 *Zoning Ordinance Section 8.05 states that the Board of Adjustment and Appeals is responsible for considering appeals and Variance requests. In regard to Variances, the Ordinance specifically states that the Board is responsible to "hear and decide requests for Variances from the literal provisions of [the] Ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration. Further, guidance on the State mandated practical difficulty standard – which includes uniqueness – advises that uniqueness relates to physical characteristics of the property(ies) in question, such as sloping topography or other natural features like wetlands or trees. The County finds that the request is based on issues between two neighboring property owners (i.e., a boundary line dispute and a dangerous dog) and fails to demonstrate compliance with the County's stated purpose of the Variance process and, further, fails to demonstrate compliance with the State mandated practical difficulty standard, specifically in terms of uniqueness.*

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 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

DENIAL

RESOLUTION NO. BOAA2023-0902

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, APPROVING A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE FENCE HEIGHT ON PROPERTY LOCATED AT 32442 NORTHSHIRE COURT IN CHISAGO LAKE TOWNSHIP

WHEREAS, property owners John Keefe & Marie Keefe submitted an application dated received August 24, 2023 and considered complete on August 28, 2023 for a Variance to Zoning Ordinance Section 4.09 Fences; and

WHEREAS, the property owners wish to construct a 6' tall fence along their southerly property boundary (side yard) where the maximum allowable height is 4'; and

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

WHEREAS, the subject site is legally described as:

PID 02.01316.03
Lot 3, Block 1, Imperial Estates, Chisago County, Minnesota

WHEREAS, notice was provided and on September 28, 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 *Given that the proposed fence is located along a side property boundary and all adjacent structures meet and exceed the required side yard setback of 10', the County finds that the proposed fence will be situated in a location which has no impact on the supply of light or air to adjacent structures and, therefore, properties.*

Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;
Finding #2 *The proposed action relates to the installation of a fence which the County finds to have no impact on the amount of traffic generated at the subject site or congestion on surrounding roadways. The County further finds that the fence being installed along a side property boundary outside of the front non-buildable setback area will not cause traffic obstructions or hazards.*

Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
Finding #3 *The County finds no evidence to suggest that the proposed fence will have any impact on the danger of fire or public safety.*

Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
Finding #4 *Being that proposed fence is intended to provide a physical barrier between two properties and much of the fence will be located in an area which is already heavily wooded, the County finds no evidence to suggest that the proposed fence will cause undue negative impacts to surrounding properties.*

APPROVAL

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

Finding #5 *The County finds no correlation between the proposed fence and the impact upon existing facilities and services. Rather, the proposed fence is an accessory use to an existing dwelling.*

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

Finding #6 *The County finds no evidence that the proposed fence will have a negative fiscal impact on the County or school district.*

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

Finding #7 *The subject site is zoned Rural Residential I (RRI) District and the Zoning Ordinance allows fences which are located on side and rear lot lines to be up to four (4) feet in height. While the proposed fence is contrary to the RRI District fence regulations, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed fence is a reasonable accessory use in a residential zoning district, that the circumstances necessitating the proposed fence are unique to the subject site, and that the proposed fence will fit the essential character of the neighborhood given that fences are commonly found in residential neighborhoods.*

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 Variance approval allows for the installation of a six (6') foot tall fence, as measured from the finished grade, on the southerly property boundary (side yard) in the Rural Residential I (RRI) District where the maximum allowable height is four (4') feet.
2. The fence shall not be located within the front non-buildable setback area of the property, which is measured 40' from the township Right-of-Way boundary. Any fence installed in this area shall comply with the Chisago County Zoning Ordinance at time of installation.
3. The approved fence shall be constructed in general conformance with application materials dated received August 24, 2023 and kept on file with the Department of Environmental Services, except as specifically conditioned herein. Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

APPROVED

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
30583 Lofton Avenue / CSAH 24, Chisago Lake Township
DATE: September 28, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing a total of 4,852 square feet of accessory storage space in the Rural Residential II (RRII) District where the maximum allowable amount is 2,000 square feet.

SITE & APPLICATION INFORMATION

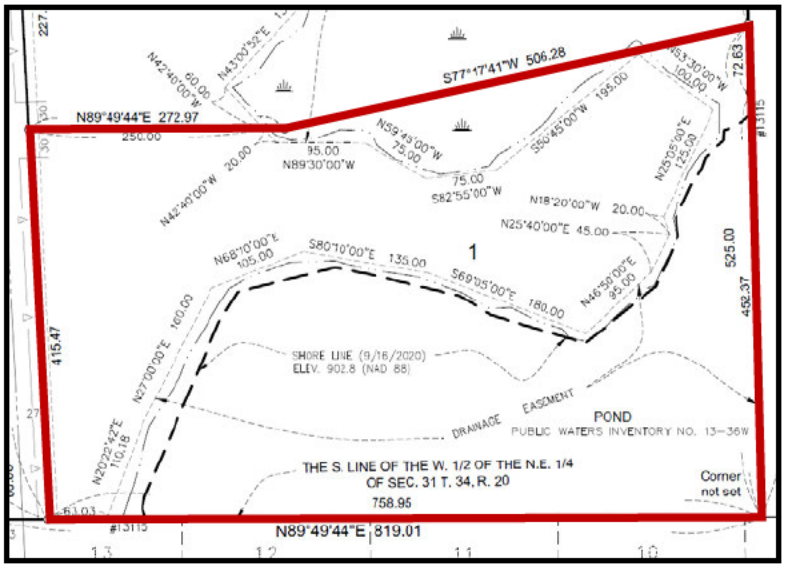
Applicant(s):	Garrett & Carrie Mueller
Property Owner(s):	Garrett & Carrie Mueller
Property Address:	30583 Lofton Avenue / CSAH 24 Chisago Lake Township
General Location:	Section 31, Township 34, Range 20
PID:	02.00848.10
Property Area:	7.90± Acres
Current Zoning:	Rural Residential II (RRII) District
Adjacent Zoning:	
North:	Rural Residential II (RRII) District
South:	Rural Residential II (RRII) District / Shoreland Management District
East:	Rural Residential II (RRII) District
West:	Rural Residential II (RRII) District / Shoreland Management District
Date Application Received:	August 29, 2023
Date Application Complete:	August 31, 2023
60-Day Review Period:	October 30, 2023

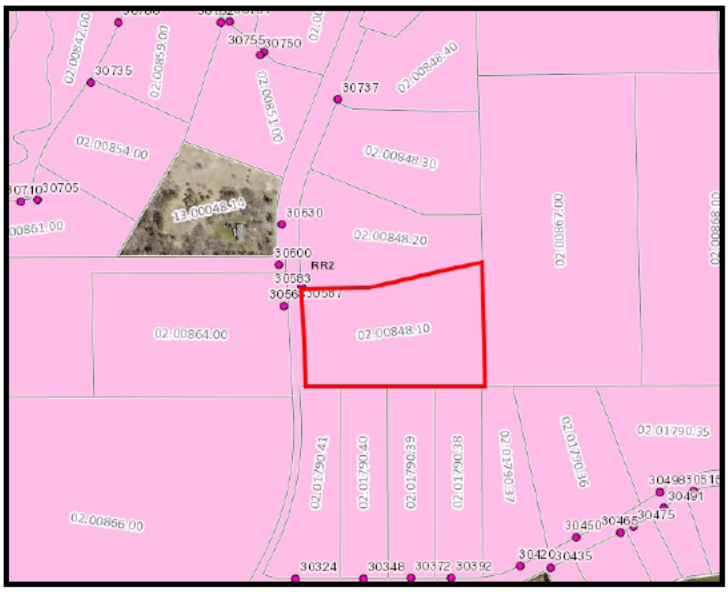
BACKGROUND

Property owners Garrett & Carrie Mueller wish to construct a 54' x 64' (3,456 sf) detached accessory structure on property located at 30583 Lofton Avenue / CSAH 24 in Chisago Lake Township. In addition to the proposed detached accessory structure, the subject site has been developed with a dwelling and 1,396 sf (four stall) attached garage. In total, the property owners wish to have 4,852 sf of accessory storage space. The subject site is located in the Rural Residential II (RRII) District, where – based on the size of the property – the maximum allowable amount of accessory storage space is 2,000 sf.

SITE & HISTORICAL ANALYSIS

The Mueller's 7.90± acre property is generally located four tenths (.4) of a mile south of the intersection of Stacy Trail / CSAH 19 and Lofton Avenue / CSAH 24 on the east side of Lofton Avenue / CSAH 24 in Chisago Lake Township. The site is situated between Lake Mattson, School Lake and Wallmark Lake, and also includes and is immediately adjacent to a pond (see adjacent plat image for reference). The pond is not a protected waterbody and, being that the site is more than 1,000 feet from Lake Mattson, School Lake and Wallmark Lake, the site isn't subject to the County's Shoreland Management Ordinance. Topography of the subject site includes elevations ranging from 904' near the edge of the pond to 919' near the east wall of the dwelling to 924' near the roadway. The site also appears to be somewhat heavily wooded near the roadway and approximately half of the site is classified as wetland (i.e., the pond).





The subject site has been developed with a dwelling and a 1,396 sf attached garage, and there does not appear to be any detached accessory structures currently on the property. The subject site and all surrounding properties – with the exception of a parcel to the northwest which is located within the City of Chisago City – are zoned Rural Residential II (RRII) District, with several neighboring properties also located in the Shoreland Management District. The adjacent image shows the RRII District in pink.

While the subject site has enough frontage to support two parcels in the RRII District, it's highly unlikely that the site could be further subdivided due to an insufficient amount of buildable land and other dimensional considerations.

The property was platted as Lot 1, Block 1, Mueller Addition in 2021. The site, along with three other parcels directly north, were platted by Mueller Properties, LLC / Garrett Mueller. Being that the subject site was recently platted, it is a legal conforming parcel which meets all required dimensional standards of the RRII District. When Mueller Addition was platted in 2021, the parcel immediately north was already developed and considered to be legal non-conforming because the combined square footage of the attached and detached accessory structures exceeded the total amount of accessory storage space allowed in RRII District (2,000 sf). The staff report prepared for the Preliminary Plat clearly explained that the pre-existing development was allowed to remain but amount of accessory storage space could

not be expanded and the three newly created parcels – including the subject site - would be subject to the RRII District regulations in effect at the time of development, which includes the maximum allowable amount of accessory storage space. This means that the Muellers were made aware at the time of platting that the subject site would be limited to 2,000 sf of accessory storage space.

It could be said that the property owners created their own "hardship" by creating parcels more compatible with the Agricultural (AG) District in terms of lot area, which is cited by the property owners in the attached written narrative as being part of the reason for seeking the Variance. The minimum lot size in the RRII District is two acres, whereas the minimum lot size in the AG District is five acres. This circumstance does not only apply to Mueller Addition; there are a number of RRII parcels greater than two acres in size in the immediate vicinity and throughout the County.

PROPOSAL ANALYSIS

The attached site plan shows that the proposed 54' x 64' (3,456 sf) detached accessory structure will be situated south of the driveway, north of the septic system, and 135' east of the centerline of Lofton Avenue / CSAH 24. The distance to the pond in unknown; however, there is no required setback. As proposed, the structure will meet all required setbacks. The height elevation of the proposed structure is unknown but, per the County's Zoning Ordinance, it will not be allowed to exceed the height of the dwelling. The property owners have provided a rendering of the proposed structure for reference (see attached) and have described the structure as having a stone wainscoting front, windows, and color to match the existing dwelling.

The attached written narrative suggests that the proposed accessory structure is an agricultural building; however, the subject site does not have and is not eligible to have an agricultural tax classification. Therefore, in terms of zoning, the proposed structure is classified as a non-agricultural accessory structure.

The written narrative states that the property owners would like the proposed structure in order to "keep [their] belongings and the property safe, clean, neat, and secure from theft and the elements for as long as possible". The narrative further states that the subject site is unique in that it's 7.99 acres in size and almost entirely surrounded by water and marshland, and that the subject area is not a "typical RRII neighborhood" in that many of the surrounding properties are five acres or larger in size. The property owners believe that the proposed structure is similar to and in keeping with detached accessory structures in the area.

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

	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
Mueller 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 = 1,396 sf	54' x 64' detached accessory structure = 3,456 sf	4,852 sf	2	1

Staff notes that the requested amount of accessory storage space is more than 240% more than the maximum allowed.

The written narrative does not include any indication that the property owners have considered reducing the size of the proposed accessory structure to reduce the Variance needed or eliminate the need for Variance altogether. With an existing 1,396 sf attached garage, the property owners have the ability to construct up to 604 sf of accessory storage space without need for Variance. For reference, this amount of available space would allow for a 20' x 30' structure without need for Variance.

REVIEW PROCESS

The Technical Review Committee met with property owner Garrett Mueller on September 13, 2023. When asked if the lean-to shown in the attached rendering was factored into the overall proposed size of 54' x 64', Mueller commented that it was not and, being that the lean-to would increase the Variance request, Muller stated that it would be eliminated. When asked about the proposed structure height, Mueller was uncertain but was informed that the Zoning Ordinance requires that the height not exceed the height of the dwelling. The group also discussed required setbacks, including a setback from the septic system. Aside from the items above, the Committee did not identify any concerns.

The Chisago Lake Town Board considered the request on September 19, 2023 and recommended approval with the notation of "very reasonable – all adjacent lots have large barns".

