



Chisago County, MN
BOARD OF ADJUSTMENT AND APPEALS
Meeting Agenda
October 26, 2023 | 7:00 pm

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

Tour Time and Date: Wednesday, October 25, 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. September 28, 2023
- 5. Receive all Materials and Submittals into Record**

Previously Distributed Materials:

 - a. Complete meeting packet including staff reports with attachments for agenda items 6a, 6b, and 6c
- 6. Public Hearings – New Applications**
 - a. **David & Melissa Donatell** – Property owners David & Melissa Donatell are requesting a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a non-conforming structure (dwelling) closer to the Ordinary High Water Level, township Right-of-Way and County State Aid Highway than required, to expand a detached accessory structure (garage) closer to the southerly property boundary (side yard), township Right-of-Way and County State Aid Highway than required, and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District. The .58± acre subject site is located at 11980 Lyman Lane in Chisago Lake Township, S17, T33, R20 (PID 02.01444.00).
 - b. **Jayme Ersfeld** – Property owner Jayme Ersfeld is requesting a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21 in order to allow the expansion of a non-conforming structure (dwelling) closer to the Ordinary High Water Level (OHWL) than required in the Rural Residential II (RRII) District / Shoreland Management District. The .37± acre subject site is located at 32342 N. Center Lane in Chisago Lake Township, S22, T34, R20 (PID 02.00988.00).
 - c. **David & Crystal Neuman** – Property owners David & Crystal Neuman are requesting a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order construct a dwelling, deck and attached garage closer to the Ordinary High Water Level and township Right-of-Way than required in the Rural Residential I (RRI) District / Shoreland Management District. The .29± acre subject site is located at 11960 Mentzer Trail in Chisago Lake Township, S5, T33, R20 (PID 02.01626.00).
- 7. Public Hearings – Continued Hearings**

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

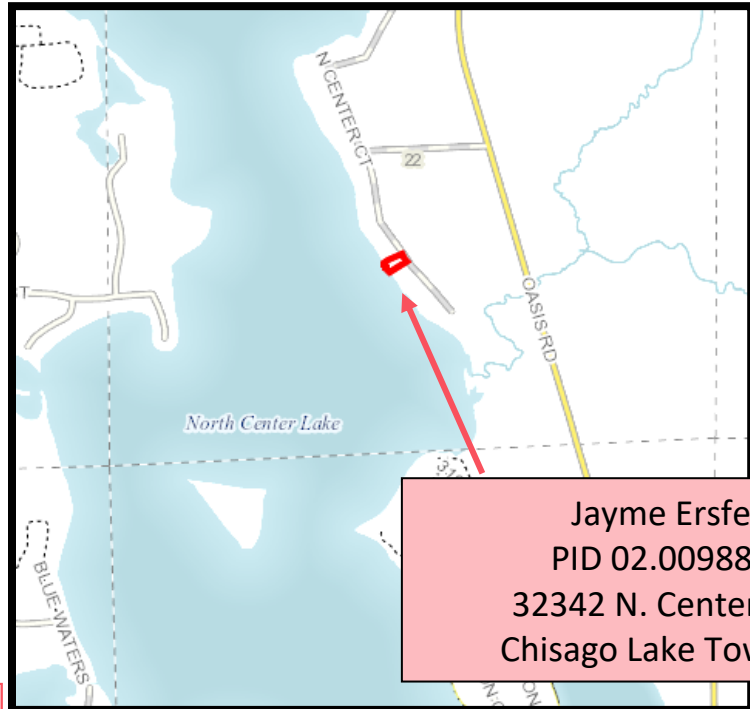
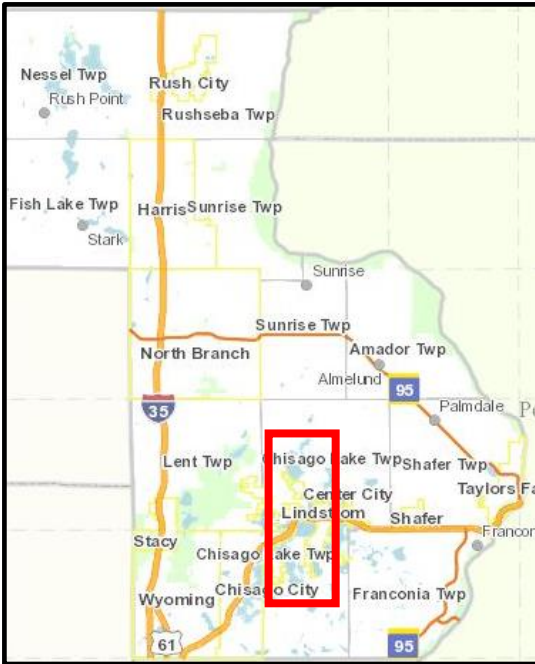
The next meeting is scheduled for Thursday, November 30, 2023 at 7:00 pm.

Board of Adjustment and Appeals

Tour Date and Time:

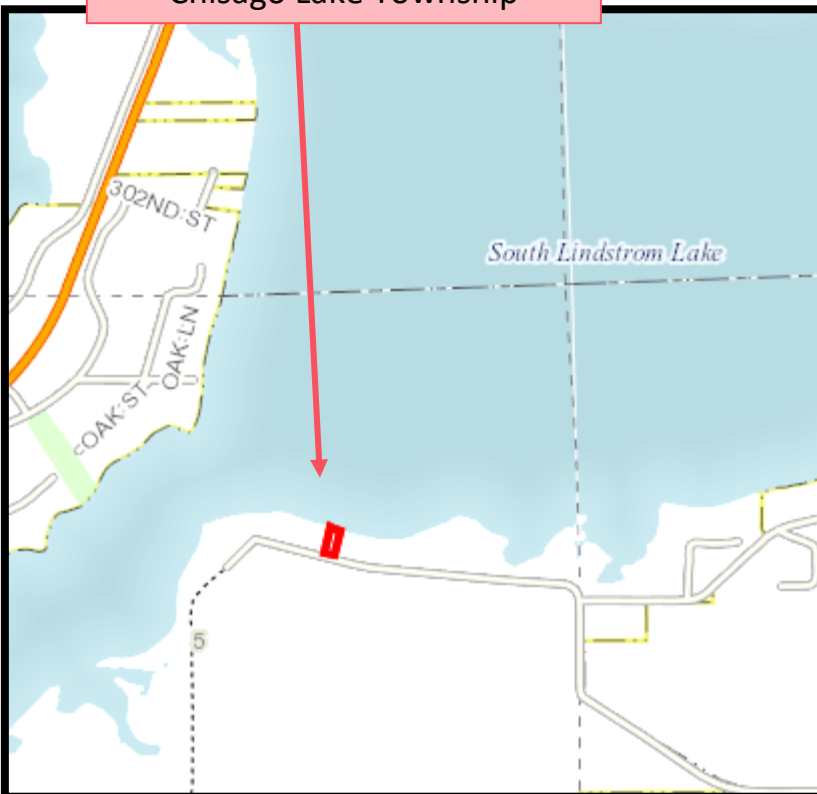
Wednesday, October 25, 2023 at 8:15 am

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



Jayme Ersfeld
PID 02.00988.00
32342 N. Center Lane
Chisago Lake Township

David & Crystal Neuman
PID 02.01626.00
11960 Mentzer Trail
Chisago Lake Township



David & Melissa Donatell
PID 02.01444.00
11980 Lyman Lane
Chisago Lake Township

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
September 28, 2023**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, September 28, 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.

Vice Chair Sutcliffe 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, John Sutcliffe, Becky Strand, and Chip Yeager. Absent: Chair Gregg Carlson. A quorum was established.

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

APPROVAL OF MINUTES – Motion to approve the August 31, 2023 meeting minutes as presented by Yeager; second by Strand. 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 Matt & Megan Walsh for agenda item 6b, into the record by Strand; second by Greene. The **motion passed** and carried unanimously. Meeting materials distributed in advance to the Board of Adjustment & Appeals for their review included: staff reports with attachments and written comments from Matt & Megan Walsh. 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

Kyle & Laura Beste – Coordinator Gervais provided background information on Kyle & Laura Beste’s after-the-fact Variance request for property located at 44050 Maple Lane in Fish Lake Township (PID 03.01315.00), explaining that the property owners recently constructed a deck which encroached on the required Ordinary High Water Level (OHWL) setback by 14’ and the total amount of impervious surface coverage exceeded the maximum allowable amount by 6.6%. Gervais shared that the Bestes were under the impression that the previous property owners were granted a Variance in 2017 for the deck and impervious surface coverage, however, Gervais added, a septic compliance inspection revealed a non-compliant system in 2017 and the 2017 Variance request was withdrawn. With a passing septic compliance inspection in 2022 and the Bestes believing that the 2017 Variance had been approved, they proceeded with the deck and additional impervious surface coverage. As part of a code enforcement effort to deal with work being completed without the necessary building permit, a stop work order was issued in June 2023 by the Department of Environmental Services (Department) and the property owners were instructed that work must stop until the necessary building permit was obtained. Once the building permit application was submitted and upon review of the application, it was determined by the Department that the deck did not meet the required OHWL setback and the deck would either need to be removed or an after-the-fact Variance could be requested.

Gervais provided details about the subject site and surrounding area, explaining that the property was considered legal non-conforming as it didn’t meet the County’s minimum dimensional requirements for the Rural Residential I (RRI) District / Shoreland Management District. Gervais then reviewed details of the request, again explaining that the property owners were seeking a 14’ OHWL setback Variance as well as a Variance to

exceed the maximum allowable amount of impervious surface coverage by 6.6%, and highlighted the property owners' written justifications.

The Technical Review Committee met with Kyle Beste on September 13, 2023. 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 review period was scheduled to expire on October 9, 2023.

Gervais identified staff concerns related to the request. The application materials explained that the property owners believed that the previous property owner had obtained Variance approval for the OHWL setback encroachment and they were acting on that approval given that the septic system had been brought into compliance. Gervais noted that this factor did not constitute an exceptional or extraordinary circumstance as it was the property owners' responsibility to verify setbacks and Variance status prior to construction. 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. Gervais believed that the property owners had complete control over this circumstance. Regarding the amount of impervious surface coverage, the application materials explained that the total amount exceeded 25% when they purchased the property in 2022. Gervais noted that the application did not offer any exceptional or extraordinary circumstance relating to the new semi-circular patio (265 sf) added by the Bestes since they acquired the property.

Gervais concluded by offering a recommendation of approval for an after-the-fact Variance to encroach on the OHWL setback and denial of an after-the-fact Variance to exceed the maximum allowable amount of impervious surface coverage, and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Kyle Beste stepped forward and stated that he and his wife were unaware that a building permit had not been pulled by their hired contractor and work on the deck was completed before the stop work order was given. Strand, recalling observations from the Board's September 27, 2023 site visit, asked about a structure on the property which wasn't included in the impervious surface calculation worksheet. Beste explained that the structure was the previous owner's icehouse and Beste agreed to have it removed. Strand also sought clarification on what materials were used in the front of the boathouse. Beste confirmed that it was sand.

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

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

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.

John & Marie Keefe – Coordinator Gervais provided background information on John & Marie Keefe's Variance request for property located at 32442 Northshire Court in Chisago Lake Township (PID 02.01316.03), explaining that the request was for a Variance to construct a 6' tall fence along nearly the full length of their southerly property boundary (side yard) where the maximum allowable height was 4'. Gervais noted that the length of the southerly property boundary, as platted, was 368.58' and, after excluding 40' for the front non-buildable setback area where the fence regulations differed, the length of the fence was estimated by staff to be as much as 328.58'. Gervais reviewed details about the subject site and surrounding areas, explaining that the subject site was located in the Rural Residential I (RRI) District and at the north end of the Northshire Court cul-de-sac in the Imperial Estates subdivision which was platted in 1980.