The State mandated 60-day review period expires on October 30, 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 referenced lot size as an exceptional or extraordinary circumstance, as well as the subject site being surrounded by water and marshland. However, by offering that many surrounding properties are greater than five acres in size, the property owners have demonstrated that this is not an uncommon circumstance. Further, given the surrounding lakes, it isn't uncommon for properties in this general area to be surrounded by water and marshland.

Being that the property owners platted this property in 2021, staff notes that they created the circumstance of property size.

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

   Literal interpretation of the Zoning Ordinance would not deprive the applicants of rights commonly enjoyed by other RRII District properties. Property owners located in the RRII District have the right to accessory storage in compliance with Zoning Ordinance Section 4.08.2. The subject site, based on lot size, is allowed a maximum of 2,000 sf of accessory storage space, which is the largest amount of accessory storage space permitted in the RRII District. The site has been developed with a 1,396 sf attached garage, leaving the property owners with 604 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 604 sf would allow a reasonably sized detached accessory structure without the need for a Variance (i.e., 20' x 30' = 600 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 previously mentioned, the property owners platted the subject site and three adjacent parcels in 2021. Staff believes this is an indication that the property owners created the circumstance of property size.

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 RRII 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 or no Variance at all – has been considered. As noted above, the property owners currently have 604 sf available for additional accessory storage space, which would allow a structure such as 20' x 30' without need for 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 RRII 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 property owners did not cite economic conditions as a practical difficulty.

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

   The subject site is not located in a flood district.

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

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

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

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

2. Uniqueness
   The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the

particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the Variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

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

FINDINGS OF FACT

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

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

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 Lofton Avenue / CSAH 24 or surrounding roadways. Further, the County Engineer did not express any concern with the impact of the proposed action on the public Right-of-Way.*

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

Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed 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 that the proposed detached accessory structure will be constructed to match the exterior building materials of the existing dwelling and show that 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 II (RRII) District. 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.*

-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 II (RRII) 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.*

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 #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 2,852 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the subject site to have a total of 4,852 square feet of accessory storage space in the Rural Residential II (RRII) District. In addition to the existing 1,396 square foot attached garage, this approval allows for the construction of a detached accessory structure up to 3,456 sf in size.
2. The detached accessory structure shall meet all required setbacks, shall be constructed so that the exterior matches the appearance and color of the dwelling, and shall not exceed the height of the dwelling.
3. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received August 29, 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.
4. 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.
5. Future subdivision of the subject site must occur in a manner in which the parent parcel (the parcel which includes the existing dwelling and proposed detached accessory structure) remains no less than the minimum lot size in the Agricultural (AG) District in effect at the time of subdivision or, conversely, the parent parcel must be brought into compliance with the regulations for accessory structures in the Rural Residential II (RRII) District at the time of subdivision.
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. *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 30, 2023, allowing for further review and consideration at the Board's October 26, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0903, 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 30583 Lofton Avenue / CSAH 24 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. Email from Garrett Mueller dated August 30, 2023
   d. Site plan
   e. Rendering of proposed accessory structure
   f. Final Plat of Mueller Addition
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0903 (denial)
5. Draft Resolution No. BOAA2023-0903 (approval)

CC: Garrett & Carrie Mueller, property owners
County file

Chisago County Department of Environmental Services
Planning & Zoning Application

Permit # 23-1582

Township CHISAGO LAKES **S/T/R** 31-34-20 **PID#** 02.00848.10

Project Address 30583 LOFTON AVE. CHISAGO CITY MN. 55013

Property Owner(s) GARRETT + CARRIE MUELLER

Mailing Address (If Different from Project Address) (SAME)

Phone# [redacted] **Email** [redacted]

Applicant(s) GARRETT & CARRIE MUELLER

Mailing Address (If Different from Project Address) (SAME)

Phone# (SAME) **Email** (SAME)

Type of Request (Check All That Apply)

Board of Adjustment & Appeals	Planning Commission	
☒ Variance	☐ Conditional Use Permit (CUP)	☐ Preliminary Plat
☐ Administrative Appeal	☐ Interim Use Permit (IUP)	☐ Rezoning
	☐ Amendment to CUP or IUP	☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) REQUESTING A VARIANCE TO BUILD A LARGER AGRICULTURAL BUILDING THEN IS CURRENTLY ALLOWED.

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

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

[signature] 8-28-23

Applicant Signature **Date of Application**

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

Fees		Dates	
Base Fee	$ 500 —	Application Received	8-29-23
Recording Fee	$ 46 —	Application Complete	8-31-23
Plat Fee – No Road(s) / With Road(s)	$	60 / 120 Day Review Period	10-30-23
Septic Compliance Fee	$	Extended Review Period	
Wetland Fee	$		
TOTAL FEE	$ 546 —		

Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township CHISAGO LAKES **S/T/R** 31-34-20 **PID#** 02.00848.10

Project Address 30583 LOFTON AVE. CHISAGO CITY MN 55103

Property Owner(s) GARRETT & CARRIE MUELLER

Mailing Address (If Different from Project Address) (SAME)

Phone# [redacted] **Email** [redacted]

Applicant(s) GARRETT & CARRIE MUELLER

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) REQUESTING A VARIANCE TO BUILD A LARGER AGRICULTURAL BUILDING THEN IS CURRENTLY ALLOWED.

Garrett R. Mueller
Applicant Signature

8-28-23
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 SEPT 28, 2023 **Date of Township Presentation** SEPT 19, 2023

Township Action Taken (Township Use Only)
- ☒ Recommendation of Approval
- ☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial
very reasonable - all adjacent lot have large barns

Signatures of Township Officials or Authorized Personnel

To who it may concern,

My name is Gary Mueller and I am requesting your consideration for a variance to build an agricultural building more extensive than what is allowed for Zone RRII.

My wife Carrie and I are local business owners that have lived in Chisago City for the past 25 years. Our children were born and raised here their entire life and we love this community! We purchased land about three years ago and have built our forever dream home on it. The land is a beautiful unique piece of property and we would like to construct an equally beautiful 54'x64' agricultural building with a stone wainscoting front, windows, and colors to match our home. Being able to build this would keep our belongings and the property safe, clean, neat, and secure from theft and the elements for as long as possible!

Our property is unique and beautiful because we are on 7.99 acres and almost all of it is surrounded by water and marshland. Our dream house is built about 700 feet off the county road out on a skinny peninsula that is sloped all the way around it, which doesn't allow room for storing anything around the house structure. There is an area when you first drive onto the property that is flat, partially open, and partially wooded that I am able to store my belongings but they would not be safe and secure and I believe would be an eyesore for all the passing by traffic that enters into Chisago City on Lofton and surrounding neighbors in the area.

I believe my request is reasonable because there are several larger barns on the properties that surround our property. We are not in a typical RRII neighborhood because we have 7.99 acres and every property around us has 5 or more acres with extensive outbuildings similar to what we are requesting. Within less than a half-mile to the north of us on Lofton the land is zoned agricultural and less than a half-mile to the south of us on Lofton there is some land zoned agricultural also with several outbuildings on it. Hence, the size that I am requesting is not uncommon or out of the characteristics of our area or the county road which we live on. In fact, I believe and hope that what I would like to build would encourage surrounding properties to clean up all their piles and broken-down equipment and stop letting everything rust and deteriorate into the ground!

I greatly appreciate your time and consideration! I hope I have pleaded my case for the variance and you can see what I have envisioned for our forever dream home!

Thank you!
Gary and Carrie Mueller

Beth M. Gervais

From: Gary Mueller [redacted]
Sent: Wednesday, August 30, 2023 8:59 AM
To: Beth M. Gervais
Subject: Mueller Variance Request

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.

Good Morning Beth,

Thank you for meeting with me yesterday and catching the details I missed on my application!
Please attach this to my file.

My attached garage is 1396 total sqft (outside foundation)
The new building would be 3456 total sqft
The combined total equals 4852 total sqft (1396 + 3456 = 4852)
The amount allowed is 2000 total sqft
My requested variance would be 2852 total sqft (4852 - 2000 = 2852)

I believe this completes my application, if I missed anything else please let me know.

Thank you!!
Gary Mueller

Mueller Jewelers

11425 Brink Ave.
Chisago City, MN. 55013
T 651-213-1010
F 651-213-1012
www.muellerjewelers.com

Closed Sun.- Mon.
Tues.- Fri. 9am - 5pm
Sat. 10am - 1pm
After hours by appointment

SITE PLAN

Chisago County

0 55 110 220 ft

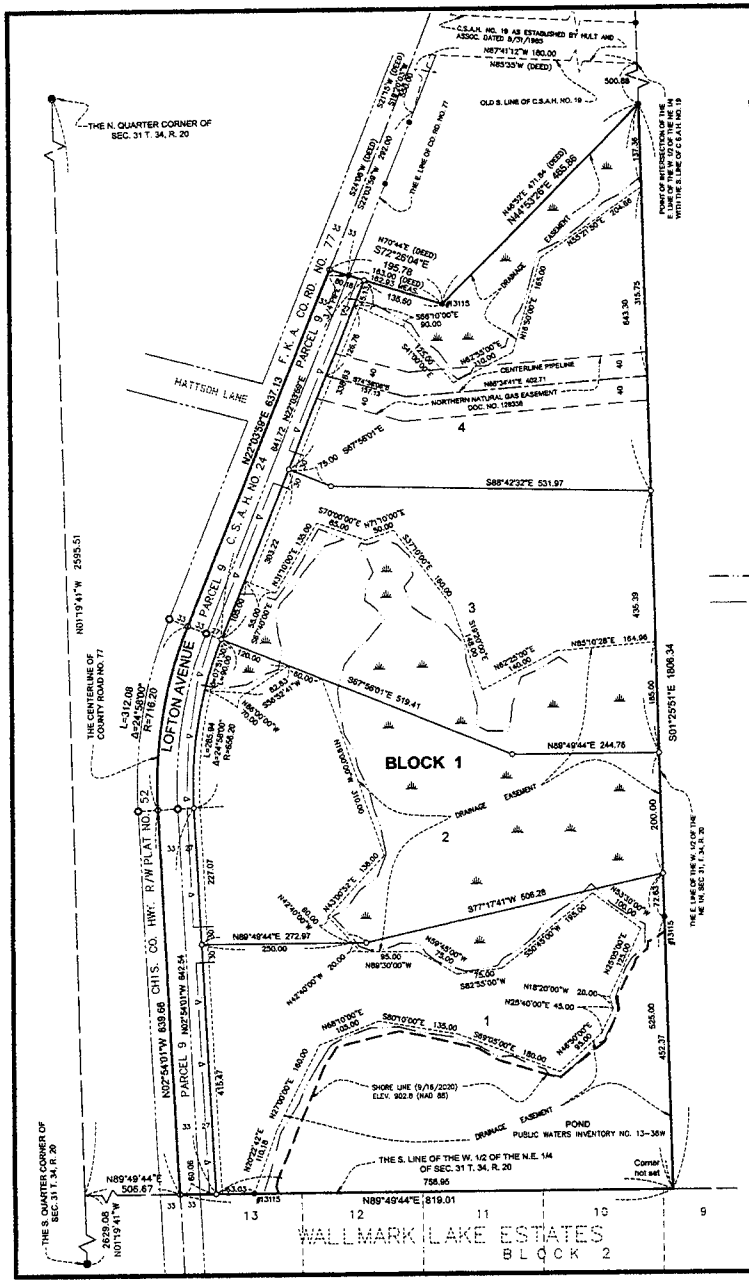
Date: 8/28/2023
Time: 1:04:35 PM

These data are provided on as "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

CONFIGURATION

OFFICIAL PLAT

MUELLER ADDITION



NORTH

THE ORIENTATION OF THIS BEARING SYSTEM IS BASED ON CHISAGO COUNTY COORDINATE SYSTEM HARN GEODETIC POSITION NAD 83 (1996 ADJ.)

0 100 200

Scale in Feet
1 INCH = 100 FEET

LEGEND

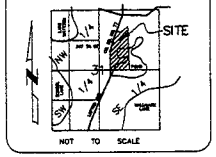
- DENOTES A FOUND 1/2 INCH IRON PIPE UNLESS NOTED OTHERWISE
- DENOTES A SET 1/2 INCH BY 14 INCH IRON PIPE WITH A PLASTIC CAP INSCRIBED LS 42648.
- DENOTES CHISAGO COUNTY MONUMENT
- DENOTES A SET MAG. NAIL AND WASHER INSCRIBED LS 42648
- DENOTES FOUND CHISAGO CO. ROW MONUMENT
- DENOTES WETLAND DELINEATED BY JACOBSON ENVIRONMENTAL PLLC
- Δ DENOTES COUNTY CONTROLLED ACCESS

DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:

10 10

BEING 10 FEET IN WIDTH ADJOINING STREET LINES, UNLESS OTHERWISE SHOWN ON THIS PLAT.