Gervais reviewed details of the proposed fence, explaining that it would start at an identified tree in the front yard and potentially run westerly for the full distance of the southerly property boundary to the point where that boundary met the westerly property boundary. Gervais shared that the application materials explained that the allowable 4' tall fence would keep the neighboring property owner from parking vehicles and storing miscellaneous equipment and supplies on the Keefe property but a 6' fence would help keep the neighboring Pitbull dog from entering the Keefe property. The property owners believed this to be a reasonable request so that they could enjoy their land with a reasonable level of security from harm; that the situation was 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 was heavily wooded, screened by structures, and located at the end of a cul-de-sac.

The Technical Review Committee met with property owners John & Marie Keefe on September 13, 2023 and no concerns were identified. The Chisago Lake Town Board considered the request on September 19, 2023 and recommended approval with the notation of "very reasonable request". The State mandated review period was scheduled to expire on October 27, 2023.

Gervais identified staff concerns related to the request. The application materials cited issues with a neighboring property owner and the neighboring property owner's dog as exceptional or extraordinary circumstances. Gervais noted that these issues did not relate to the property itself and related instead to personal circumstances between neighbors. The proposed fence height was primarily intended to prevent a neighboring dog from entering the subject site; however, the fence provisions within the Zoning Ordinance were not intended to address or prevent issues / disputes between neighbors. Variances were intended to provide relief from unique circumstances relating to the property itself. Staff did not believe that the Variance would necessarily be detrimental to other properties in the RRI District but did believe that the Variance would be

contrary and detrimental to the purposes and intent of the Zoning Ordinance.

Gervais concluded by offering a recommendation of denial and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owners John & Marie Keefe stepped forward. J. Keefe explained that the hardship that they faced was that they could not enjoy their yard space because the neighbor's dog continued to trespass and cause harm to them and their dog. They believed that the 6' fence would be tall enough to keep the dog from jumping over it and increase the level of safety for themselves and their family. Keefe explained that his neighbor was willing to share in the cost of the proposed fence so it wasn't an issue of warring neighbors as stated in the staff report. Greene sought clarification on whether the fence would be installed around the whole yard or only along one property boundary. Keefe stated that they didn't plan to fence the whole lot. Greene, referencing written comments received from Matt & Megan Walsh of 32439 Northshire Court, asked where the Walshes lived in comparison to the Keefes. Keefe explained that the Walshes were located northwest of his property.

Vice Chair Sutcliffe opened the public hearing and sought public comment.

Megan Walsh of 32439 Northshire Court, Chisago Lake Township offered her support for the proposed Variance, sharing that she didn't know what else could be done about the neighboring dog given that the Sheriff's Office had already been called twice. The neighbors had all talked to the dog owner with no action.

Bob Murphy of 32340 Northshire Court, Chisago Lake Township offered support for the Variance request, commenting that the neighboring dog had been aggressive before and he would hate to have the dog be able to jump over a 4' fence and attack a child.

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

Greene asked staff if the fence had to be set back 40' from the front property boundary. Gervais stated that fences in the front non-buildable setback area could not exceed 36" in height except that chain link fences could be up to 5' in height. Greene commented that, if the fence was only located on one property boundary, the neighboring dog could walk around it and enter the Keefe property. J. Keefe explained that, due to topography, he didn't think the dog would walk around the fence.

Strand voiced her concern that the neighbor was parking vehicles and equipment right up to the shared property line already, speculating that this would continue even if a fence was installed which would allow the neighboring dog to climb up and over the fence. Strand stated that there were other remedies for the situation, such as contacting the Sheriff's Office, and that the Board could not act as law enforcement. Strand encouraged the applicants and their neighbors to continue reporting the issue to the Sheriff's Office, and commented that a 6' fence would not remedy the problem.

Yeager noted that guidance on the State mandated practical difficulty standard advised that uniqueness related to physical characteristics of the property in question, such as topography. If the Board granted the Variance and the 6' tall fence was built and then the neighbor and dog moved away, the rationale for the fence Variance would also go away. Yeager commented that this was not what Variances were intended for.

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

Garrett & Carrie Mueller – Coordinator Gervais provided background information on Garrett & Carrie Mueller's Variance request for property located at 30583 Lofton Avenue / CSAH 24 in Chisago Lake Township (PID 02.00848.10), explaining that the property owners were requesting the Variance in order to construct a 54' x 64' (3,456 sf) detached accessory structure in addition to their 1,396 sf attached garage – for a total of 4,852 sf of accessory storage space – where the maximum allowable amount of accessory storage space was 2,000 sf.

Gervais shared details about the subject site and surrounding area, explaining that the subject site was slightly less than 8 acres in size and zoned Rural Residential II (RRII) District. Despite being located adjacent to water, the body of water was classified as a pond and the site was, therefore, not in the Shoreland Management District or subject to additional Shoreland setbacks. Gervais then reviewed details about the request. The proposed 54' x 64' (3,456 sf) detached accessory structure would be situated south of the driveway, north of the septic system, and 135' east of the centerline of Lofton Avenue / CSAH 24. The height of the proposed structure was unknown but, per the County's Zoning Ordinance, it would not be allowed to exceed the height of the dwelling. The property owners described the structure as having a stone wainscoting front, windows, and color to match the dwelling. As justification for the Variance, the application materials explained that the property owners would like the proposed structure to keep their belongings and the property safe, clean, neat, and secure from theft and the elements for as long as possible. The written narrative stated that the subject site was unique in that it was 7.99 acres in size and almost totally surrounded by water and marshland, and that the subject area was not a typical RRII District neighborhood in that many of the surrounding properties were five acres or larger in size. The property owners believed that the proposed structure was similar to and in keeping with detached accessory structures in the area. Gervais noted that the written narrative did not include any indication that the property owners had considered reducing the size of the proposed accessory structure to reduce the Variance needed or eliminate the need for Variance altogether, explaining that with an existing 1,396 sf attached garage, the property owners could construct up to 604 sf of accessory storage space without need for Variance. For reference, Gervais added that, this amount of available space would have allowed for a 20' x 30' structure without need for Variance. Gervais also noted for the Board that the requested amount of accessory storage space was 240% more than the maximum allowed.

The Technical Review Committee met with Garrett Mueller on September 13, 2023. Mueller shared that the lean-to, shown in the rendering of the proposed structure, was not included in the Variance request and it would therefore be eliminated. He also was unsure of the overall structure height but acknowledged that it could not exceed the height of dwelling. The committee did not identify any other concerns. The Chisago Lake Town Board considered the request on September 19, 2023 and recommended approval with notation of "very reasonable - all adjacent lots have large barns". The State mandated review period was scheduled to expire on October 30, 2023.

Gervais identified staff concerns related to the request. 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. When Mueller Addition was platted, the parcel immediately north of the subject site 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. The staff report prepared for the Preliminary Plat clearly explained that the pre-existing development was allowed to remain, but the 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 included the maximum allowable amount of accessory storage space.

This meant 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. Gervais suggested that 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 was cited by the property owners as being part of the reason for seeking the Variance. Gervais explained that the minimum lot size in the RRII District was two acres, whereas the minimum lot size in the AG District was five acres. Gervais added that the circumstance of lot size did not only apply to Mueller Addition; there were several RRII parcels greater than two acres in size in the immediate vicinity and throughout the County.

Gervais concluded by offering a recommendation of denial and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Garrett Mueller stepped forward and stated that he believed that the proposed structure conformed with everything else on surrounding properties. He felt that he wasn’t asking for anything unreasonable because there were large barns across the street. The area was zoned RRII District before the subject site was platted but he wanted to keep the agricultural feel and therefore platted the lots with five or more acres. With the house being on a peninsula and so far off the road, he felt that the proposed structure would keep his property and belongings safer than just leaving them set out. Mueller concluded by sharing that the proposed structure would be made to match the dwelling.

Greene stated that the Board had recently approved a similar Variance request in the immediate vicinity but the approval was far less than 240% over the maximum allowed. Greene added that, if the Board set a precedent by approving such a significant Variance, it would make it more difficult for the people that didn’t have large properties like the applicants. Mueller pointed out that there were multiple big barns in the area. Strand commented that those barns had been there for decades and were considered legal non-conforming structures.

Vice Chair Sutcliffe opened the public hearing and sought public hearing.

Nick Angeloni of 30450 Wallmark Lake Drive, Chisago Lake Township offered his support for the requested Variance, sharing that, up to this point, everyone in the area had been denied a Variance for this type of project and most people who wanted more storage space moved out of the area.

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

The Board discussed details of a 2022 Variance granted to a neighboring property for a similar request (the example introduced by Board member Greene earlier in the meeting). Understanding the Board’s concerns with the proposed structure size and the amount of Variance requested, Mueller verbally amended the request to allow for a total of 3,124 sf of accessory storage space rather than a total of 4,852 sf (a 1,728 sf reduction), with this amendment allowing the property owners to construct a detached accessory structure of up to 1,728 sf in size.

Motion by Vice Chair Sutcliffe to adopt 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, based on the property owner’s amended request; second by Yeager. The **motion passed** and carried unanimously.

Conditions as Amended:

1. This approval grants a ~~2,852~~ 1,124 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the subject site to have a total of ~~4,852~~ 3,124 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~~ 1,728 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.

Floyd & Cindy Petty and Bear Roofing & Exteriors – Gervais shared that property owners Floyd & Cindy Petty of 3400 Stark Road / CSAH 10 and applicant Bear Roofing & Exteriors were proposing to expand the Petty's non-conforming dwelling by extending / constructing a roof over the existing non-conforming deck, explaining that the existing dwelling and deck were considered non-conforming being that they encroached on the required 135' setback as measured from the centerline of Stark Road / CSAH 10. Gervais noted that, while the proposed roof would 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 meant that the proposed roof would not exacerbate the non-conforming setback.

Gervais shared details about the subject site and surrounding area, explaining that the site was located in the Rural Residential I (RRI) District / Shoreland Management District and was developed with a dwelling and one detached garage. The dwelling encroached on the required CSAH setback but was believed to be legal non-conforming. The original deck was believed by staff to have been constructed in approximately 1985. Gervais then reviewed details about the request. The property owners and applicant were requesting the Variance to expand the legal non-conforming dwelling by extending / constructing a roof over the deck. The dwelling appeared to be situated approximately 90' from the centerline of Stark Road / CSAH 10 and the deck was situated approximately 82' from the centerline where the required setback was 135'. Historical records from the Assessor's Office showed that the deck, likely constructed around 1985, was 12' x 20'; however, the current application materials showed the deck as being 12' x 24'. Staff was 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 deck. 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 was unable to determine if the existing deck was a legal non-conforming structure or an illegal non-conforming structure due to expansion. Gervais added that, even though the roofline was proposed to extend closer to the centerline of Stark Road / CSAH 10, this would not be

considered an exacerbation of the existing setback encroachment as the Zoning Ordinance provided an exception to such features as the roof so long as it did not extend more than 3' from the structure.

In an effort to address the State mandated practical difficulty standard, the application materials explained that the property owners were proposing to add a roof over the deck to provide shade following the removal of diseased shade trees. They believed that the request was reasonable in that the roof would not expand the footprint of the dwelling or deck. The Petty's felt that the dwelling was unique in that it was situated at an intersection of two County roads (CSAH 10 and CR 60) and faced a lake. The shade provided by the proposed roof would allow the property owners to enjoy the view of the lake and that the addition of a roof would make the dwelling more visually appealing and make the space more usable.

The Technical Review Committee met with Floyd & Cindy Petty on September 13, 2023. The County Sanitarian stated that a septic compliance inspection would be required due to subject site being located in the Shoreland Management District. The County Engineer recommended that the property owners maintained at least a 50' setback from the centerline of Stark Road / CSAH 10. 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 review period was scheduled to expire on October 30, 2023.

Gervais identified staff concerns related to the request. Staff did not believe that the application materials adequately demonstrated compliance with the County's stated purpose of the Variance process or the State mandated practical difficulty standard. Further, staff believed that the proposed Variance would be contrary and detrimental to the purposes and intent of the Zoning Ordinance. Gervais speculated that the proposed roof was the minimum size necessary to adequately create a covered deck and did not believe that the expansion would exacerbate the existing setback encroachment, but did not believe that the application materials adequately demonstrated that a hardship existed and therefore believed that any amount of roof / expansion was excessive. Further, the fact that the property owners were desiring to have shade while using their deck was a personal preference and staff believed 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, or similar method.

Gervais concluded by offering a recommendation of denial and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Cindy Petty stepped forward and explained that they were required to take down a few very large diseased trees in the yard and, as a result, lost the shade they provided. Petty did not believe that an umbrella, shade sail or retractable awning were appropriate remedies in her case. She and her family would like to sit outside in the rain and be able to hang flower baskets from the covered roof and not hit their heads on the low-hanging shade. Petty shared pictures with the Board that showed where the new deck railing was compared to where it was previously as proof that she and her husband had not increased the size of the deck but had, in fact, decreased the size. Petty questioned the intent of the Variance law, asking if it was intended to determine what type of shade went over a deck or if it was to prevent encroachment on the road or lake.

Vice Chair Sutcliffe opened the public hearing and sought public comment. 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.

Strand asked staff if an arbor or pergola would be allowed without a Variance. Gervais speculated that either of those options would be allowed as they would be attached to the deck and the deck was already legal. Greene

suggested that the loss of shade trees was a unique circumstance related to the subject site and offered support for the request.

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

Conditions:

1. This Variance approval allows for the expansion of a legal non-conforming dwelling in the Residential I (RRI) District/ Shoreland Management District by allowing the expansion of the rural 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 staff, shall require further review and approval from the Board of Adjustment and Appeals Services 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.

Shaun Kane & Julie Keyes Kane – Coordinator Gervais explained that property owners Shaun Kane & Julie Keyes Kane of 51955 Belle Isle Drive, Nessel Township (PID 06.00991.00) were 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 was 36" / 3'. Gervais reviewed details about the subject site and surrounding area, explaining that the subject site was located at a point where the roadway transitioned from a north-south direction to a northeast-southwest direction. Gervais shared that the proposed fence would be 6' in height and 24' long and made of a brown composite material. The property owners had located their roadside property pins and estimated that the fence would be 9'2" from the Right-of-Way boundary. The application materials explained that the subject site sat lower than the roadway and the proposed fence would provide privacy on the front side of the dwelling. The written narrative further explained that the fence would create a wind block for snow during winter months and provide screening from headlight wash given that the property was situated near a curve in the road.

The Technical Review Committee met with Shaun Kane on September 13, 2023. The County Sanitarian commented that the property owners would be required to catch up on reporting for their Type IV septic system as part of the Variance process. Gervais explained for the Board that this type of septic system was not typical and required annual reporting. 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 review period was scheduled to expire on November 5, 2023.

Gervais commented that staff did not believe that the cited reasons for the fence were necessarily exceptional or extraordinary circumstances only applying to the subject site; however, they may be factors that the Board wished to consider. And, if the Board considered these to be exceptional or extraordinary circumstances, staff did 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 was at a lower elevation than the roadway, staff suspected that a 6' tall fence was necessary to accomplish this type of screening. Therefore, staff believed that the property owners had requested the minimum Variance needed to alleviate the hardship.

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

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Shaun Kane stepped forward and stated that he was in the process of getting all necessary paperwork together to bring the septic system into compliance, adding that, as a new owner of the property, he was not aware of the annual reporting requirement. Kane explained that the fence would be installed between the two rows of trees in his front yard and described the approximate location in relation to existing trees and structures. Strand asked staff if a septic certification was required as part of the Variance process. Gervais responded that septic compliance inspections were required for all properties in the Shoreland Management District when the property owners applied for Variances unless a septic compliance inspection had been completed within the past three years.

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

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

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.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUSINESS

None

NEW BUISNESS

None

MISCELLANEOUS

None

ADJOURN MEETING – ***Motion*** to adjourn by Yeager; second by Strand. The **motion passed** and carried unanimously. With no further business the meeting was adjourned at 8:43 p.m.

John Sutcliffe
Vice Chair

ATTEST:

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Expand a Non-Conforming Structure Closer to the Ordinary High Water Level, Township Right-of-Way and County State Aid Highway than Required, to Expand a Detached Accessory Structure Closer to the Southerly Property Boundary (side yard), Township Right-of-Way and County State Aid Highway than Required, and to Exceed the Maximum Allowable Amount of Impervious Surface Coverage
 11980 Lyman Lane, Chisago Lake Township
 DATE: October 26, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance to Zoning Ordinance Sections 4.03 and 5.15 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a non-conforming dwelling closer to the Ordinary High Water Level, township Right-of-Way and County State Aid Highway than required, to expand a non-conforming detached accessory structure (garage) closer to the southerly property boundary (side yard), township Right-of-Way and County State Aid Highway than required, and 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):	David & Melissa Donatell
Property Owner(s):	David & Melissa Donatell
Property Address:	11980 Lyman Lane Chisago Lake Township
General Location:	Section 17, Township 33, Range 20
PID:	02.01444.00
Property Area:	.58± 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:	Chisago Lake
Date Application Received:	September 25, 2023
Date Application Complete:	October 3, 2023
60-Day Review Period:	December 2, 2023



BACKGROUND

Property owners David & Melissa Donatell are proposing to further develop their lakeshore property by expanding their existing non-conforming dwelling with a 21' x 37' (777 sf) addition of habitable space and an approximate 6' x 37' (222 sf) porch addition on the southeasterly side (roadside), a 12' x 30' (360 sf) covered patio on the northeasterly side (northerly side yard), and a 12' x 19' (228 sf) "open" patio on the northwesterly side (lakeside). The proposed dwelling additions will encroach on the required Ordinary High Water Level (OHWL), township Right-of-Way (R-O-W), and County State Aid Highway (CSAH) setbacks.

The Donatells are also proposing to expand their existing non-conforming detached accessory structure (garage) by constructing a 20' x 24' (480 sf) addition on the southeasterly side (roadside). The proposed garage addition will encroach on the required southerly side yard, township R-O-W and CSAH setbacks.

Upon completion of the proposed additions / improvements, the reported amount of impervious surface coverage will increase from 18% to 31.25%.

SITE ANALYSIS

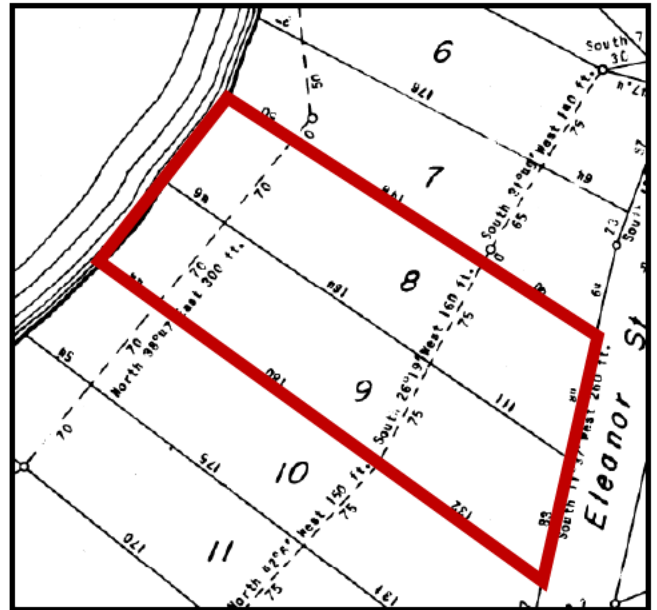
The .58-acre subject site is located approximately 50' north of Chisago Boulevard / CSAH 23 on the west side of Lyman Lane and on the southeast side of Chisago Lake. Topography of the site includes elevations ranging significantly from 928' near the roadway to 897' near the shoreline, with the OHWL of Chisago Lake being 900.2'.

The site was platted as part of Lilygren's Beach in 1956. As platted, the subject site is 167' wide at the roadway with an average depth of 322'. The property is considered non-conforming due to lot area, but is considered legal non-conforming due to the fact that the property was platted prior to the County's adoption of official land use controls.

While the property owners did not provide a survey and the site plans do not show the existing structures in relation to all property boundaries or the OHWL, staff estimates, based on the County's GIS Viewer, the following:

- The existing dwelling and deck may be as close as 15' from the OHWL where the required setback is 75'; approximately 65' from the township R-O-W where the required setback is 40'; approximately 167' from the centerline of the CSAH where the required setback is 135'; and, approximately 18' and 80' from the side property boundaries where the required setback is 10'.
- The existing detached garage is approximately 95' from the OHWL where the required setback is 75'; approximately 5' from the southerly side yard where the required setback is 5'; approximately 28' from the township R-O-W where the required setback is 40'; and, approximately 104' from the centerline of the CSAH where the required setback is 135'.

Staff notes that it's very challenging to determine which features on aerial imagery are structures and the exact boundaries of those structures, such as the deck, for the goal of establishing approximate



existing setbacks. The Board should use these approximated setbacks for reference but remember that they are not precise measurements.

Based on zoning and lot size, the subject site is limited to a maximum of 1,263.4 sf of accessory storage space. The property owners are reporting the current amount of accessory storage space to be 680 sf (624 sf detached garage and 56 sf shed).

The subject site is zoned Rural Residential I (RRI) / Shoreland Management District as are all surrounding properties on the northerly side of Chisago Boulevard / CSAH 23. Properties on the south side of Chisago Boulevard / CSAH 23 are zoned Agricultural (AG) District / Shoreland Management District. Neighboring properties on Lyman Lane range in size from approximately .10 acres to nearly 1 acre, with most neighboring properties developed for residential purposes.

Records from the Chisago County Assessor's Office suggest that the dwelling was constructed in 1956 and the garage was constructed in 1979. The top adjacent image, obtained from the Assessor's Office, shows the dwelling in 1972.

Records from the Environmental Services Department indicate that a previous property owner (Karasov) had requested a Variance in 2007 which would have allowed the replacement of a deck and retaining wall and construction of a stairway landing larger than the maximum allowable size, with all activity being situated closer to the OHWL than required. The Board ultimately granted a modified approval with conditions. Staff noted during this research exercise that it was suggested in 2007 by DNR and County staff that the elevations may constitute a bluff status. It did not appear that there was a survey submitted as part of the 2007 request or a final determination on the bluff status, but this does raise the question for the current request. If this site constitutes a bluff, an additional 30' setback would be required from top-of-bluff. The bottom adjacent image shows 1' contours (elevations).