VICINITY MAP
SEC. 31, T34, R20
CHISAGO LAKE TOWNSHIP
CHISAGO COUNTY, MINNESOTA



KNOW ALL PERSONS BY THESE PRESENTS: That Mueller Properties LLC, a Minnesota limited liability company, owner and proprietor of the following described property situated in the County of Chisago and the State of Minnesota:

That part of the West Half of the Northeast Quarter of Section 31, Township 34, Range 20, Chisago County, Minnesota, lying easterly of County Road No. 77 and southerly of the following described line:

Commencing at the point of intersection of the east line of said West Half of the Northeast Quarter of Section 31 with the south line of County State Aid Highway No. 19, as now established; thence North 85 degrees 35 minutes West, along said highway line, for 180 feet to an intersection with the easterly line of County Road No. 77; thence South 21 degrees 15 minutes West, along said easterly road line, a distance of 550 feet; thence South 24 degrees 08 minutes West, continuing along said road line, for 292 feet to the point of beginning of the line to be described; thence South 70 degrees 44 minutes East, 163 feet; thence North 46 degrees 52 minutes East, 471.84 feet, more or less, to the east line of said West Half of the Northeast Quarter of Section 31 and there terminating, subject to easements and reservations of record including any right of side existing in the adjacent County Road No. 77, to the centerline thereof.

Has caused the same to be surveyed and platted as MUELLER ADDITION and does hereby donate and dedicate to the public for public use the road and easements for drainage and utility purposes only and controlled access to Chisago County as shown on this plat.

In witness whereof said Mueller Properties LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper members this 25th day of January, 20 21.

Signed: Mueller Properties LLC

Garrett D. Mueller, Member
Print GARRETT MUELLER

Carrie Mueller, Member
Print Carrie Mueller

STATE OF MINNESOTA
COUNTY OF Chisago

This instrument was acknowledged before me this 25th day of January, 20 21 by Garrett Mueller member and by Carrie Mueller member of Mueller Properties LLC, a Minnesota limited liability company.

Rachell J. Francesco
Notary Public, Minnesota
My Commission Expires 1/31/2024

I hereby certify that I have surveyed and platted or directly supervised the surveying and platting of the land described on this plat; this plat is a correct representation of the boundary survey; all mathematical data and labels are correctly designated on the plat; all monuments depicted on the plat have been correctly set; all water boundaries and wet lands as of this date are shown and labeled; and all public ways are shown and labeled.

Dated this 19th day of JANUARY, 20 21.

Kelly L. Jordan, Land Surveyor
Minnesota License No. 42648

STATE OF MINNESOTA
COUNTY OF CHISAGO

The foregoing Surveyor's Certificate by Kelly L. Jordan, Minnesota License No. 42648, was acknowledged before me this 19th day of January, 20 21.

Rachell J. Francesco
Notary Public, Minnesota
My Commission Expires 1/31/2024

Approved by the Chisago Lake Township Board, Chisago County, Minnesota, this 19 day of January, 20 21, and is in compliance with the provisions of Chapter 505.03, Subdivision 2, Minnesota Statutes.

Signed _____ Chairperson
Signed _____ Clerk

Approved by the Board of County Commissioners, Chisago County, Minnesota, this 17th day of February, 20 21.

Signed _____ Board Chairperson
Signed _____ County Auditor

Pursuant to Chisago County Subdivision Ordinance Number 99-2, I hereby certify that this plat has been checked and approved as to compliance with Chapter 505, Minnesota Statutes this 25th day of January, 20 21.

Chisago County Surveyor

This plat was recommended for approval this 5th day of January, 20 21.

Chisago County Engineer

This plat was approved as to form and execution this day of March 2, 20 21.

Chisago County Attorney

No delinquent taxes and transfer entered this 4th day of March, 20 21.

Chisago County Auditor

I hereby certify that the taxes for the year 20 21 on the property described hereon are paid this 4th day of March, 20 21.

Chisago County Treasurer

Document No. 642201
I hereby certify that this instrument was filed in the Office of the County Recorder for record on this 4th day of March, 20 21 at 10:07 o'clock A M., and was duly recorded in the Chisago County Records.

Chisago County Recorder

WIDSETH
ARCHITECTS • ENGINEERS • SCIENTISTS • SURVEYORS

Garrett & Carrie Mueller – Property owners Garrett & Carrie Mueller 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 II (RRII) District. The 7.90± acre subject site is located at 30583 Lofton Avenue / CSAH 24 in Chisago Lake Township, S31, T34, R20 (PID 02.00848.10).

Mueller Property -

Garrett & Carrie Mueller – Property owners Garrett & Carrie Mueller 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 II (RRII) District. The 7.90± acre subject site is located at 30583 Lofton Avenue / CSAH 24 in Chisago Lake Township, S31, T34, R20 (PID 02.00848.10).

Mueller Property -

RESOLUTION NO. BOAA2023-0903

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 30583 LOFTON AVENUE / CSAH 24 IN CHISAGO LAKE TOWNSHIP

WHEREAS, property owners Garrett Mueller & Carrie Mueller submitted an application dated received August 29, 2023 and considered complete on August 31, 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 3,456 sf detached accessory structure in addition to their existing 1,396 sf attached garage (proposed total of 4,852 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 II (RRII) District; and

WHEREAS, the subject site is legally described as:

PID 02.00848.10
Lot 1, Block 1, Mueller Addition, Chisago County, Minnesota.

WHEREAS, notice was provided and on September 28, 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 Lofton Avenue / CSAH 24 or surrounding roadways. Further, the County Engineer did not express any concern with the impact of the proposed action on the public Right-of-Way.*

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

Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed 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.*

DENIAL

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

Finding #4 *The application materials state that the proposed detached accessory structure will be constructed to match the exterior building materials of the existing dwelling and show that 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 II (RRII) District. 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 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

DENIAL

RESOLUTION NO. BOAA2023-0903

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 30583 LOFTON AVENUE / CSAH 24 IN CHISAGO LAKE TOWNSHIP

WHEREAS, property owners Garrett Mueller & Carrie Mueller submitted an application dated received August 29, 2023 and considered complete on August 31, 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 3,456 sf detached accessory structure in addition to their existing 1,396 sf attached garage (proposed total of 4,852 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 II (RRII) District; and

WHEREAS, the subject site is legally described as:

PID 02.00848.10
Lot 1, Block 1, Mueller Addition, Chisago County, Minnesota.

WHEREAS, notice was provided and on September 28, 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 Lofton Avenue / CSAH 24 or surrounding roadways. Further, the County Engineer did not express any concern with the impact of the proposed action on the public Right-of-Way.*

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

Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed detached accessory structure and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help*

APPROVAL

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 that the proposed detached accessory structure will be constructed to match the exterior building materials of the existing dwelling and show that 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 II (RRII) 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 2,852 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the subject site to have a total of 4,852 square feet of accessory storage space in the Rural Residential II (RRII) District. In addition to the existing 1,396 square foot attached garage, this approval allows for the construction of a detached accessory structure up to 3,456 sf in size.

APPROVAL

2. The detached accessory structure shall meet all required setbacks, shall be constructed so that the exterior matches the appearance and color of the dwelling, and shall not exceed the height of the dwelling.
3. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received August 29, 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.
4. 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.
5. Future subdivision of the subject site must occur in a manner in which the parent parcel (the parcel which includes the existing dwelling and proposed detached accessory structure) remains no less than the minimum lot size in the Agricultural (AG) District in effect at the time of subdivision or, conversely, the parent parcel must be brought into compliance with the regulations for accessory structures in the Rural Residential II (RRII) District at the time of subdivision.
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 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

APPROVAL

Staff Report

TO: Board of Adjustment and Appeals
FROM: Beth Gervais, Land Services Coordinator
SUBJECT: Variance to Expand a Legal Non-Conforming Structure
3400 Stark Road / CSAH 10, Fish Lake Township
DATE: September 28, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing the expansion of a non-conforming structure closer to the centerline of a County State Aide Highway (CSAH) than required in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

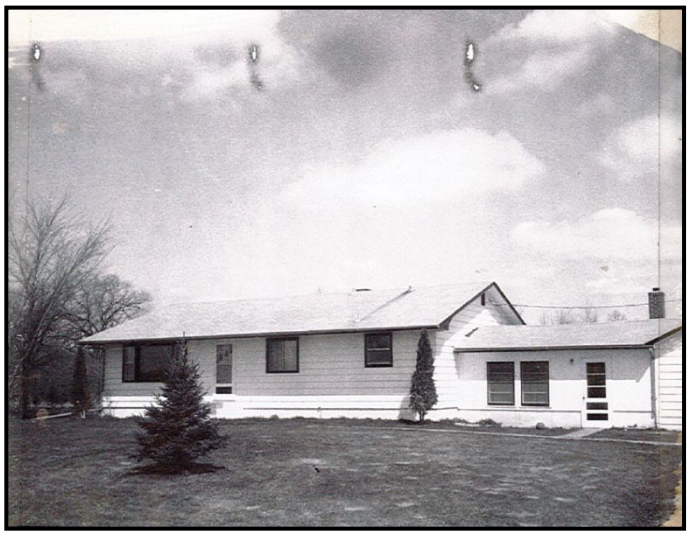
Applicant(s):	Bear Roofing & Exteriors
Property Owner(s):	Floyd & Cindy Petty
Property Address:	3400 Stark Road / CSAH 10 Fish Lake Township
General Location:	Section 25, Township 36, Range 22
PID:	03.00337.00
Property Area:	3.30± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	Rural Residential I (RRI) District / Shoreland Management District
South:	Fish Lake
East:	Rural Residential I (RRI) District / Agricultural (AG) District / Shoreland Management District
West:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	August 29, 2023
Date Application Complete:	August 31, 2023
60-Day Review Period:	October 30, 2023

BACKGROUND

Property owner Cindy Petty and applicant Bear Roofing & Exteriors are proposing to expand the Petty's non-conforming dwelling by constructing a roof over the deck. The existing dwelling and deck are considered non-conforming being that they encroach on the required 135' setback as measured from the centerline of Stark Road / CSAH 10. While the proposed roof will extend approximately 1' closer to the centerline of Stark Road / CSAH 10 than the deck, the setback would be measured from the deck – and not the roof – which means that the proposed roof will not exacerbate the non-conforming setback.

SITE ANALYSIS

The 3.30± acre subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and located northwesterly of the intersection of Stark Road / CSAH 10 and Deerwood Trail / CR 60. The site has been developed with a dwelling and one detached accessory structure (garage). The exact age of the dwelling is unknown; however, the adjacent top image, obtained from the Chisago County Assessor's Office, shows the dwelling in 1973. Being that the County adopted official land use controls in 1970, it's presumed that the dwelling predates official land use controls and is considered a legal non-conforming use. Based on records from the Assessor's Office, the deck appears to have been added around 1985.



Topography of the site includes fairly level elevations ranging from 919' to 923' near the west / rear property boundary, as well as wetland covering more than half of the property. The adjacent bottom image shows elevations and wetland areas.

Surrounding properties to the north and west are similarly zoned, whereas some properties to the east are zoned RRI District and some area zoned Agricultural (AG) District.

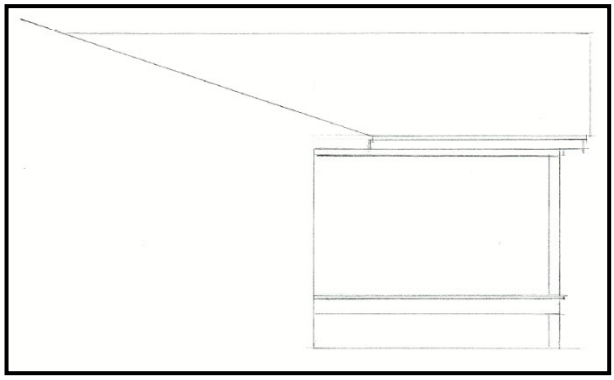
PROPOSAL ANALYSIS

The property owner and applicant are requesting a Variance in order to expand the legal non-conforming dwelling by constructing a roof over the deck. Based on the County's GIS Viewer, which shows imagery from spring 2022, the dwelling is situated approximately 90' from the centerline of Stark Road / CSAH 10 and the deck is situated approximately 82' from the centerline where the required setback is 135'. While the attached site plan shows that the current deck is 67' from the road, this measurement is based on the edge of the road rather than centerline.

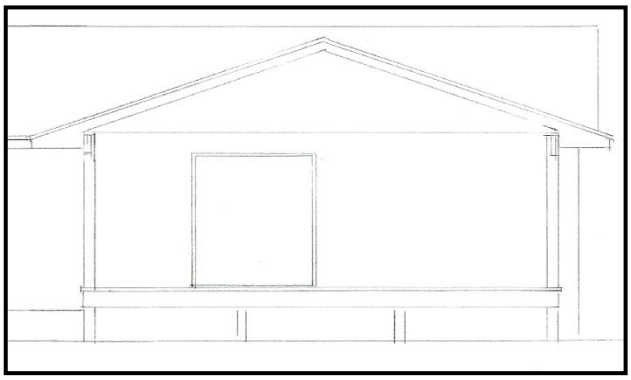
Historical records from the Assessor's Office show that the deck, likely constructed around 1985, was 12' x 20' (240 sf); however, the current application materials show the deck as being 12' x 24' (288 sf). Staff is not aware of when the deck was expanded or by whom, but the current property owners did receive a building permit in June 2023 to replace the deck. The building permit application included the proposed dimensions of 12' x 24' and it was approved with a notation that it was "ok if same as one removed", meaning that the property owners had a statutory right to replace exactly what was there but not

expand the non-conforming structure. The building permit application also included notation that the property owners removed the former deck the month prior in May 2023, which meant that the former size likely could not be verified by County staff. Ultimately, staff is unable to determine if the existing deck is a legal non-conforming structure or an illegal non-conforming structure due to expansion.