PROPOSAL ANALYSIS

The property owners are requesting multiple Variances to the Zoning and Shoreland Management Ordinances within this single Variance request, including:

- A Variance allowing the expansion of the legal non-conforming dwelling by constructing a 21' x 37' (777 sf) addition of habitable space and an approximate 6' x 37' (222 sf) porch addition on the southeasterly side (roadside), a 12' x 30' (360 sf) covered patio on the northeasterly side (northerly side yard), and a 12' x 19' "open" patio on the northwesterly side (lakeside).
 - It appears that the existing dwelling was constructed in 1956, which means that the dwelling was constructed prior to the County's adoption of official land use controls and is, therefore, considered to be a legal non-conforming structure. Expansion of a non-conforming structure is prohibited unless approved by Variance.
 - Roadside Addition (Habitable Space):
 - The application suggests that the roadside addition will be 21' x 37' (777 sf); however, the site plan also shows the addition of a porch. According to the building plans, the habitable space addition (entryway, mudroom, dining room and living room) is 21' x 37' and the covered porch is approximately 6' x 37'.
 - The site plan shows the roadside addition to be 36' from township R-O-W where the required setback is 40' (which equates to a 4' setback Variance) and 28' from the closest side yard where the required setback is 10'. Based on the County's GIS Viewer, staff estimates that the roadside addition will likely meet the required 75' OHWL setback and *may* meet the required 135' CSAH setback. Without a detailed site plan or survey, it's difficult to determine exact setbacks from the OHWL and the centerline of CSAH 23.
 - Northerly Side Yard Addition (Covered Patio / Porch):
 - The application suggests that the covered patio will be 12' x 30' (360 sf) in size and the site plan shows this addition – labeled as a porch – to be located on the northeasterly side of the existing dwelling. The site plan and building plans show that the covered patio / porch will be located in and completely fill the "L-shaped" space created by the off-set of the existing dwelling and the proposed roadside addition.
 - The site plan does not show the proposed setback from the OHWL, but staff estimates that it's approximately 52' where the required setback is 75' (which equates to a 23' setback Variance). Based on the site plan and the County's GIS Viewer, staff believes that the covered patio / porch will meet and exceed all other required setbacks.
 - Lakeside "Open" Patio Addition:
 - The application suggests that the lakeside addition will be a 12' x 19' "open" patio located on the northwesterly side of the existing dwelling. The patio will extend northwesterly from the proposed covered patio / porch and additional 19' toward the lake / OHWL.
 - An "open" (uncovered) patio is not considered a structure and is, therefore, not subject to the 75' structural setback from OHWL or any other structural setback requirements. Therefore, Variance approval is not necessary for this component of the project.
- A Variance allowing the expansion of the legal non-conforming detached garage by constructing a 20' x 24' (480 sf) addition on the southeasterly side (roadside) of the existing 26' x 24' (624 sf) detached garage.
 - It appears that the existing detached garage was constructed in 1979. Staff is not certain if the detached garage met all required setbacks at time of construction, but the setbacks do not comply with current requirements and is, therefore, considered non-conforming. For

the purposes of this request, staff is assuming that the detached garage is considered to be legal non-conforming. Expansion of a non-conforming structure is prohibited unless approved by Variance.

- The site plan shows the proposed addition to be as close at 3'7" from the southerly property boundary / side yard where the required setback is 5' (which equates to a 1'5" setback Variance) and as close as 15'8" from township R-O-W where the required setback is 40' (which equates to a 24'4" setback Variance).
 - The site plan does not show the proposed setback from the OHWL; however, staff estimates that the garage addition will exceed the required setback. Likewise, the site plan does not show the proposed setback from the centerline of CSAH 23, but staff estimates this setback to be approximately 85' where the required setback is 135' (which equates to a 50' setback Variance).
 - The written narrative explains that the property owners don't have immediate plans to expand the garage but the garage-related Variances are being requested for future use. Staff notes that Variances are required to be utilized within one year or they become null and void. The Board may wish to discuss the timing of this portion of the proposed project with the property owners and, if the Variance is approved, include an appropriate condition.
 - The written narrative references the addition of a paved area "next to the garage and road". Staff is not entirely certain where this paved area is proposed to be located or the dimensions of said area; however, the proposed impervious surface coverage worksheet lists a "paved area" which is 38' x 55' (2,090 sf) in size. Staff presumes that these are one in the same.
- A Variance allowing more than 25% impervious surface coverage.
 - The property owners have reported – via the impervious surface calculation worksheets – an existing amount of impervious surface at 18% and a proposed amount at 31%. This significant increase is a direct result of proposed structure additions, the proposed "open" patio addition, and the proposed 2,090 sf "paved area".
 - Staff notes for the Board that the worksheets have not been fully verified for accuracy, with the exception of determining that – based on the information provided – the actual proposed amount of impervious surface coverage is 31.25% rather than an even 31%. Staff's comments on this topic rely on the information provided by the property owners.

The written narrative explains that the proposed dwelling addition (habitable space) will provide such amenities as a dining room, a front closet, and generally more space for the family of five. The narrative also suggests that the land located between the existing dwelling and detached garage often floods in the spring due to the sloping elevations and the property owners believe that the proposed addition will help remedy this issue. The narrative does not address the need or justification for the proposed covered patio / porch or the "open" patio.

The written narrative explains that the proposed detached garage addition will be constructed at some point in the future and will allow for additional storage of "outdoor things". The narrative states that, with this additional space, the property owners would remove the existing 56 sf shed. Additionally, the narrative explains that the property owners are proposing the installation of a paved area "next to the garage and road" allowing for additional parking and an area for the property owners' children to play. The narrative explains that the need for the paved area is based on the fact that the subject site is located on a short dirt road and not within a neighborhood, and their children do not have a road they can ride their bicycles on.

In an effort to address the State mandated practical difficulty standard, the written narrative offers the following:

- The property owners believe that the required Variances are due to circumstances out of their control in that the County's ordinances were established after the dwelling was constructed in 1956. They believe that the existing dwelling already encroaches on the required OHWL and roadway setbacks and there is no location on the property which would be in compliance with the required setbacks.
- The property owners believe that other dwellings in the immediate vicinity encroach on the required OHWL and roadway setbacks and, therefore, the proposed dwelling additions will not be inconsistent with the surrounding area.

The proposed amount of accessory storage space is shown to be 1,104 sf, assuming that the 56 sf shed is removed, which is within the allowable amount. Even if the 56 sf shed remains, the total amount of accessory storage space will be within the allowable amount.

REVIEW PROCESS

The Technical Review Committee met with property owners David & Melissa Donatell on October 11, 2023. The Land Services Coordinator shared her concerns about the lack of identifying / locating the exact property boundaries, specifically the southerly property boundary. The County Sanitarian stated that a septic compliance inspection will be required being that the subject site is located within the Shoreland Management District.

The Chisago Lake Town Board considered the request on October 17, 2023 and recommended approval with no conditions.

The State mandated 60-day review period will expire on December 2, 2023.

VARIANCE ANALYSIS

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

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

The written narrative alludes to the fact that the existing dwelling was constructed prior to the County's adoption of official land use controls, which the County refers to as pre-existing development and would be considered an exceptional or extraordinary circumstance. The narrative also suggests that the proposed dwelling addition will help remedy a seasonal flooding concern related to sloping elevations between the dwelling and detached garage. The property owners have had no control over these circumstances. However, staff believes that there are other options for remedying the flooding situation which would not require Variance approval and that the written narrative is lacking in providing exceptional or extraordinary circumstances to justify the proposed garage addition and proposed amount of impervious surface coverage. Staff believes that most of

the requested Variances are based on personal preferences rather than exceptional or extraordinary circumstances relating to 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 Rural Residential I (RRI) District / Shoreland Management District properties. Properties in the Rural Residential I (RRI) District / Shoreland Management District have the right to be developed for residential purposes, in addition to other uses identified by the Zoning Ordinance, and the subject site is presently developed with a dwelling, detached accessory structures, and extensive deck / patio areas.

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

The subject site was platted in 1956. It's believed that the existing dwelling was constructed in 1956 and the existing garage was constructed in 1979. These actions occurred prior to the County adopting official land use controls and were not a result of the current or previous property owners. However, staff does not believe that pre-existing development provides sufficient justification for all of the proposed Variances.

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

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

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

The application materials cite, in part, pre-existing development as a practical difficulty. There is no feasible way to expand the existing dwelling or existing detached garage in a manner that meets all required setbacks. While the proposed dwelling additions are not exacerbating the OHWL setback encroachment, they are creating a new township R-O-W setback encroachment. Likewise, the proposed garage addition is creating a new township R-O-W setback encroachment and exacerbating the existing CSAH setback encroachment. Lastly, the property owners are proposing to increase a conforming amount of impervious surface coverage to a non-conforming amount, with much of the impervious surface being a new parking area next to the garage and road. Staff believes that the request is significant, and the property owners haven't given any indication that they've considered a lesser plan to reduce the Variances needed.

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, 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 believe that some allowance should be given for

the fact that the site and existing dwelling constitute pre-existing development; however, staff does not believe that pre-existing development provides sufficient justification for all of the proposed Variances.

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, as a whole, would be contrary and detrimental to the purposes and intent of the Zoning and Shoreland Management Ordinances.

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

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

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

While a portion of the subject site is located in a flood zone, the proposed dwelling and detached garage additions will be located outside of the flood zone.

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

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

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

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to

any reasonable use whatsoever without the Variance. For example, if the Variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

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

3. Essential Character

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

FINDINGS OF FACT

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

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

Finding #1 Given that the proposed dwelling addition will meet and exceed all side yard setback requirements, where there is greatest likelihood for impacting adjacent properties, the County finds that the proposed addition will not impair supply of light or air to adjacent properties. While the proposed garage addition will encroach on the southerly side yard setback (and exceed the northerly side yard setback), the southerly neighboring dwelling is shown to be located approximately 90' from the shared property boundary. Therefore, the County finds that the proposed addition will not impair supply of light or air to adjacent properties. Further, the County finds that the proposed amount of impervious surface coverage has no impact on supply of light and air.

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

Finding #2 The County finds that the proposed use of the property will not change and the number of bedrooms will not change as a result of Variance approval and should, therefore, not increase the amount of traffic generated at the subject site. Further, the Chisago Lake Town Board / Road Authority did not identify any concerns related to Lyman Lane.

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

Finding #3 The property owners will be required to obtain building permits prior to construction of the proposed dwelling additions and garage addition, and they 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 related detached accessory structures and the proposed action will not change how the property is being used. The proposed dwellings additions will meet and exceed the required side yard setbacks where there is greatest likelihood for impacting adjacent properties. However, without the benefit of a survey or identification of property boundaries to verify setbacks for the existing garage and proposed garage addition, the County cannot be certain that the proposed addition will be located entirely on the subject site and finds that it cannot grant a Variance which could potentially allow a structure to encroach on a neighboring property. The County finds that the proposed amount of impervious surface coverage will have no direct impact on adjacent properties.

-OR-

Finding #4 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. The proposed dwellings additions will meet and exceed the required side yard setbacks where there is greatest likelihood for impacting adjacent properties. While the proposed garage addition will encroach on the required southerly side yard setback, it will be approximately 90' from the southerly neighboring dwelling. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties. Further, the County finds that the proposed amount of impervious surface coverage will have no direct impact on adjacent properties.

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

Finding #5 The subject site utilizes a private well and private septic system and accesses a public roadway known as Lyman Lane. Lyman Lane is a well-established and well-maintained public roadway intended to serve a small residential neighborhood. Therefore, the County finds that the proposed action will not cause unreasonable strain upon existing facilities or 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. The County further finds that the proposed action will increase the property value which will, in turn, positively benefit the County and school district in terms of fiscal impact.

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 proposed actions related to the expansion of the dwelling comply with the requirements for granting a Variance; however, the County further finds that proposed actions related to the expansion of the detached garage and exceeding the maximum allowable amount of impervious surface coverage fail 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 reasonableness and uniqueness.

-OR-

Finding #7 The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 allows dwellings and detached accessory structures as Permitted Uses in the RRI District. The Zoning Ordinance and Shoreland Management Ordinance do provide minimum setback requirements and a maximum allowable amount of impervious surface coverage; however, the Zoning Ordinance also allows for Variances from these requirements 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. The County finds that the proposed structure expansions and proposed amount of impervious surface coverage are reasonable based on the fact that dwellings and detached accessory structures are Permitted Uses in the RRI District / Shoreland Management District, that the circumstances necessitating the proposed structure expansions and proposed amount of impervious surface coverage are unique in that the subject site and dwelling constitute pre-existing development (i.e., they predate the County’s adoption of official land use controls), and that the proposed structure expansions and proposed amount of impervious surface coverage will fit the essential character of the neighborhood based on existing development in the immediate vicinity.

STAFF RECOMMENDATION

Staff has a number of concerns related to the proposed Variances and is reluctant to provide a recommendation of approval at this time. Staff’s concerns include, but may not be limited to, the following:

- Based on verbal statements from the property owners, they have not had a survey prepared or located property pins to verify existing and proposed setbacks. While the site plan shows some approximate setbacks, staff is concerned that the proposed garage addition may be closer to the neighboring property than suggested on the site plan or possibly even encroaching on the neighboring property. It’s also concerning that the site plan doesn’t show the location of the OHWL. The approximate OHWL setbacks included in this report are entirely based on the County’s GIS Viewer and it’s known that the GIS Viewer is not 100% accurate and is not intended to replace surveys.
- It’s unclear if the elevations constitute bluff status. There was an indication from DNR and County staff, as part of a 2007 Variance for the same property, that the elevations may constitute a bluff status but it does not appear that this was verified in 2007. If there is a bluff, an additional 30’

setback would be required from top-of-bluff and this would have a significant impact on the Variance request / Variance needed, specifically for the proposed dwelling additions.