The attached building plans show that the property owners intend to construct a gable roof over the deck. Despite the fact that the roofline will extend beyond the edges of the deck, this would not be considered an exacerbation of the existing setback encroachment as the Zoning Ordinance provides an exception to such features as the roof so long as it does not extend more than 3' from the structure.



side view



front view

In an effort to address the State mandated practical difficulty standard, the written narrative explains that the property owners are proposing to add a roof over the deck to provide shade following the removal of diseased shade trees. They believe that the request is reasonable in that the roof will not expand the footprint of the dwelling or deck. The written narrative also explains that the property owners believe that their dwelling is unique in that it's situated at an intersection of two county roads (CSAH 10 and CR 60) and faces a lake. They believe that the shade provided by the proposed roof would allow them to enjoy the view of the lake. The written narrative also states that the property owners feel the addition of a roof will make the dwelling more visually appealing and make the space more usable.

REVIEW PROCESS

The Technical Review Committee met with property owners Floyd & Cindy Petty on September 13, 2023. The property owners explained that the proposed roof is needed due to the loss of shade trees and clarified that the deck will be covered but not be enclosed. The Sanitarian explained that a septic compliance inspection will be required as the property is located in the Shoreland Management District. The County Engineer commented that Stark Road / CSAH 10 would be reconstructed in 2026 and he was concerned about further encroachment on the County Right-of-Way. Ultimately, the County Engineer recommended that the property owners maintain at least a 50' setback from centerline, which they are. The Committee did not identify any other concerns.

The Fish Lake Town Board considered the request on September 11, 2023 and recommended approval with no conditions.

The State mandated 60-day review period expires on October 30, 2023.

VARIANCE ANALYSIS

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

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

   The written narrative states that the dwelling – and presumably the property – is unique in that it's located at the intersection of two county roads (CSAH 10 and CR 60) and fronts a lake (Fish Lake). Staff does not believe that these conditions are necessarily exceptional or extraordinary within the RRI District / Shoreland Management District or Chisago County as a whole.

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

   Literal interpretation of the Zoning Ordinance would not deprive the property owners or 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 residential purposes, in addition to other uses identified by the Zoning Ordinance, and the subject site is presently developed with a dwelling, deck, and detached accessory structure.

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 written narrative states that the subject site is located at the intersection of two county roads (CSAH 10 and CR 60) and fronts a lake (Fish Lake). It can be demonstrated that neither the current property owners nor the previous property owner(s) created this circumstance. However, staff does not believe that these conditions are unique in the RRI District / Shoreland Management District or Chisago County as a whole.

   As discussed in the Proposal Analysis section above, staff is not entirely certain of whether the existing deck is a legal non-conforming structure or an illegal non-conforming structure due to expansion from 12' x 20' to 12' x 24' at some point in time. If it can be determined that the deck was expanded illegally / under false pretenses, staff would have strong reservations about this Variance request being approved as the proposed Variance directly relates to the deck and use of the deck.

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

   The proposed roof / expansion is a permitted use in the RRI District / Shoreland Management District; therefore, the Variance would not be considered a use Variance.

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

   Staff believes that the proposed roof is the minimum size necessary to adequately create a covered deck and finds that the expansion will not exacerbate the existing setback encroachment. However, staff does not believe that the application materials have adequately demonstrated that a hardship exists and therefore believes that any amount of roof is excessive. The fact that the property owners

are desiring to have shade while using their deck is entirely a personal preference and staff believes that shade could be accomplished in other reasonable non-structural / non-permanent ways such as the use of a deck / patio umbrella, shade sail, retractable awning, etc.

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

   Zoning Ordinance Section 8.05 states that the Board of Adjustment and Appeals is responsible for considering appeals and Variance requests. In regard to Variances, the Ordinance specifically states that the Board is responsible to "hear and decide requests for Variances from the literal provisions of [the] Ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration. Further, LMC guidance on the State mandated practical difficulty standard advises that uniqueness relates to physical characteristics of the property(ies) in question, such as sloping topography or other natural features like wetlands or trees. Staff does not believe that the application materials adequately demonstrate compliance with the County's stated purpose of the Variance process and the State mandated practical difficulty standard.

   Staff does not believe that the Variance, if approved, would necessarily be detrimental to other properties in the RRI District / Shoreland Management District but does believe that the Variance would be contrary and detrimental to the purposes and intent of the Zoning Ordinance.

   Additionally, if it is determined that the current deck constitutes an illegal non-conforming structure, staff believes that the proposed Variance would be further detrimental to the purposes of this Ordinance and to the purposes of Minnesota Statutes relating to non-conforming structures.

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

   Neither the property owners nor the applicant cited economic conditions as a practical difficulty.

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

   The proposed location of the roof is not within in a flood district.

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

*The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a **reasonable** manner not permitted by an official control; the plight of the landowner is due to circumstances **unique** to the property not created by the landowner; and the variance, if granted, will not alter the **essential character** of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the*

official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

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

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

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

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

FINDINGS OF FACT

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

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

Finding #1 *The proposed roof expansion is located approximately 40' from the closest property boundary. Given this distance and the fact that the proposed roof expansion will meet all required side yard and rear yard setbacks, the County finds that the proposed expansion will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.*

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

Finding #2 *The proposed roof expansion will not create additional bedrooms or otherwise intensify the use of the subject property. Therefore, the County find that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on Stark Road / CSAH 10 or 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 roof expansion, and it will, therefore, be constructed in compliance with all applicable building and fire codes. Being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.*

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

Finding #4 *The subject site is currently developed with a dwelling and detached accessory structure. The proposed roof expansion will not change how the property is being used or allow the structures to be situated any closer to neighboring properties. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*

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

Finding #5 *The proposed action will not change or intensify the use of the subject site; therefore, the County finds that the proposed roof expansion 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 roof expansion 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 the existing and proposed uses as Permitted Uses in this District. The existing dwelling is considered legal non-conforming in that it encroaches on the required 135' setback from centerline of Stark Road / CSAH 10. While the Zoning Ordinance prohibits the expansion of non-conforming structures, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the application materials have failed to demonstrate that the request satisfies the State mandated three-factor practical difficulty standard, specifically in terms of reasonableness and uniqueness. The County finds that the property owners' desire to have shade while using their deck is entirely a personal preference and believes that shade can be accomplished in other reasonable non-structural / non-permanent ways such as the use of a deck / patio umbrella, shade sail, retractable awning, etc. Further, the County finds that the*

circumstance of the subject site being located at the intersection of two county roads (CSAH 10 and CR 60) and the dwelling fronting a lake (Fish Lake) is not unique in the RRI District / Shoreland Management District or Chisago County as a whole.

-OR-

Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and the Zoning Ordinance allows the existing and proposed uses as Permitted Uses in this District. The existing dwelling is considered legal non-conforming in that it encroaches on the required 135' setback from the centerline of Stark Road / CSAH 10. While the Zoning Ordinance prohibits the expansion of non-conforming structures, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance and also satisfies the three-factor test of uniqueness, reasonableness and essential character.*

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 #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:

Recommended condition(s):

1. This Variance approval allows for the expansion of a legal non-conforming dwelling in the Rural Residential I (RRI) District / Shoreland Management District by allowing the expansion of the roof to cover the existing 12' x 24' deck located on the south side of the dwelling.
2. The roof expansion shall be constructed in general conformance with the application materials, including site plan and building plans, dated received August 29, 2023. Any significant deviation from the approved request and plans, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. This Variance does not allow for the deck and expanded roof to be enclosed.
4. The permit holder shall obtain a building permit prior to construction and, further, the expansion shall comply with all applicable codes and regulations.
5. 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.
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. *Note: this option will require the Board to adopt all draft Findings of Fact 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 of Fact #1 - #6 shown in black italics and draft Finding of Fact #7 shown in red italics.*

3. **Table** action to allow for further review and consideration. The current review period expires on October 30, 2023, allowing the Board to continue its review at the October 26, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0904, a resolution denying a Variance to expand a legal non-conforming structure on property located at 3400 Stark Road / CSAH 10 in Fish 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
    d. Aerial image
    e. Building plans
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0904 (denial)
5. Draft Resolution No. BOAA2023-0904 (approval)

CC: Floyd & Cindy Petty, property owners
Bear Roofing & Exteriors, applicant
County file

Chisago County Department of Environmental Services
Planning & Zoning Application

Permit # 23-1590

Township fish lake **S/T/R** 25/036/022 **PID#** 030033700

Project Address 3400 Stark Rd, Harris MN 55038

Property Owner(s) Cindy Petty

Mailing Address (If Different from Project Address) 3400 Stark Rd, Harris MN 55038

Phone# [redacted] **Email** _____

Applicant(s) Bear Roofing & Exteriors

Mailing Address (If Different from Project Address) 3521 Commerce Blvd, white bear lake MN 55110

[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) Attached

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

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

Applicant Signature

8/29/23
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	$ 500.00	Application Received	8-29-23
Recording Fee	$ 46.00	Application Complete	8-31-23
Plat Fee – No Road(s) / With Road(s)	$	60 / 120 Day Review Period	10-30-23
Septic Compliance Fee	$	Extended Review Period	
Wetland Fee	$		
TOTAL FEE	$ 546.00		

Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township FISH LAKE S/T/R 25/36/22 PID# 03.00337.00

Project Address 3400 STARK RD, HARRIS MN 55032

Property Owner(s) CINDY PETTY

Mailing Address (If Different from Project Address) 3400 STARK RD, HARRIS MN 55032

Phone# [redacted] Email _____

Applicant(s) BEAR ROOFING + EXTERIORS

Mailing Address (If Different from Project Address) 3521 COMMERCE BLVD, WBL, MN 55110

Phone# [redacted] Email [redacted]

Type of Request (Check All That Apply)

Board of Adjustment & Appeals	Planning Commission	
☑ Variance	☐ Conditional Use Permit (CUP)	☐ Preliminary Plat
☐ Administrative Appeal	☐ Interim Use Permit (IUP)	☐ Rezoning
	☐ Amendment to CUP or IUP	☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) ATTACHED

[signature] 8/29/23

Applicant Signature **Date of Application**

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

Date of County Public Hearing SEPT 28, 2023 **Date of Township Presentation** SEPT 11, 2023

Township Action Taken (Township Use Only)

☑ Recommendation of Approval ☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Signatures of Township Officials or Authorized Personnel

Bruce Ubl James B Ruff Dan Fog

NO Conditions

Written Narrative

3400 Stark Road, Harris MN 55032

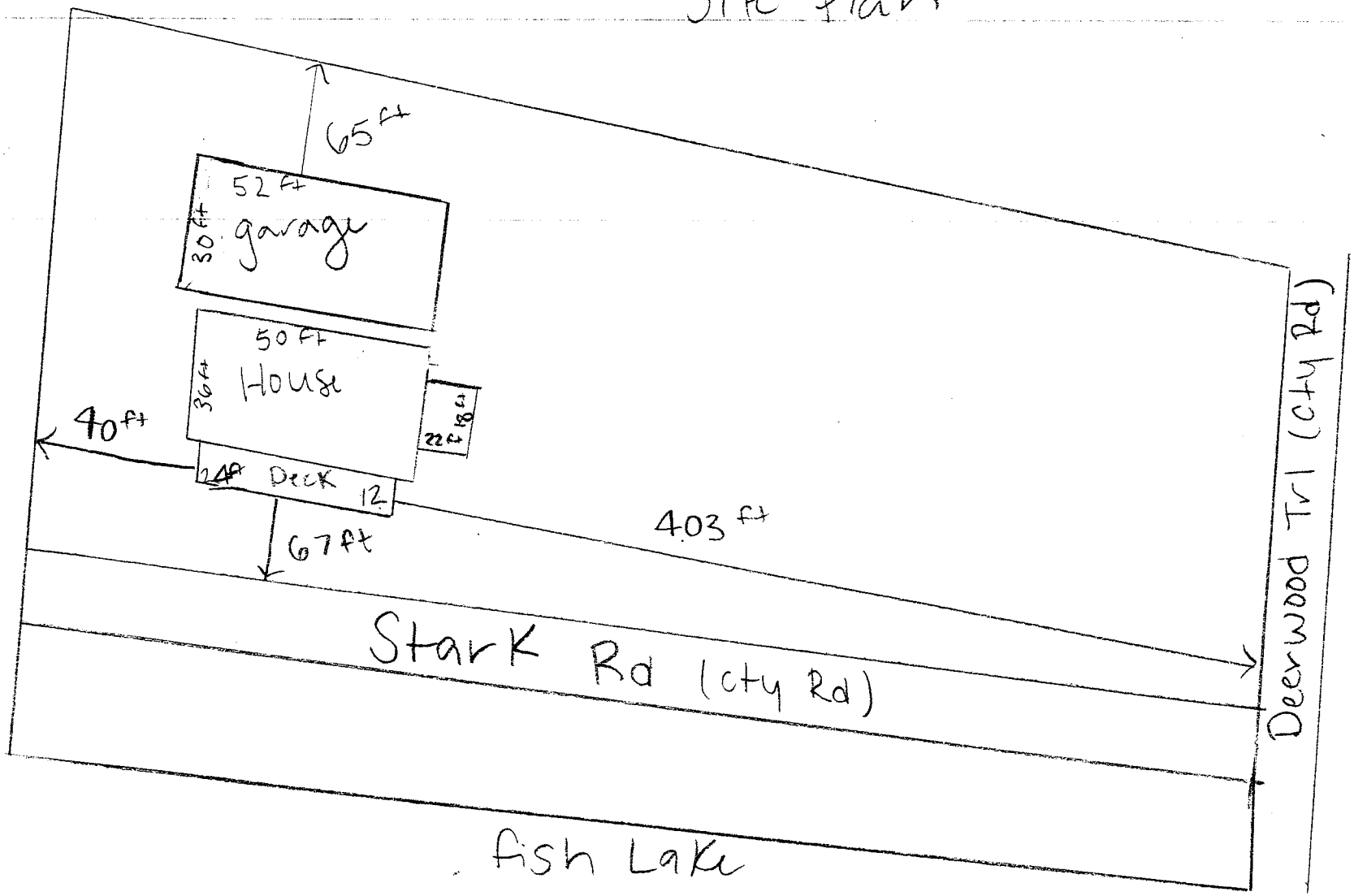
We are requesting a variance to build a roof over an existing deck. The homeowners are looking to add a roof to provide shade on the deck as the trees that previously shaded the area had to be removed due to disease. We feel this is a reasonable request as adding the roof over the deck would not extend the footprint of the deck or the dwelling.