- While pre-existing development may offer justification for some amount of Variance, it should not be used as justification for actions which are found to be excessive and/or unreasonable. Staff believes that the dwelling additions may be reasonable in that they aren't exacerbating the OHWL setback encroachment and they aren't encroaching on the roadway setbacks any greater than the existing detached garage. However, the proposed detached garage addition and amount of impervious surface coverage are concerning. The proposed garage addition will be exacerbating non-conforming roadway setbacks and, without identifying the location of the southerly property boundary, the exact southerly side yard setback is questionable. Under no circumstance should the County approve a Variance which would result in the garage addition being constructed on the neighboring property. The proposed increase in impervious surface coverage is concerning in that a large portion of it is for a parking area which is, in part, being proposed as an area for the property owners' children to play. Staff does not believe that the property owners have provided sufficient justification for the proposed amount of impervious surface coverage and, specifically, the need for a 2,090 sf parking area which is in addition to a 24' x 46' detached garage and driveway. If this 2,090 sf parking area were eliminated, staff estimates that the total amount of impervious surface would be reduced to 23%, which is an allowable amount.

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 that the Board table the request in order to allow the property owners time to have a survey prepared, or otherwise locate their property boundaries, and provide updated application materials including an updated site plan showing the OHWL, all property boundaries with existing and proposed setbacks, and elevations with a bluff determination.** Staff's recommendation is based on the comments included in the Variance Analysis section (shown in *blue italics*) and Findings of Fact section (shown in *red italics*).

Alternatively, should the Board determine that the request for Variance – in whole or in part – satisfies the State mandated practical difficulty standard and the Board adopts Findings of Fact to support approval of the request for Variance, staff encourages the Board to consider the following conditions of approval. Staff cautions that, without the preparation of a survey or locating the property pins / boundaries to determine existing and proposed setbacks, the setback Variances listed below may not be sufficient for the proposed structure expansions. Given the complexity of this request and the potential options for approval / denial, staff has not prepared a resolution for the Board's consideration but will prepare a resolution, based on the adopted Findings of Fact and conditions, if the Board makes a determination on the request as presented.

Recommended condition(s):

1. This approval grants the following Variances:
 - a. A Variance to expand a legal non-conforming dwelling and a legal non-conforming detached accessory structure (garage).
 - b. For the dwelling additions:
 - i. An approximate 4' Variance to the township Right-of-Way setback requirement allowing the proposed dwelling addition to be no closer than 36' from Lyman Lane.
 - ii. An approximate 23' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling addition to be no closer than 52' from the OHWL of Chisago Lake.

- c. For the detached accessory structure (garage) addition:
 - i. An approximate 1'5" Variance to the side yard setback requirement allowing the proposed garage addition to be no closer than 3'7" from the southerly side yard. Under no circumstances should the garage addition be located on or over the southerly property boundary, and it shall be the responsibility of the permit holder to accurately verify the location of said property boundary.
 - ii. An approximate 24'4" Variance to the township Right-of-Way setback requirement allowing the proposed garage addition to be no closer than 15'8" from Lyman Lane.
 - iii. An approximate 50' Variance to the County State Aid Highway (CSAH) setback requirement allowing the proposed garage addition to be no closer than 85' from the centerline of Chisago Boulevard / CSAH 23.
 - d. A 6% Variance to the impervious surface coverage requirement allowing the total amount of impervious surface to be no greater than 31.25%.
2. The sizes and locations of the dwelling additions and detached accessory structure addition shall be in general conformance with the application materials, including site plans, dated received September 25, 2023 and kept on file with the Department of Environmental Services. Any significant deviation from the approved request and site plans, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the permit holder's expense.
 3. The permit holder shall obtain a building permit prior to construction of the dwelling addition and detached accessory structure addition. The additions shall comply with all applicable codes and regulations, except as herein conditioned.
 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.
 5. This Variance shall be made use of within one year of the date of approval or it shall become null and void. The County acknowledges that the permit holder does not intend to utilize the approved Variances for the detached accessory structure addition within one year and will allow this specific portion of the project to be completed within three years of the date of approval, so long as the permit holder has otherwise made use of the Variance approval (i.e., applying for a building permit for the dwelling additions). If the Variances for the detached accessory structure addition are not utilized within three years, these specific Variances shall become null and void.

OPTIONS

1. **Approve** the Variance in whole 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. **Approve certain components & Deny certain components** of the Variance based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to thoroughly review the draft Findings of Fact and recommended conditions and amend as deemed appropriate.*
3. **Deny** the Variance in whole based on the Findings of Fact presented or amended. *Note: this option will require the Board to thoroughly review the draft Findings of Fact and amend as deemed appropriate.*

4. **Table** action to allow for further review and consideration. The current review period expires on December 2, 2023, allowing the Board to continue its review at the November 30, 2023 meeting.

ACTION REQUESTED

Motion to table the request in order to allow the property owners time to have a survey prepared, or otherwise locate their property boundaries, and provide updated application materials including an updated site plan showing the OHWL, all property boundaries with existing and proposed setbacks, and elevations with a bluff determination.

If the Board chooses to make a determination on the request for Variance as presented, staff will prepare a resolution based on the adopted Findings of Fact and conditions.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plans
 - d. Building plans
 - e. Impervious surface calculations (existing and proposed)
 - f. Petition for Variance Approval – Neighborhood Opinion
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map

CC: David & Melissa Donatell, property owners
County file



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 23-01811

Township Chisago Lakes TWP S/T/R 17/33/20 PID# 02.01444.00

Project Address 11980 Lyman Ln Chisago City, MN 55013

Property Owner(s) David Donatell, Melissa Donatell

Mailing Address (If Different from Project Address) _____

Phone# [REDACTED] Email [REDACTED]

Applicant(s) David Donatell, Melissa Donatell

Mailing Address (If Different from Project Address) _____

Phone# [REDACTED] Email [REDACTED]

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

☒ Variance

☐ Administrative Appeal

Planning Commission

☐ Conditional Use Permit (CUP)

☐ Interim Use Permit (IUP)

☐ Amendment to CUP or IUP

☐ Preliminary Plat

☐ Rezoning

☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) See Attached detail written narrative

Variance for home addition on the front of our house, between the existing house and detached garage. The addition will be 21ft x 37ft with a 12ft x 30ft covered patio and 19x12 open patio.

In the Future 20x24 Garage addition and to pave the area next to the garage and road.

Total Impervious surface ~~2480~~ 31%

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

☒ Full Legal Description

☒ Detailed Site Plan

☒ Detailed Written Narrative

☐ Plat Drawings

[Signature]
Applicant Signature

9/27/23
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

BASE FEE \$ 500 —
RECORDING FEE \$ 44 —

TOTAL FEE

\$ 544

DATES

APPLICATION REC'D 9/25/23
APPLICATION COMPLETE 10/3/23
60-DAY REVIEW PERIOD 12/2/23



Chisago County Department of Environmental Services Planning & Zoning Application

Township Presentation Form

Township Chisago Lakes TWP S/T/R 17/33/20 PID# 02.61444.00

Project Address 11980 Lyman Ln Chisago City, MN 55013

Property Owner(s) David Donatell, Melissa Donatell

Mailing Address (If Different from Project Address) _____

Phone# [REDACTED] Email [REDACTED]

Applicant(s) _____

Mailing Address (If Different from Project Address) _____

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)
 Variance for home addition on the front of our house, between the existing house and detached garage. The addition will be 21ft x 37ft with a 12ft x 30ft covered patio and 19x12 open patio.
 In the Future 20x24 Garage addition and to pave the area next to the garage and road.
 Total Impervious surface area 317

Applicant Signature [Signature] Date of Application 9/27/23

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

Date of County Public Hearing OCT 26, 2023 Date of Township Presentation OCT 17, 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
[Signature] [Signature]

We are asking the Board for a variance on our property.

We would like to put a home addition on the front of our house, between the existing house and detached garage. The addition will be 21ft x 37ft with a 12ft x 30ft covered patio and 19x12 open patio. This addition will include a living room, dining room and mudroom.

As our house is now, through the front door you immediately walk into our kitchen. There is no dining area. We have a table in the hallway area. No front closet to hang coats or put shoes. We would like to have more space for our family of 5. The space between our house and detached garage is unused space. It floods in the spring because of hills and how the yard slopes to that area. Putting on the addition will also help with this issue.

In the future, we would also like to expand our garage. Adding a 20x24 addition to it. This would allow us to have storage for all our outdoor things, we would no longer need a shed. We would also like to pave the area next to the garage and road. This would allow us to have more parking area. Also give our children an area to ride their bikes and play. Since we are on a short dirt road, and not in a neighborhood. The kids do not have a road they can ride their bikes on.

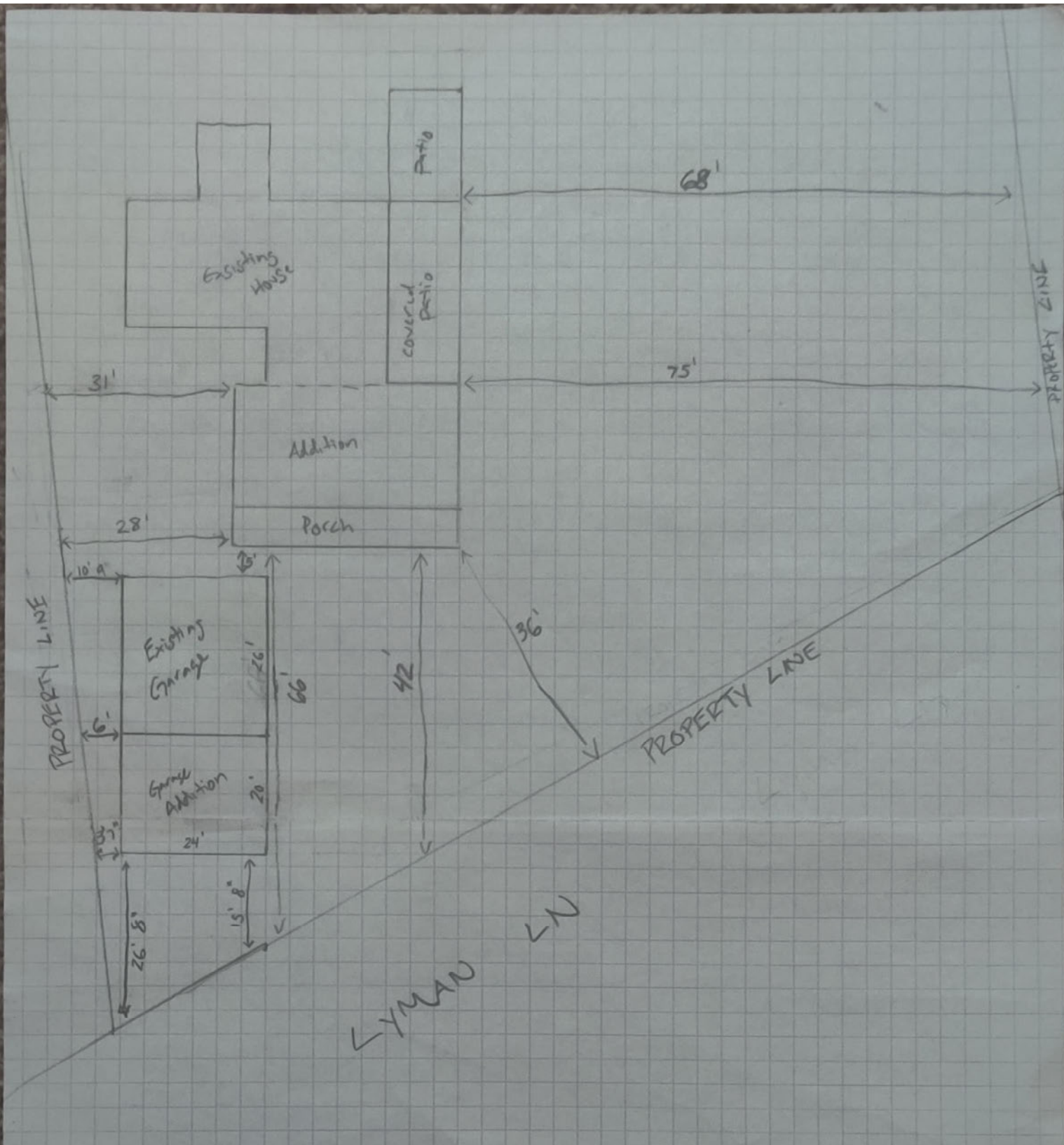
Our issue is due to circumstances out of our control. Ordinances were put in place after our home was built. As the rules of the ordinance are, there is no location on our property that would be in compliance. The existing structure is too close to the lake. And too close to the road.

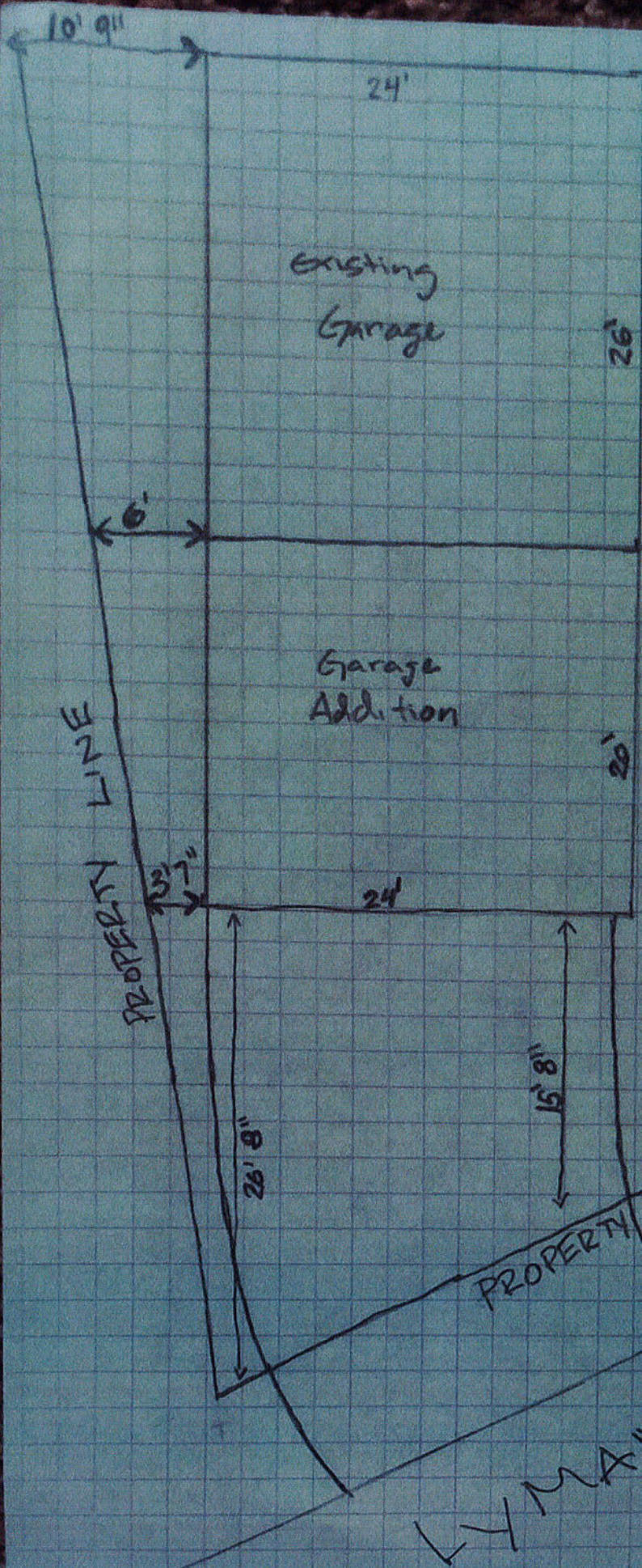
The other homes on our street are closer to the lake and closer to the road. The new structure will not be inconsistent with the surrounding homes. We will be setback farther from the road than other homes in the area.

Please consider granting us this variance.

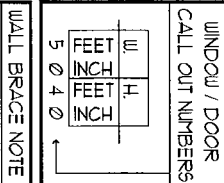
Thank You

Dave & Melissa Donatell





1/4" - 0"

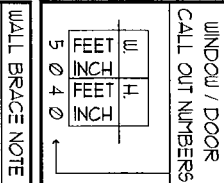


REV. #	DATE	DESCRIPTION
1	00-00-23	

KJ
Design
*Custom Home
Design*
Milwaukee 651-248-5222
Wisconsin 715-671-0200
kari@kjdesigninc.com

[illegible]

1/4" = 1'-0"



Page Number:
23-1-048

DOOR CASE

PRELIMINARY NOT FOR CONSTRUCTION

GENERAL NOTES:

1. PURPOSE OF THE INVESTIGATION: The purpose of this investigation was to determine if the use of a leaded gasoline pump was a factor in the death of a child.
2. ALLEGED FACTS: A child, 10 months of age, was found dead in a car. The child was found in the back seat of a car, which was parked in a parking lot. The child was found with a leaded gasoline pump in the car. The child was found with a leaded gasoline pump in the car.
3. ANALYTICAL INFORMATION: The child was found with a leaded gasoline pump in the car. The child was found with a leaded gasoline pump in the car.
4. RESULTS: The child was found with a leaded gasoline pump in the car. The child was found with a leaded gasoline pump in the car.
5. CONCLUSIONS: The child was found with a leaded gasoline pump in the car. The child was found with a leaded gasoline pump in the car.
6. RECOMMENDATIONS: The child was found with a leaded gasoline pump in the car. The child was found with a leaded gasoline pump in the car.

WALL BRACE NOTE

2016

(1) LINE INDICATES CS-
WILL LOCATE PER CODE
SEE PLAN FOR LOCATION

(2) LINE INDICATES PS-
WILL LOCATE PER CODE
SEE PLAN FOR LOCATION

(3) LINE INDICATES GP METHOD
WILL LOCATE PER CODE
SEE PLAN FOR LOCATION

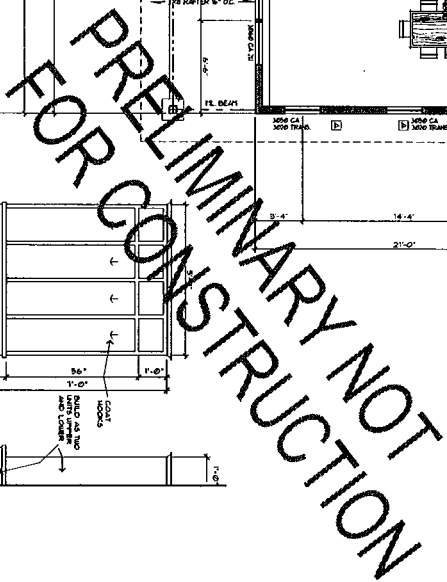
(4) LINE INDICATES PM METHOD
WILL LOCATE PER CODE
SEE PLAN FOR LOCATION

(5) LINE INDICATES ADJ METHOD
WILL LOCATE PER CODE
SEE PLAN FOR LOCATION

NOTE:
BORING LOGS TO BE 7' IN
UP STD CODE - "N.C."
IF NOT PASSED TO
ADJUTANT GENERAL'S
ALL BODIES OF THE FIELD

Street No.

A2

$1/4'' = 1'-0''$ 

Technical drawing of a window unit. The drawing shows a side view of a window with multiple panes. Dimensions are indicated: 1'-4" for the width of the left section, 1'-0" for the width of the middle section, and 1'-0" for the width of the right section. A vertical dimension of 36" is shown for the height of the middle section. Labels include "WOOD" pointing to the frame, "SHUTTER AS SHOWN" pointing to the shutter mechanism, and "SAFETY GLASS AND LAMINATE" pointing to the glass panes. A large diagonal watermark "SAMPLE" is visible across the drawing.

23-1-048

[illegible]

WINDOW / DOOR
CALL OUT NUMBERS

W.	H.
FEET	FEET
INCH	INCH

5 0 4 0

WALL BRACE NOTE

WALL BRACE NOTE

MONTH

4. LATE LOCATIONS CHANGING
LATE, SPOILING FROM CODE
SEE PLAIN FOR LOCATION
5. LATE LOCATIONS OF PERIOD
LATE, SPOILING FROM CODE
SEE PLAIN FOR LOCATION
6. LATE LOCATIONS PERIOD PAIR
LATE LOCATIONS PERIOD PAIR
SEE PLAIN FOR LOCATION
7. LATE LOCATIONS PERIOD CODE
LATE, SPOILING FROM CODE
SEE PLAIN FOR LOCATION
8. LATE LOCATIONS PERIOD AND
LATE LOCATIONS PERIOD AND
LATE, SPOILING FROM CODE
SEE PLAIN FOR LOCATION

NOTE:
DO NOT LOCATE TO LATE PERIOD
SPR AND GRADE + W/O D.C.
IF PERIOD ASSIGNED TO
UNRECORDED STATIONS *
ALL RECORDS IN THE FIELD

[illegible]

KJ

Design

Custom Home Design

Milwaukee 851-243-5232
Whitconsin 715-671-0202
Kenya@kjdesigns.com

[illegible]

Sheet No. **A4**

EXISTING

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

acres:	square feet per acre:	Total area of parcel in square feet
.58	x 43,560	= 25,264.8

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		=	1225 1080 1000
garage	24 x 26	=	624
deck		=	1415
patio		=	
sidewalk	6 x 26	=	156
driveway	44 x 24	=	1056
other; list:			
Shed	7 x 8	=	56
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			

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

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

Calculate:

Total from "Residential Structures":

Total from "Agricultural Structures":

Total from "Other Items":

Total square footage of coverage:

(divide by total area of parcel, above)

TOTAL IMPERVIOUS SURFACE 18 %

signature

date

corresponding permit number

Proposed

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

acres:	square feet per acre:	Total area of parcel in square feet
0.58	x 43,560	= 25264.8

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		=	2299
garage	46'x24'	=	1104
Back Patio/deck	44'x20'	=	880
Side patio	49'x12'	=	588
sidewalk		=	
driveway	24'x39'	=	936
other; list:			
Paved Area	38x55	=	2090
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			7897

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

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

Calculate:

Total from "Residential Structures":

Total from "Agricultural Structures":

Total from "Other Items":

Total square footage of coverage:

(divide by total area of parcel, above)

25264.8

TOTAL IMPERVIOUS SURFACE

31

%

signature

date

9/27/23

23-01811

corresponding permit number

Approval by Neighbors on the Donatell house addition.