The dwelling is unique as it is on a corner with two county roads, the front of the property faces Fish Lake. The area that the Homeowners are looking to add the roof would be where they spend time enjoying the view of the lake, without the added shade it will be unenjoyable to use.

The addition of the roof will be visually appealing to the façade of the home, add dimension to the dwelling while also making the space usable for the homeowners.

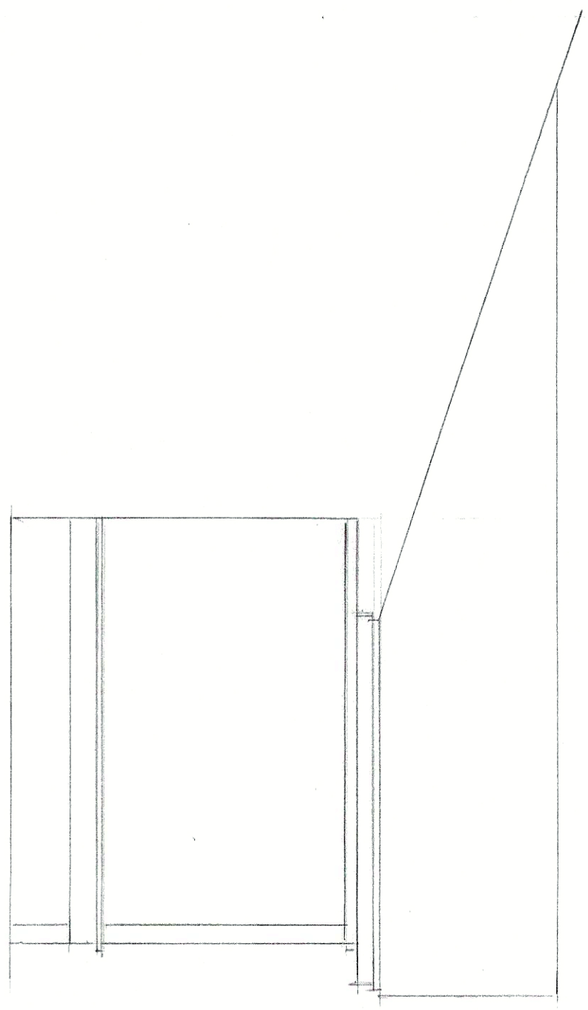
3400 Stark Road

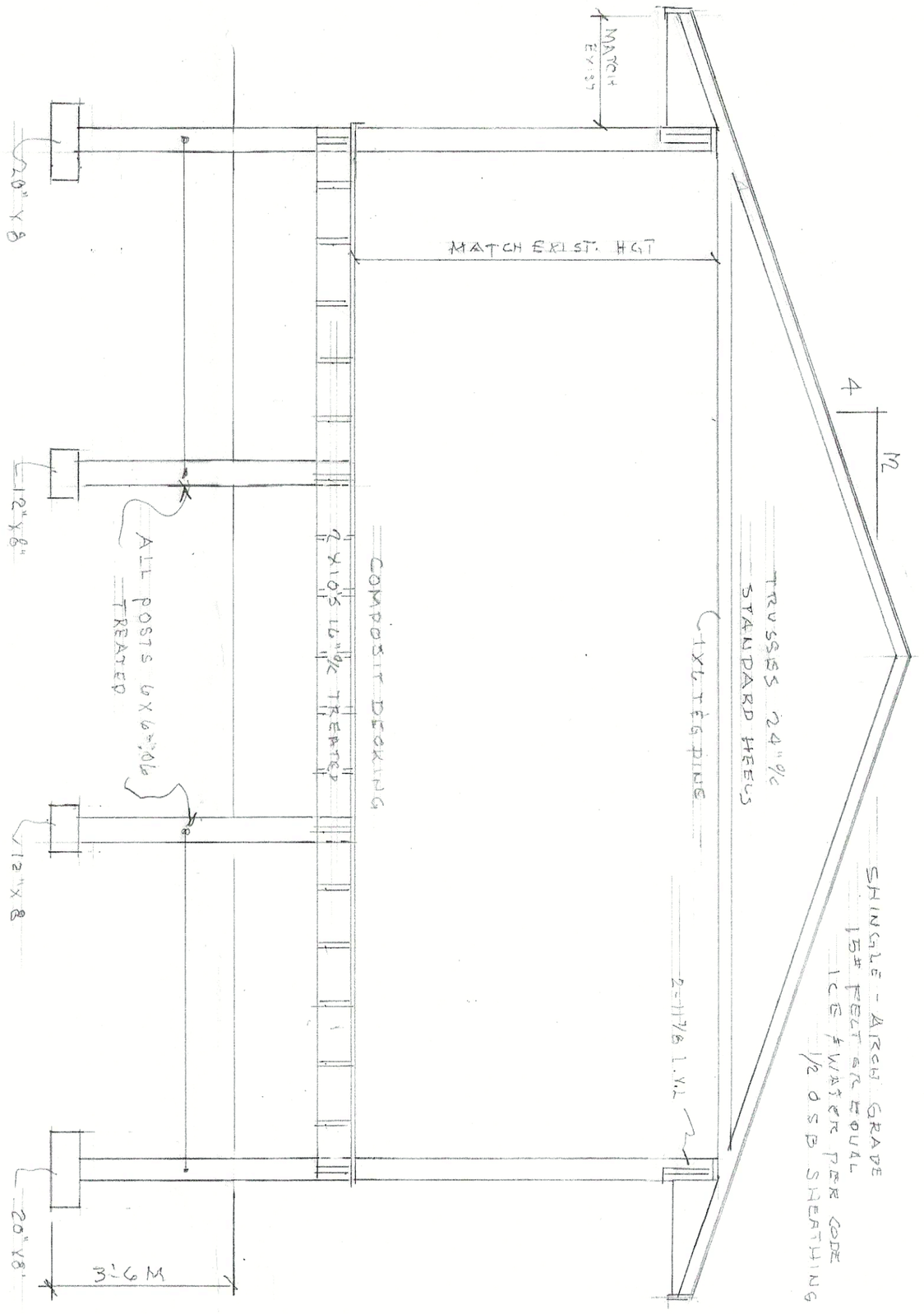
Site Plan

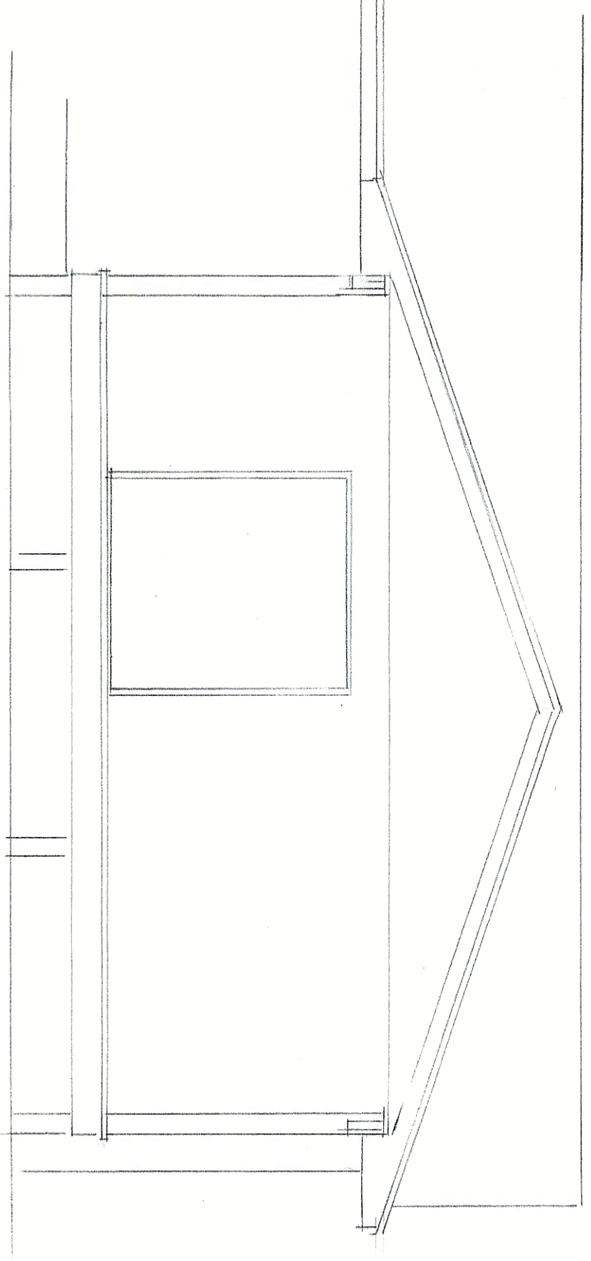


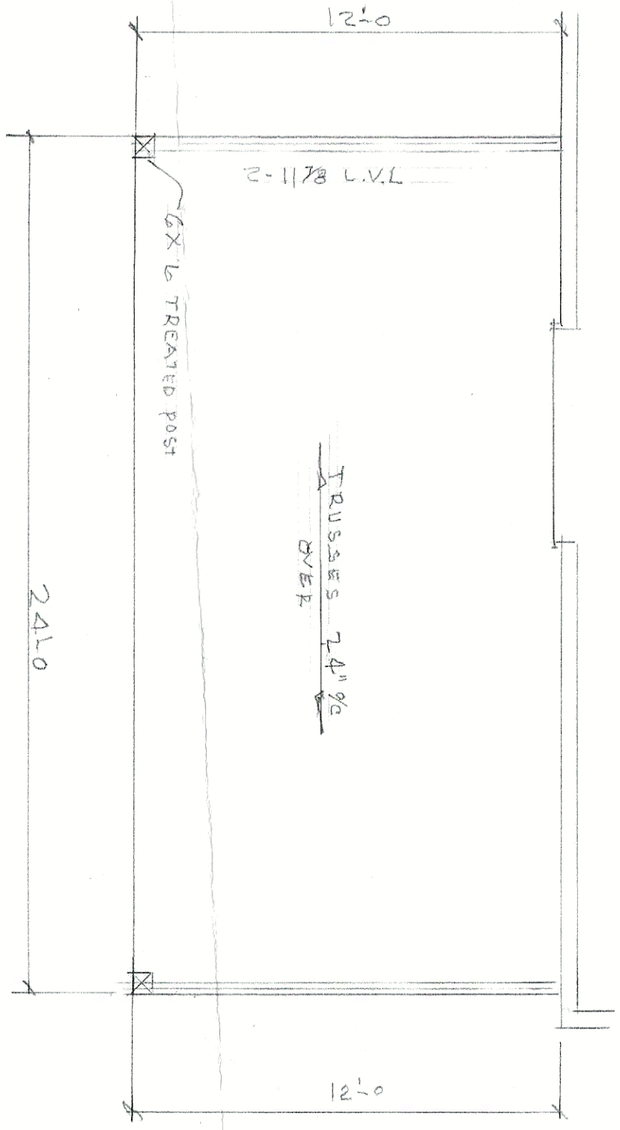
65.36 ft
21.2°
40.55 ft
291.4°
67.8 ft
20.7°
403.4
109.2°
Vertical
May 2 2023
20 ft