Lyman Ln Chisago City, MN

VP Confidential

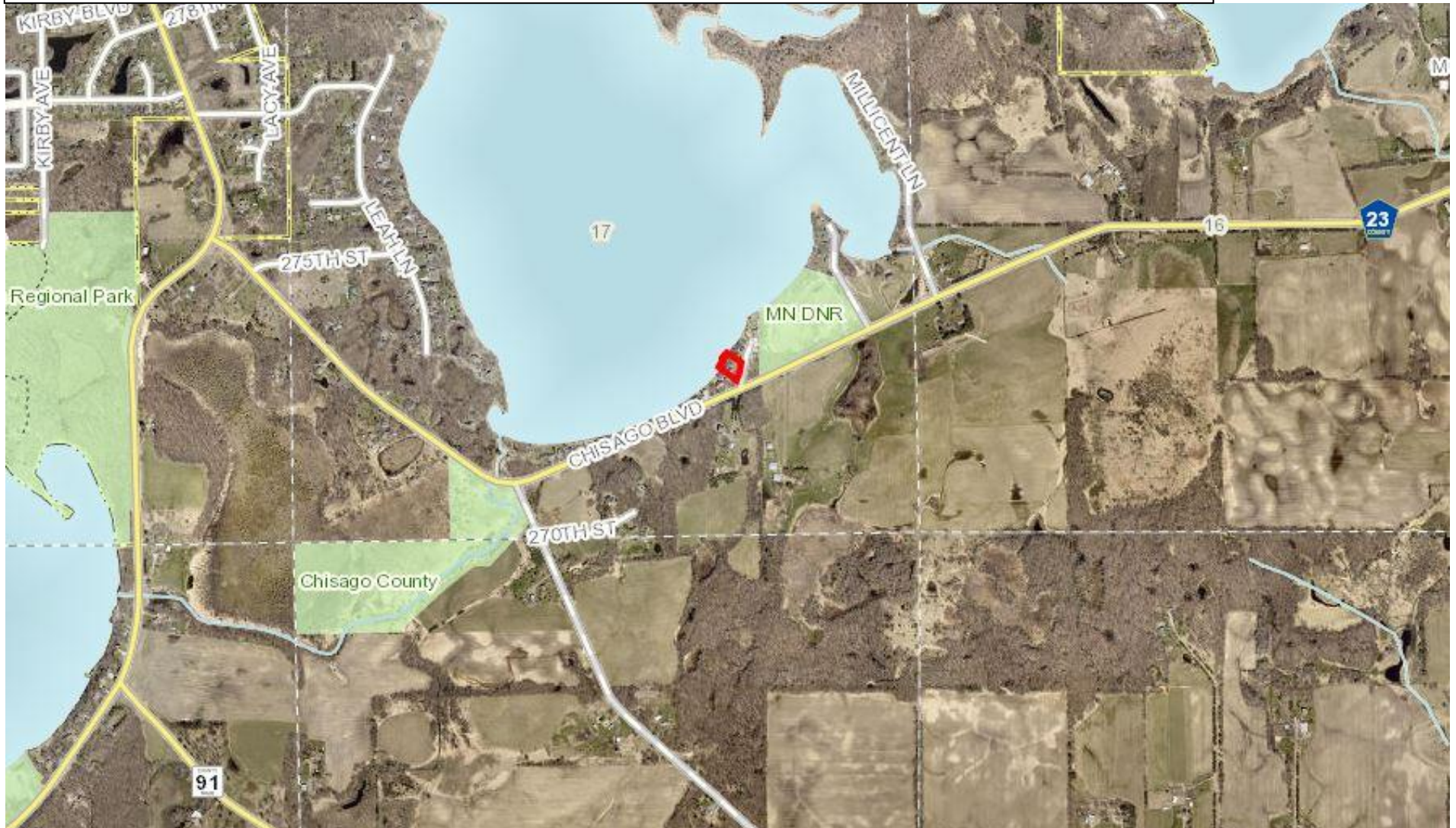
David & Melissa Donatell – Property owners David & Melissa Donatell are requesting a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a non-conforming structure (dwelling) closer to the Ordinary High Water Level, township Right-of-Way and County State Aid Highway than required, to expand a detached accessory structure (garage) closer to the southerly property boundary (side yard), township Right-of-Way and County State Aid Highway than required, and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District. The .58± acre subject site is located at 11980 Lyman Lane in Chisago Lake Township, S17, T33, R20 (PID 02.01444.00).

Donatell property - 



David & Melissa Donatell – Property owners David & Melissa Donatell are requesting a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Sections 5.21 and 5.52 in order to expand a non-conforming structure (dwelling) closer to the Ordinary High Water Level, township Right-of-Way and County State Aid Highway than required, to expand a detached accessory structure (garage) closer to the southerly property boundary (side yard), township Right-of-Way and County State Aid Highway than required, and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District. The .58± acre subject site is located at 11980 Lyman Lane in Chisago Lake Township, S17, T33, R20 (PID 02.01444.00).

Donatell property - 





Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Expand a Legal Non-Conforming Structure Closer to the Ordinary High Water Level than Required
 32342 N. Center Lane, Chisago Lake Township
 DATE: October 26, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21 in order to allow the expansion of a non-conforming structure (dwelling) closer to the Ordinary High Water Level (OHWL) than required in the Rural Residential II (RRII) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s):	Jayne Ersfeld
Property Owner(s):	Jayne Ersfeld
Property Address:	32342 N. Center Lane Chisago Lake Township
General Location:	Section 22, Township 34, Range 20
PID:	02.00988.00
Property Area:	.37± Acres
Current Zoning:	Rural Residential II (RRII) District / Shoreland Management District
Adjacent Zoning:	
North:	Rural Residential II (RRII) District / Shoreland Management District
South:	Rural Residential II (RRII) District / Shoreland Management District
East:	Rural Residential II (RRII) District / Shoreland Management District
West:	North Center Lake
Date Application Received:	September 25, 2023
Date Application Complete:	October 4, 2023
60-Day Review Period:	December 3, 2023

BACKGROUND

Property owner Jayne Ersfeld is proposing to expand her legal non-conforming dwelling by constructing an addition. The existing dwelling is considered legal non-conforming due to the fact that it's located 47.2' from the OHWL where the required setback is 75' and because it's less than the required minimum dwelling size of 960 sf. Based on the existing structure setback and dimensions of the existing dwelling, staff believes that the proposed addition will be located 69.7' from the OHWL.



SITE ANALYSIS

The .37-acre subject site is located approximately two-tenths (.20) of a mile south of 325th Street on the east side of North Center Lake. The property was platted in its current configuration as Lot 15, Baldy Beach in 1951. The property is 70' wide at the roadway, approximately 110' wide at the shoreline, and 192' deep. Given that the subject site doesn't meet today's minimum dimensional requirements, the site is considered non-conforming or substandard. Given that the property was platted prior to the County adopting official land use controls, the property is considered legal non-conforming.

Topography of the site includes elevations ranging significantly from 896' at the westerly property boundary (lake side) to approximately 925' near the easterly property boundary (road side). The attached survey includes notation that the elevations do not qualify as a bluff, which means that no additional structural setback is required from top-of-bluff.

The site is currently developed with a 797 sf dwelling, a 960 sf detached garage, a 127 sf "bunk house" adjacent to the northerly property boundary, and a 34 sf shed below OHWL. Records from the Chisago County Assessor's Office suggest that the dwelling was constructed in 1952 and the garage was constructed in 1979. The adjacent image, obtained from the Assessor's Office, shows the dwelling in 1972. Staff notes that, in addition to a non-conforming OHWL setback, the dwelling is 797 sf in size which is less than the current required minimum of 960 sf, as measured at the foundation. Staff notes other non-conformities, including, but not necessarily limited to:



- The site has three detached accessory structures where the maximum number is two.
- The bunk house is located slightly less than 5' from the northerly property boundary where the required setback is 5'.
- The bunk house is 50' from OHWL where the required setback is 75'.
- The shed is below the OHWL where the required setback is 75' above OHWL.
- The total amount of accessory storage space is 1,121 sf where the required maximum is 1,000 sf.

Given that the above-listed non-conformities have no bearing on the current request, the Board should not factor these into its decision; staff is simply offering observations on the existing development / site conditions.

The existing amount of impervious surface coverage is shown on the survey to be 12.8%, however the impervious surface calculation worksheet shows 15.57%. While both are well below the maximum of 25%, staff notes that there are some inconsistencies with the information provided. The most significant inconsistency relates to size of the detached garage. The survey, prepared in 2022, shows the detached garage to be 20.3' x 24.2' (491 sf) whereas the worksheet reports the garage size to be 960 sf. The property owner confirmed during the Technical Review Committee meeting that the garage size is 960 sf; however, it isn't clear when the structure was expanded or how it was allowed to exceed the maximum allowable amount of accessory storage space. But, as stated above, the total amount of impervious surface coverage is well below the 25% maximum.

The subject site is located in the RRII District / Shoreland Management District, as are all surrounding properties. Surrounding properties located on the west side of N. Center Court (riparian lots) are similarly sized and developed, whereas properties on the east side (non-riparian) are larger in size and used for both residential and agricultural purposes.

PROPOSAL ANALYSIS

The property owner is requesting a Variance in order to expand the legal non-conforming dwelling by constructing an addition on the easterly side of the dwelling (roadside). The building plans show that the addition will include a 6' x 13' covered entrance, a 6'6" x 13' entryway, and a 10' x 13' office. The existing dwelling is considered legal non-conforming in that it's closer to the OHWL than required and smaller than required, and any expansion of the dwelling will only be allowed with Variance approval. The survey shows that the existing dwelling is located 47.2' from OHWL and the proposed addition will be located 69.7' from OHWL, where the required setback is 75'. The survey shows that the dwelling is 797 sf in size, where the required minimum dwelling size is 960 sf. Staff notes that the proposed addition will not exacerbate the OHWL setback encroachment and it will bring the dwelling size into compliance (797 sf existing + 214.5 sf of new habitable space (6'6" x 13' entryway and 10' x 13' office) = 1,011.5 sf).

While the application states that the proposed addition is 12' x 20' (240 sf), the attached impervious surface calculation worksheet suggests that the addition is 220 sf and the attached building plans show the addition to be 292.5 sf (12'6" x 13' + 10' x 13'). Despite these discrepancies, when staff recalculated the total amount of impervious surface with the largest addition size of 292.5 sf, it was determined that the total proposed amount was 17.37%.

The written narrative explains that the dwelling was constructed in the 1950s, that the proposed addition will not look out of place when compared to surrounding properties, and it will better serve the residents in case of emergencies and for their current work arrangements. While the latter relates to personal circumstances rather than circumstances related to the property, staff notes that the written narrative and other application materials address the State mandated practical difficulty standard (reasonableness, uniqueness, and essential character) by offering the following:

- Reasonableness – the proposed addition will meet the roadway and side yard setbacks and will not exacerbate the OHWL setback encroachment. The property owner has no ability to expand the structure in a manner that meets the required OHWL setback.
- Uniqueness – the property was platted in 1951 and the dwelling was constructed in 1952, all before the County adopted official land use controls. The Board refers to this circumstance as pre-existing development.
- Essential Character – the property owner believes that the proposed addition will not look out of place when compared to surrounding properties.

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

	RRII District / Shoreland Management District Standards	Proposed
Road Setback	40' to township Right-of-Way	Approximately 80' to township R-O-W
Ordinary High Water Level (OHWL) Setback	75' for structures; 50' for septic systems	69.7' to OHWL
Side Yard Setback	10' for dwelling + attached garage; 5' for detached accessory structures	Approximately 40' from southerly property boundary and approximately 30' from northerly property boundary
Impervious Surface Coverage	25%	Approximately 17.37% (as determined by staff)
Accessory Storage Space	1,000 sf	1,121 sf (existing)

REVIEW PROCESS

The Technical Review Committee met with property owner Jayme Ersfeld on October 11, 2023. Ersfeld confirmed that the detached garage is 24' x 40' (960 sf) in size rather than 20.3' x 24.2' (491 sf) as the 2022 survey indicates and that the "bunk house" is only used for storage rather than living quarters / overnight accommodations. The County Sanitarian completed a septic compliance inspection in September 2023 and the system was found to be compliant. The Committee did not identify any concerns.

The Chisago Lake Town Board considered the request on October 17, 2023 and recommended approval with no conditions.

The State mandated 60-day review period will expire on December 3, 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 existing dwelling was constructed in the 1950s which constitutes pre-existing development. The property owner has had no control over this circumstance.

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

Literal interpretation of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by other Rural Residential II (RRII) District / Shoreland Management District properties. Properties in the RRII 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 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;

The property was platted in 1951 and the existing dwelling was constructed in 1952, both of which pre-date the County's adoption of official land use controls. Neither the current property owner nor the previous property owner(s) created the special circumstance of pre-existing development.