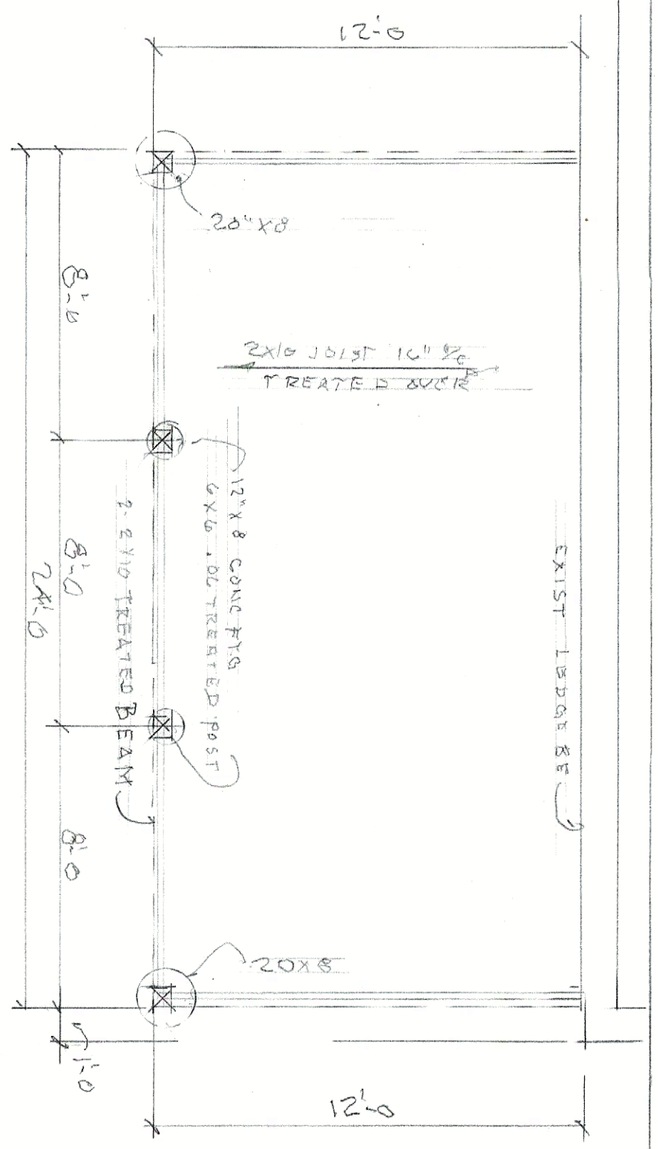
fish fake











2323	1 OF 1	1/4"=1'-0 3/8"=1'-0	8-6-08

CARLSON DESIGN
651-429-7695
13753 FOREST BLVD. HUGO, MN

BEAR ROOFING AND EXTIORS, INC.
651-271-3296

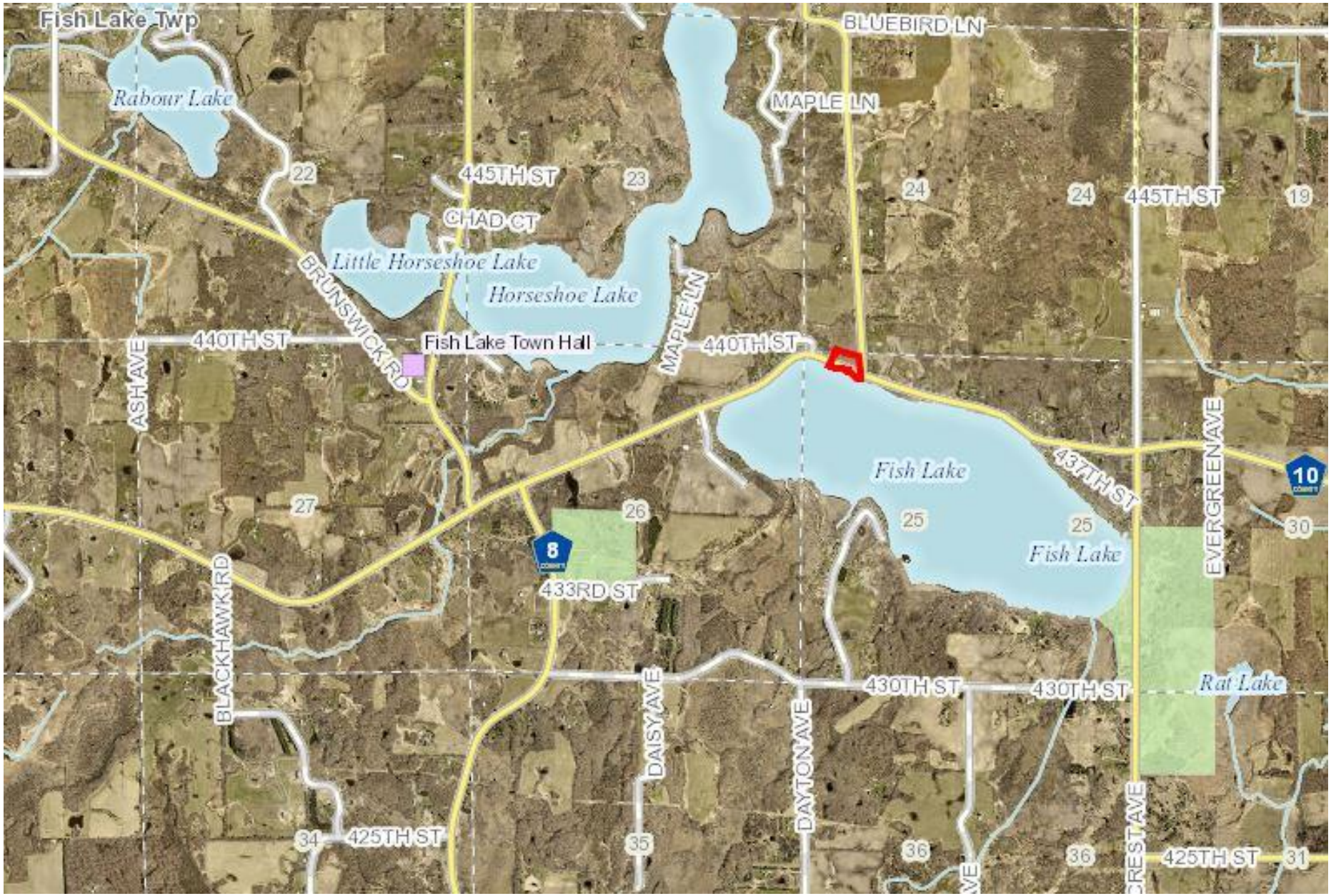
CONTRACTOR TO VERIFY ALL INFORMATION & DIMENSIONS BEFORE CONSTRUCTION & IS RESPONSIBLE FOR SAME

Cindy Petty and Bear Roofing & Exteriors – Property owner Cindy Petty and applicant Bear Roofing & Exteriors are requesting a Variance to Zoning Ordinance Sections 4.03 and 5.15 in order to expand a non-conforming structure closer to the centerline of a County State Aide Highway than required in the Rural Residential I (RRI) District / Shoreland Management District. The 3.30± acre subject site is located at 3400 Stark Road / CSAH 10 in Fish Lake Township, S25, T36, R22 (PID 03.00337.00).

Cindy Petty and Bear Roofing & Exteriors -

Cindy Petty and Bear Roofing & Exteriors – Property owner Cindy Petty and applicant Bear Roofing & Exteriors are requesting a Variance to Zoning Ordinance Sections 4.03 and 5.15 in order to expand a non-conforming structure closer to the centerline of a County State Aide Highway than required in the Rural Residential I (RRI) District / Shoreland Management District. The 3.30± acre subject site is located at 3400 Stark Road / CSAH 10 in Fish Lake Township, S25, T36, R22 (PID 03.00337.00).

Cindy Petty and Bear Roofing & Exteriors -



RESOLUTION NO. BOAA2023-0904

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, DENYING A VARIANCE TO EXPAND A LEGAL NON-CONFORMING STRUCTURE ON PROPERTY LOCATED AT 3400 STARK ROAD / CSAH 10 IN FISH LAKE TOWNSHIP

WHEREAS, property owner Cindy Petty and applicant Bear Roofing & Exteriors submitted an application dated received August 29, 2023 and considered complete on August 31, 2023 for a Variance to Zoning Ordinance Section 4.03 Non-Conforming Structures and Uses; and

WHEREAS, the property owners wish to expand their legal non-conforming structure (dwelling) by extending the roof to cover a deck; 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 03.00337.00

All that part of Lot One (1), Section Twenty-five (25), and an adjoining Southwest Quarter of Southwest Quarter (SW1/4 of SW1/4) of Section Twenty-four (24), all in Township Thirty-six (36), Range Twenty-two (22), and escribed as follows, to-wit:
Beginning at a point on the north line of said Section 25, a distance of 300 feet East of the Northwest corner thereof; thence North 17 degrees 30 minutes East for 32 feet; thence South 72 degrees 30 minutes East for 200 feet, to a point which constitutes the point of beginning of the parcel thereby to be conveyed; thence North 17 degrees 30 minutes East for 85 feet; thence South 72 degrees 30 minutes East, continuing on such course to where such continued line would intersect with the west line of County Road
No. 60 as now established; running thence Southerly along the west line of said County Road No. 60 to the point of intersection with the north line of State Aid Road No. 10; thence continuing same course southerly, crossing said State Aid Road No. 10, to the shore of Fish Lake; running thence northwesterly along the shore of Fish Lake to a point which is South 17 degrees 30 minutes West from the point of beginning; running thence North 17 degrees 30 minutes East, again crossing said State Aid Road #10 and continuing such course to the point of beginning, excepting therefrom the right of way of State Aid Road #10, but including all riparian rights appertaining thereto.

WHEREAS, notice was provided and on September 28, 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/or applicant, 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 roof expansion is located approximately 40' from the closest property boundary. Given this distance and the fact that the proposed roof expansion will meet all required side yard and rear yard setbacks, the County finds that the proposed expansion will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.*

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

Finding #2 *The proposed roof expansion will not create additional bedrooms or otherwise intensify the use of the subject property. Therefore, the County find that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on Stark Road / CSAH 10 or 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 roof expansion, and it will, therefore, be constructed in compliance with all applicable building and fire codes. Being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.*

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

Finding #4 *The subject site is currently developed with a dwelling and detached accessory structure. The proposed roof expansion will not change how the property is being used or allow the structures to be situated any closer to neighboring properties. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*

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

Finding #5 *The proposed action will not change or intensify the use of the subject site; therefore, the County finds that the proposed roof expansion 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 roof expansion 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 the existing and proposed uses as Permitted Uses in this District. The existing dwelling is considered legal non-conforming in that it encroaches on the required 135' setback from centerline of Stark Road / CSAH 10. While the Zoning Ordinance prohibits the expansion of non-conforming structures, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the application materials have failed to demonstrate that the request satisfies the State mandated three-factor practical difficulty standard, specifically in terms of reasonableness and uniqueness. The County finds that the property owners' desire to have shade while using*

DENIAL

their deck is entirely a personal preference and believes that shade can be accomplished in other reasonable non-structural / non-permanent ways such as the use of a deck / patio umbrella, shade sail, or retractable awning. Further, the County finds that the circumstance of the subject site being located at the intersection of two county roads (CSAH 10 and CR 60) and the dwelling fronting a lake (Fish Lake) is not unique in the RRI District / Shoreland Management District or Chisago County as a whole.

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 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

DENIAL

RESOLUTION NO. BOAA2023-0904

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, APPROVING A VARIANCE TO EXPAND A LEGAL NON-CONFORMING STRUCTURE ON PROPERTY LOCATED AT 3400 STARK ROAD / CSAH 10 IN FISH LAKE TOWNSHIP

WHEREAS, property owner Cindy Petty and applicant Bear Roofing & Exteriors submitted an application dated received August 29, 2023 and considered complete on August 31, 2023 for a Variance to Zoning Ordinance Section 4.03 Non-Conforming Structures and Uses; and

WHEREAS, the property owners wish to expand their legal non-conforming structure (dwelling) by extending the roof to cover a deck; 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 03.00337.00

All that part of Lot One (1), Section Twenty-five (25), and an adjoining Southwest Quarter of Southwest Quarter (SW1/4 of SW1/4) of Section Twenty-four (24), all in Township Thirty-six (36), Range Twenty-two (22), and escribed as follows, to-wit:
Beginning at a point on the north line of said Section 25, a distance of 300 feet East of the Northwest corner thereof; thence North 17 degrees 30 minutes East for 32 feet; thence South 72 degrees 30 minutes East for 200 feet, to a point which constitutes the point of beginning of the parcel thereby to be conveyed; thence North 17 degrees 30 minutes East for 85 feet; thence South 72 degrees 30 minutes East, continuing on such course to where such continued line would intersect with the west line of County Road
No. 60 as now established; running thence Southerly along the west line of said County Road No. 60 to the point of intersection with the north line of State Aid Road No. 10; thence continuing same course southerly, crossing said State Aid Road No. 10, to the shore of Fish Lake; running thence northwesterly along the shore of Fish Lake to a point which is South 17 degrees 30 minutes West from the point of beginning; running thence North 17 degrees 30 minutes East, again crossing said State Aid Road #10 and continuing such course to the point of beginning, excepting therefrom the right of way of State Aid Road #10, but including all riparian rights appertaining thereto.

WHEREAS, notice was provided and on September 28, 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/or applicant, 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 roof expansion is located approximately 40' from the closest property boundary. Given this distance and the fact that the proposed roof expansion will meet all required side yard and rear yard setbacks, the County finds that the proposed expansion will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.*

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

Finding #2 *The proposed roof expansion will not create additional bedrooms or otherwise intensify the use of the subject property. Therefore, the County find that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on Stark Road / CSAH 10 or 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 roof expansion, and it will, therefore, be constructed in compliance with all applicable building and fire codes. Being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.*

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

Finding #4 *The subject site is currently developed with a dwelling and detached accessory structure. The proposed roof expansion will not change how the property is being used or allow the structures to be situated any closer to neighboring properties. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.*

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

Finding #5 *The proposed action will not change or intensify the use of the subject site; therefore, the County finds that the proposed roof expansion 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 roof expansion 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 the existing and proposed uses as Permitted Uses in this District. The existing dwelling is considered legal non-conforming in that it encroaches on the required 135' setback from the centerline of Stark Road / CSAH 10. While the Zoning Ordinance prohibits the expansion of non-conforming structures, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance and also satisfies the three-factor test of uniqueness, reasonableness and essential character.*

APPROVAL

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 Variance approval allows for the expansion of a legal non-conforming dwelling in the Rural Residential I (RRI) District / Shoreland Management District by allowing the expansion of the roof to cover the existing 12' x 24' deck located on the south side of the dwelling.
2. The roof expansion shall be constructed in general conformance with the application materials, including site plan and building plans, dated received August 29, 2023. Any significant deviation from the approved request and plans, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. This Variance does not allow for the deck and expanded roof to be enclosed.
4. The permit holder shall obtain a building permit prior to construction and, further, the expansion shall comply with all applicable codes and regulations.
5. 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.
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 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator

APPROVAL

Staff Report

TO: Board of Adjustment and Appeals
FROM: Beth Gervais, Land Services Coordinator
SUBJECT: Variance to Allow a Fence Exceeding the Maximum Allowable Height
51955 Belle Isle Drive, Nessel Township
DATE: September 28, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing the installation of a six (6') foot tall fence in the front (roadside) setback area where the maximum allowable height is thirty six (36") inches / three (3') feet.

SITE & APPLICATION INFORMATION

Applicant(s):	Shaun Kane & Julie Keyes Kane
Property Owner(s):	Shaun Kane & Julie Keyes Kane
Property Address:	51955 Belle Isle Drive Nessel Township
General Location:	Section 15, Township 37, Range 22
PID:	06.00991.00
Property Area:	.48± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	Rural Residential I (RRI) District / Shoreland Management District
South:	East Rush Lake
East:	Rural Residential I (RRI) District / Shoreland Management District
West:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	August 31, 2023
Date Application Complete:	September 6, 2023
60-Day Review Period:	November 5, 2023

BACKGROUND

Property owners Shaun Kane & Julie Keyes Kane are requesting a Variance in order to install a 6' tall privacy fence in the front (roadside) non-buildable setback area where the maximum allowable height is 36" / 3'. The length of the fence is shown to be 24'.

SITE ANALYSIS

The subject site is .48± acres in size and located on the northwest side of East Rush Lake in the LaBelle Isle subdivision. The subject site was platted in 1959. The property gently slopes from 935' at the roadway to 916' at the shoreline. Based on the County's GIS Viewer, it appears that

the site has been developed with a dwelling and detached garage. Given that LaBelle Isle was platted in 1959, it predates the County's adoption of Zoning and Subdivision Ordinances and, based on lot area and lot width, the subject site is considered legal non-conforming. Surrounding properties are similarly sized and have been developed with dwellings or seasonal cabins and related accessory structures.

Belle Isle Drive extends from Rush Lake Trail / CSAH 1 westerly and southerly around the northwest corner of East Rush Lake. The subject site is located at a point where the roadway transitions from a north-south direction to a northeast-southwest direction (see attached image for reference).

The subject site and all surrounding properties are lcoated in the Rural Residential I (RRI) District / Shoreland Management District. Section 4.09 of the Zoning Ordinance states that fences within the front non-buildable setback area shall not exceed 36" in height, except that chain link fences which do not obstruct vehicular sight lines may be 5' in height.

PROPOSAL ANALYSIS

The attached application materials explain that the property owners wish to install a 6' tall x 24' long brown composite privacy fence between two rows of pine trees adjacent to the Belle Isle Drive Right-of-Way. The property owners have reported that they've located their roadside (northerly) property pin(s) and they estimate that the fence will be located 9'2" from the northerly property boundary / Right-of-Way boundary.

The written narrative explains that the subject site sits lower than the roadway and the proposed fence will provide privacy on the front side of the dwelling. The written narrative further explains that the fence will create a wind block for snow during winter months and provide screening from headlight wash given that the property is situated near a curve in the road.

The table below provides a comparison of fence regulations for the Rural Residential I (RRI) District and corresponding information for the proposed Variance shown in red.

	RRI District Standards for Fences	Proposed
Kane Property (PID 06.06.00991.00)	Fences within the front non-buildable setback area shall not exceed thirty six (36) inches in height, except that chain link fences, which do not obstruct vehicular sight lines, may be five (5) feet in height.	6' tall fence within the front non-buildable setback area

REVIEW PROCESS

The Technical Review Committee met with property owner Shaun Kane on September 13, 2023. Kane confirmed that the proposed fence would be located between two rows of trees near the roadway and would extend 24' from the driveway toward the westerly property boundary. The Sanitarian commented that the County did not have a current monitoring report on file for the Type IV septic system which was installed in 2020 and the property owners would be required to get caught up on reporting as part of the Variance process. Immediately following the meeting, Kane initiated the process of renewing the operating permit for the septic system. The Committee did not identify any other concerns.

The Nessel Town Board considered the request on September 12, 2023 and recommended approval with no conditions.

The State mandated 60-day review period expires on November 5, 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 application materials suggest that the subject site sits lower than the road and, due to a curve in the road, the proposed fence will help screen headlight wash, as well as create a wind block for snow during winter months. Staff does not believe these are exceptional or extraordinary circumstances only applying to the subject site; however, they may be factors that the Board wishes to consider.

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

   Literal interpretation of the Zoning Ordinance would not deprive the property owners of rights commonly enjoyed by other RRI District / Shoreland Management District properties. The Zoning Ordinance allows fences up to three feet in height in the front non-buildable setback area but the property owners are choosing to request a Variance in order to increase the height.

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 site was platted in 1959 and the area was developed shortly thereafter, the circumstance of the subject site being at a lower elevation than the roadway was not a circumstance created by the current or previous property owners. This would be considered pre-existing development.

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

Fences are a permitted accessory use in the RRI District / Shoreland Management District; therefore, this would not be considered a use Variance.

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

   Staff does not believe that the allowable 36" / 3' tall fence would be sufficient for screening the subject site from headlight wash even if the site and roadway were at the same elevation. Given that the site is at a lower elevation than the roadway, staff suspects that a 6' tall fence is necessary to accomplish this type of screening. Therefore, staff suspects that the property owners have requested the minimum Variance needed to alleviate the hardship.

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 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 fences are a reasonable use in this district, that the subject site is somewhat unique in that it has a lower elevation than the roadway and it's situated near a curve in the roadway, and that it will fit the essential character of the neighborhood given that fences are common in residential neighborhoods.

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

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

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

   The subject site is partially located in a flood district; however, the location of the proposed fence is entirely outside of the flood district.

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

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

district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

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

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

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

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

FINDINGS OF FACT

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

Criteria #1	The proposed action will not impair an adequate supply of light and air to adjacent property;
Finding #1	*Given that the proposed fence is located in the front non-buildable setback area which is adjacent to the roadway, the County finds that the proposed fence will be situated in a location which has no impact on the supply of light or air to adjacent properties.*
Criteria #2	The proposed action will not unreasonably increase the congestion in the public right-of-way;
Finding #2	*The proposed action relates to the installation of a fence which the County finds to have no impact on the amount of traffic generated at the subject site or congestion on*

surrounding roadways. The County further finds that the fence being installed in a general parallel manner to the roadway will not cause traffic obstructions or hazards.

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

Finding #3 *The County finds no evidence to suggest that the proposed fence will have any impact on the danger of fire or public safety.*

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

Finding #4 *Being that the subject site is currently developed and the proposed fence will not change how the subject site is being used, the County finds no evidence to suggest that there will be any negative impact to surrounding properties. If the fence were going to cause negative impact to an adjacent property, it would most likely be the property directly north / across the street from the subject site (51940 Belle Isle Drive), and, given that the neighboring dwelling is situated so that it faces away from the proposed fence, the County finds no evidence to suggest that the proposed fence will have a negative impact on this particular neighboring property.*

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

Finding #5 *The County finds no correlation between the proposed fence and the impact upon existing facilities and services. Rather, the proposed fence is an accessory use to an existing dwelling.*

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

Finding #6 *The County finds no evidence that the proposed fence will have a negative fiscal impact on the County or school district.*

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

Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District. The Zoning Ordinance allows fences within the front non-buildable setback area when the fence is no more than 36" in height or up to 5' in height if the fence is chain link. While the proposed fence is contrary to the RRI District fence regulations, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed fence is a reasonable accessory use given that fences are allowed in the RRI District and a lesser height would not provide relief from headlight wash, that the subject site is unique in that it has a lower elevation than the adjacent roadway and it's situated near a curve in the roadway, and, that the proposed fence will fit the essential character of the neighborhood given that fences are commonly found in residential neighborhoods. Therefore, the County finds that the proposed action satisfies the three-factor test of uniqueness, reasonableness and essential character.*

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 recommends approval** of the Variance with recommended Findings of Fact (see above) and conditions (see below) and has prepared a resolution for the Board's consideration.

1. This Variance approval allows for the installation of a 6' tall fence within the front non-buildable setback area in the Rural Residential I (RRI) District where the maximum allowable height is 36".
2. The approved fence shall be constructed in general conformance with application materials dated received August 31, 2023 and kept on file with the Department of Environmental Services, including that the fence shall be no greater than 6' in height as measured from the finished grade, 24' in length, and installed at least 9' from the north property boundary / Right-of-Way boundary. Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. Prior to installation of the fence, the property owners shall provide to the Department of Environmental Services monitoring report(s) and all other documentation required by the Department of Environmental Services demonstrating that the existing Type IV septic system is compliant.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended.

2. **Deny** the Variance based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
   a. The request for Variances, as presented, is not consistent with the Chisago County Zoning Ordinance and/or Shoreland Management Ordinance due to _____.
   b. The proposed Variances will have a negative impact to surrounding properties due to _____.
   c. The request for Variances, as presented, does not meet the threshold for "practical difficulty" as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.

3. **Table** action to allow for further review and consideration. The current review period expires on November 5, 2023, allowing for further review and consideration at the Board's October 26, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-0905, a resolution approving a Variance allowing a fence which exceeds the maximum allowable height in the front non-buildable setback area on property located at 51955 Belle Isle Drive 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. Images of proposed fence location
    d. Site plan
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-0905

CC: Shaun Kane & Julie Keyes Kane, property owners
County file

Chisago County Department of Environmental Services
Planning & Zoning Application

Permit # 23-1605

Township Nessel S/T/R 15/037/022 ~~Street~~ PID# 06.0099.00

Project Address 51955 Belle Isle Dr RUSH CITY, MN 55069

Property Owner(s) Shaun Kane Julie Keyes Kane

Mailing Address (If Different from Project Address) _____

Phone# [redacted] Email [redacted]

Applicant(s) Shaun Kane Julie Keyes Kane

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Type of Request (Check All That Apply)

Board of Adjustment & Appeals	Planning Commission	
☒ Variance	☐ Conditional Use Permit (CUP)	☐ Preliminary Plat
☐ Administrative Appeal	☐ Interim Use Permit (IUP)	☐ Rezoning
	☐ Amendment to CUP or IUP	☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) We would like to install a composite 6-0 x 24-0 privacy fence in-between the pine trees, street side. *RRI DISTRICT*

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

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

Shaun P. Kane — **Applicant Signature**

8-31-23 — **Date of Application**

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

Fees		Dates	
Base Fee	$ 500 —	Application Received	8-31-23
Recording Fee	$ 46 —	Application Complete	9-6-23
Plat Fee – No Road(s) / With Road(s)	$ _____	(60) / 120 Day Review Period	11-5-23
Septic Compliance Fee	$ _____	Extended Review Period	_____
Wetland Fee	$ _____		
TOTAL FEE	$ 546 —		

Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Nessel S/T/R 15/037/022 PID# 06.00991.00

Project Address 51955 Belle Isle Dr Rush City, MN 55069

Property Owner(s) Shaun Kane Julie Keyes Kane

Mailing Address (If Different from Project Address) _____

Phone# [redacted] Email [redacted]

Applicant(s) Shaun Kane Julie Keyes Kane

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Type of Request (Check All That Apply)

Board of Adjustment & Appeals	Planning Commission	
☒ Variance	☐ Conditional Use Permit (CUP)	☐ Preliminary Plat
☐ Administrative Appeal	☐ Interim Use Permit (IUP)	☐ Rezoning
	☐ Amendment to CUP or IUP	☐ Ordinance Amendment

Description of Request (Attach Separate Sheet If Necessary) WE WOULD LIKE TO INSTALL A COMPOSITE 6-0 x24-0 PRIVACY FENCE IN-BETWEEN THE PINE TREES, STREET SIDE. *PRI DIST.*

Shaun P. Kane — 8-31-23

Applicant Signature — **Date of Application**

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

Date of County Public Hearing SEPT 28, 2023 **Date of Township Presentation** SEPT 12, 2023

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 Betty A Rising Stacy Lo Shea

_____ _____ _____

Chisago County Variance Application:

This home is our full-time residence. The addition of a privacy fence in a brown color will blend in with the pine trees and property. Our property sits down below the street; and this will enable some privacy on the front side of our home. The fence will also create a wind block for snow during the winter. Since we are on the corner of the street all the cars using the road have their lights shine onto the house; we would like to deflect some of that with the fence.

51955 Belle Isle Dr

Shaun Kane [redacted]

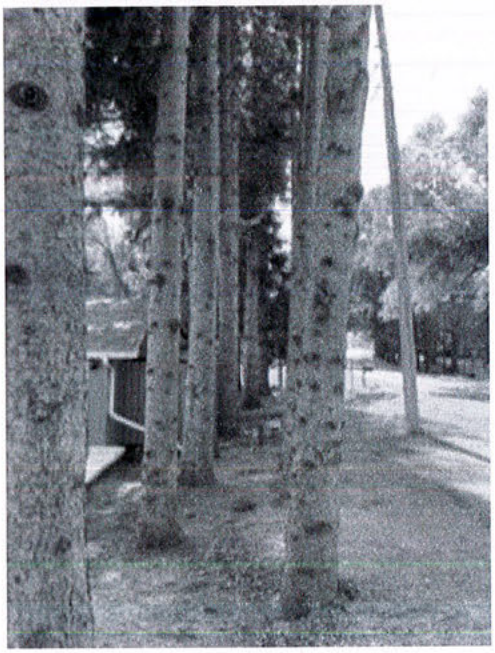
Thu 8/31/2023 5:40 AM

To:Shaun Kane [redacted]

24-0

fence line 6-0 height x 24-0
in between pine trees

Tree line ⟷ 17-0 ⟷ Road



Shaun Kane
[redacted]

GRAPHIC SCALE

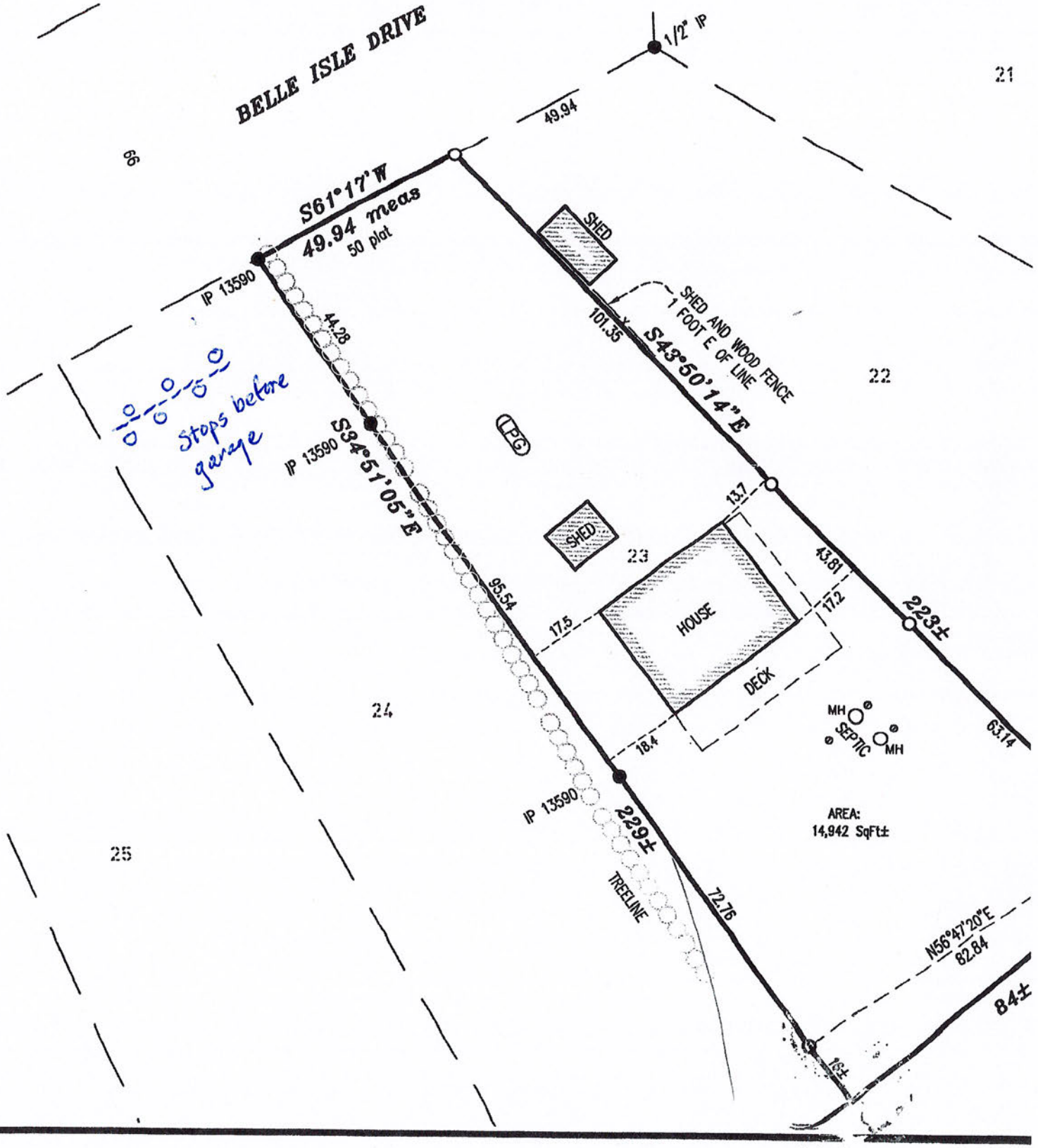
30 0 15 30 60

Scale in U.S. Survey Feet

CERTIFICATE

DICK

PART OF SECTION 15, TOWNSHIP 37

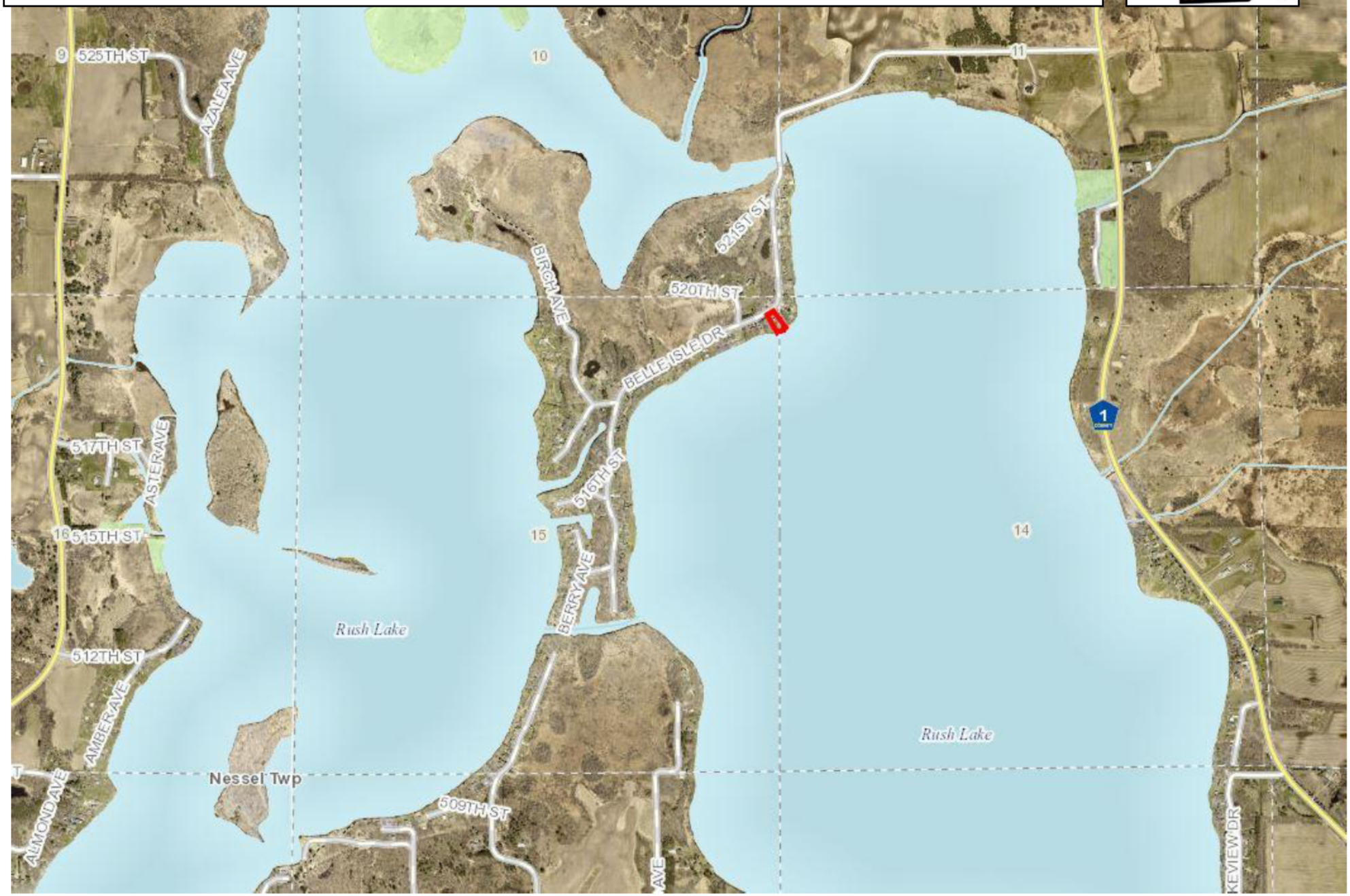


Shaun Kane & Julie Keyes Kane – Property owners Shaun Kane & Julie Keyes Kane are requesting a Variance to Zoning Ordinance Section 4.09 in order to construct a six (6) foot tall fence in the front (roadside) setback area where the maximum allowable height is three (3) feet. The .48± acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District at 51955 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00991.00).

Shaun Kane & Julie Keyes Kane Property -

Shaun Kane & Julie Keyes Kane – Property owners Shaun Kane & Julie Keyes Kane are requesting a Variance to Zoning Ordinance Section 4.09 in order to construct a six (6) foot tall fence in the front (roadside) setback area where the maximum allowable height is three (3) feet. The .48± acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District at 51955 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00991.00).

Shaun Kane & Julie Keyes Kane Property -



RESOLUTION NO. BOAA2023-0905

A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, APPROVING ALLOWING A FENCE WHICH EXCEEDS THE MAXIMUM ALLOWABLE HEIGHT IN THE FRONT NON-BUILDABLE SETBACK AREA ON PROPERTY LOCATED AT 51955 BELLE ISLE DRIVE IN NESSEL TOWNSHIP

WHEREAS, property owners Shaun Kane & Julie Keyes Kane (previously known as Julie Lehn-Keyes) submitted an application dated received August 31, 2023 and considered complete on September 6, 2023 for a Variance to Zoning Ordinance Section 4.09 Fences; and

WHEREAS, the property owners wish to install a six (6') foot tall fence in the front (roadside) setback area where the maximum allowable height is thirty six (36") inches; 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 06.00991.00

Lot Twenty-four (24) and that part of Lot Twenty-five (25) described as follows, to-wit: Beginning at the Southeast corner of said Lot Twenty-five (25); thence Westerly along the Southerly line thereof 37.5 feet; thence Northerly in a straight line to a point in the Northerly line thereof 26.73 feet Westerly of the Northeast corner; thence Easterly along the Northerly line thereof 26.73 feet to the said Northeast corner; thence Southerly on the Easterly line thereof to the point of beginning, all being, in LaBelle Isle, according to the survey and plat thereof on file and of record in the Office of the Register of Deeds of Chisago County, Minnesota.

WHEREAS, notice was provided and on September 28, 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 *Given that the proposed fence is located in the front non-buildable setback area which is adjacent to the roadway, the County finds that the proposed fence will be situated in a location which has no impact on the supply of light or air to adjacent properties.*

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

Finding #2 *The proposed action relates to the installation of a fence which the County finds to have no impact on the amount of traffic generated at the subject site or congestion on*

surrounding roadways. The County further finds that the fence being installed in a general parallel manner to the roadway will not cause traffic obstructions or hazards.

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

Finding #3 *The County finds no evidence to suggest that the proposed fence will have any impact on the danger of fire or public safety.*

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

Finding #4 *Being that the subject site is currently developed and the proposed fence will not change how the subject site is being used, the County finds no evidence to suggest that there will be any negative impact to surrounding properties. If the fence were going to cause negative impact to an adjacent property, it would most likely be the property directly north / across the street from the subject site (51940 Belle Isle Drive), and, given that the neighboring dwelling is situated so that it faces away from the proposed fence, the County finds no evidence to suggest that the proposed fence will have a negative impact on this particular neighboring property.*

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

Finding #5 *The County finds no correlation between the proposed fence and the impact upon existing facilities and services. Rather, the proposed fence is an accessory use to an existing dwelling.*

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

Finding #6 *The County finds no evidence that the proposed fence will have a negative fiscal impact on the County or school district.*

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

Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District. The Zoning Ordinance allows fences within the front non-buildable setback area when the fence is no more than 36" in height or up to 5' in height if the fence is chain link. While the proposed fence is contrary to the RRI District fence regulations, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the proposed fence is a reasonable accessory use given that fences are allowed in the RRI District and a lesser height would not provide relief from headlight wash, that the subject site is unique in that it has a lower elevation than the adjacent roadway and it's situated near a curve in the roadway, and, that the proposed fence will fit the essential character of the neighborhood given that fences are commonly found in residential neighborhoods. Therefore, 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 Variance approval allows for the installation of a 6' tall fence within the front non-buildable setback area in the Rural Residential I (RRI) District where the maximum allowable height is 36".
2. The approved fence shall be constructed in general conformance with application materials dated received August 31, 2023 and kept on file with the Department of Environmental Services, including that the fence shall be no greater than 6' in height as measured from the finished grade, 24' in length, and installed at least 9' from the north property boundary / Right-of-Way boundary. Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. Prior to installation of the fence, the property owners shall provide to the Department of Environmental Services monitoring report(s) and all other documentation required by the Department of Environmental Services demonstrating that the existing Type IV septic system is compliant.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 28th day of September, 2023.

Gregg Carlson	_____	John Sutcliffe	_____
Douglas Greene	_____	Charles Yeager	_____
Becky Strand	_____		

_____ ATTEST: _____

John Sutcliffe
Vice Chair

Beth Gervais
Land Services Coordinator