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

Dwellings are a permitted use in the RRII 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 addition is modestly sized and is very likely the smallest needed to meet the needs of the property owner. Given that the primary hardship is pre-existing development, there is no feasible way to lessen the Variance requested to improve the setback encroachment; however, the Variance will remedy the issue of non-conforming dwelling size.

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

Staff does not believe that the Variance, if approved, would be detrimental to the purposes or intent of the Zoning or Shoreland Management Ordinances or to other properties in the RRII District / Shoreland Management District. The Zoning Ordinance allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. Staff believes that the application materials satisfactorily address all three factors. Further, the requested Variance is remedying the non-conforming dwelling size.

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

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

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

The existing dwelling and proposed addition are located outside of the flood district.

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

*The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a **reasonable** manner not permitted by an official control; the plight of the landowner is due to circumstances **unique** to the property not created by the landowner; and the variance, if granted, will not alter the **essential character** of the locality. Economic*

considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

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

1. Reasonableness

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

2. Uniqueness

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

3. Essential Character

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

FINDINGS OF FACT

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

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

Finding #1 *The proposed addition is located approximately 40’ from the southerly property boundary and approximately 30’ from the northerly property boundary (side yards) and the subject site is bordered by a public roadway along the easterly property boundary and bordered by a public body of water along the westerly property boundary. Therefore, the County finds that the proposed addition 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	<i>The proposed dwelling expansion will not create additional bedrooms or change the use of the subject site. 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 N. Center Lane or surrounding roadways.</i>
Criteria #3	The proposed action will not increase the danger of fire or endanger the public safety;
Finding #3	<i>The property owner will be required to obtain a building permit prior to construction of the proposed dwelling addition, and it will, therefore, be constructed in compliance with all applicable building and fire codes. Being compliant with all applicable building and fire codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.</i>
Criteria #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties;
Finding #4	<i>The subject site is currently developed with a dwelling and related detached accessory structures. The proposed action will not change how the property is being used and the proposed addition will comply with the required side yard setbacks, where there is greatest potential for impacting surrounding properties. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties.</i>
Criteria #5	The proposed action will not cause an unreasonable strain upon existing facilities and services;
Finding #5	<i>The proposed action will not change the use of the subject site; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.</i>
Criteria #6	The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
Finding #6	<i>The proposed action will not change the use of the subject site; therefore, the County finds that there will be no negative fiscal impact upon the County or school district.</i>
Criteria #7	The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
Finding #7	<i>The subject site is zoned Rural Residential II (RRII) District / Shoreland Management District and Zoning Ordinance Section 5.09 allows dwellings and related accessory structures as permitted uses in the RRII District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from these setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the application materials satisfy these three factors and, believes that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance. Further, the County finds that the proposed action will remedy the existing non-conforming</i>

dwelling size while not exacerbating the existing non-conforming OHWL setback encroachment.

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

Recommended condition(s):

1. This approval grants the following Variances:
 - a. A Variance to expand a legal non-conforming structure.
 - b. An approximate 5.3' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling addition to be located no closer than 69.7' from the OHWL of North Center Lake.
2. The dwelling addition shall be constructed in general conformance with the application materials, including site plan, dated received September 25, 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 owner's expense.
3. The proposed 10' x 13' office shall not be used as a bedroom until and unless the septic system is deemed compliant for the total number of bedrooms within the dwelling or the septic system is expanded to accommodate all bedrooms.
4. The permit holder shall obtain a building permit prior to construction and, further, the dwelling addition shall comply with all applicable codes and regulations.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended.
2. **Deny** the Variance based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
 - a. The request for Variance, as presented, is not consistent with the Chisago County Zoning Ordinance due to _____.
 - b. The proposed Variance will have a negative impact to surrounding properties due to _____.
 - c. The request for Variance, as presented, does not meet the threshold for "practical difficulty" as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.
3. **Table** action to allow for further review and consideration. The current review period expires on December 3, 2023, allowing the Board to continue its review at the November 30, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-1002, a resolution approving a Variance allowing the expansion of a legal non-conforming structure closer to the Ordinary High Water Level than required on property located at 32342 N. Center Lane in Chisago Lake Township, as presented or amended.

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

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Survey / site plan
 - d. Building plans
 - e. Impervious surface calculation worksheets (existing and proposed)
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-1002

CC: Jayme Ersfeld, property owner
County file



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 2023-01814

Township CHISAGO LAKES S/T/R 22/34/20 PID# 020098800

Project Address 32342 N CENTER LN, CENTER CITY, MN 55012

Property Owner(s) JAYME ERSFELD

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) JAYME ERSFELD

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) _____

12X20 FRONT ENTRY ADDITION ON STREET SIDE VARIANCE NEEDED
because existing home is legal non-conforming but addition to be built on
street side and not lake side

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

☒ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☐ Plat Drawings

Jayme Ersfeld
Applicant Signature

9/25/2023
Date of Application

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

Fees		Dates	
Base Fee	\$ <u>500.00</u>	Application Received	<u>9-25-2023</u>
Recording Fee	\$ <u>46.00</u>	Application Complete	<u>10-4-23</u>
Plat Fee – No Road(s) / With Road(s)	\$ _____	☒ 60 / 120 Day Review Period	<u>12-3-23</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>546.00</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Chisago Lake Township S/T/R 22/34/20 PID# 020098800

Project Address 32342 N CENTER LN, CENTER CITY, MN 55012

Property Owner(s) JAYME ERSFELD

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) JAYME ERSFELD

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) _____

12X20 FRONT ENTRY ADDITION ON STREET SIDE

Jayne Ersfeld
Applicant Signature

9/25/2023
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 OCT 26, 2023 Date of Township Presentation OCT 17, 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

Sherry St Wendy Reed

To the Board of Adjustments,

We are writing to provide additional information for our request a variance to our property. We are hoping to add on to the front of our house (streetside). The house was originally built in the 1950's as a lake cabin. The current configuration has the front door, bathroom door and basement door all within a couple feet of each other (picture below). Since we purchased the home, we had an emergency. One evening, my husband, on his way to the bathroom passed out on his way to the bathroom blocking the front door. I called 911 and the Fire and Rescue was there within minutes. Unfortunately, because my husband was blocking the front door, they had to enter from the back of the house. They needed to get him on his feet to get him to the stretcher which was outside. It was after this, when we decided we needed to pursue adding a bigger entry to our home. Our goal is for this house to be our forever home. With that in mind, we are planning for our future and situations where we may need to care for aging parents and /or making the entryway more handicap accessible should we need that someday. My husband has been diagnosed with Rheumatoid Arthritis and although he is taking precautions to stay healthy, we don't know what accessibility needs we may need. Secondly since we purchased this home, my husband and I now work from home full time. The addition of an office by the front entry would serve as a home office separate from our main living quarters.

We've spoken to our neighbors about this, and they are so happy that we are taking great care of this property that had been neglected for years and are excited about our plans. We've also looked at other home in our neighborhood and our front addition would still be set back further from the road than several other homes so it would not look out of place. We are requesting a variance for this front addition and if approved will be built with care and conscientiousness of our neighbors and the health of the land and lake.

Thank you for your time and consideration.

[Picture from 2021 911 Call and front entry](#)



EXISTING PROPERTY DESCRIPTION: (per Warranty Deed Doc. No. T-27403)

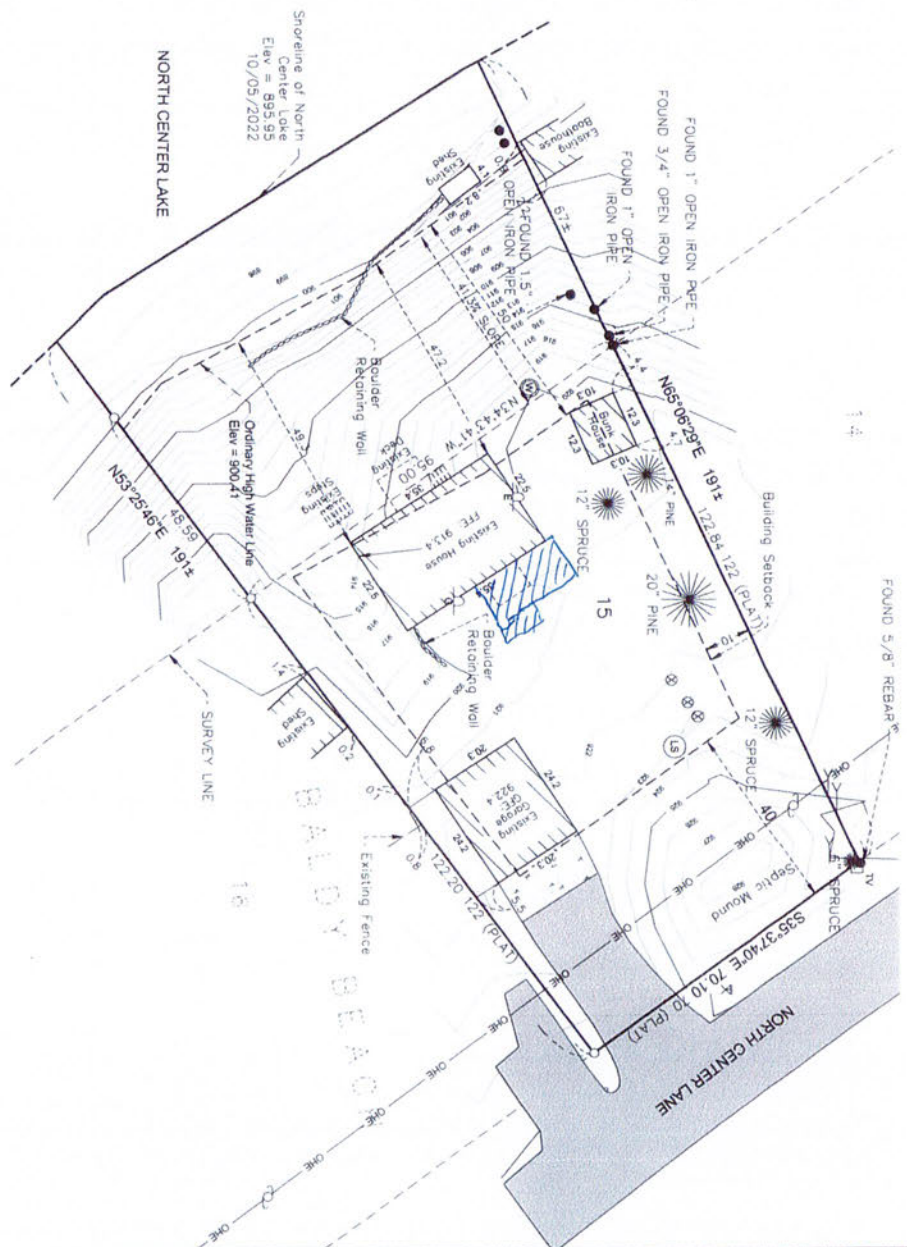
Lot 15 of Baldy Beach, according to the plat thereof on file and of record in the office of the Registrar of Titles in and for Chisago County, Minnesota.

CERTIFICATE OF SURVEY

SURVEY NOTES:

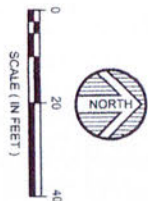
- Orientation of this bearing system is based on the Chisago County Coordinate System NAD83 (1986 ad.)
- Vertical Control: MNDOT "CCTV" BM Elev = 925.28 NAVD88
- Property Address: 32342 N. Center Lane, Center City, MN 55012 PID No. 02.00388.00
- The property is zoned as (RR-2) RURAL RESIDENTIAL 2 (per Chisago Lake North Township Zoning Map) Building Setbacks: (per Chisago Lake Township Zoning Ordinance)
Front Yard : 40 Feet
Side Yard : 10 Feet
Rear Yard(QHW) : 50 Feet
- The field work was performed on 10/5/2022.
- We are interpreting that this slope does not meet the definition of a bluff based on it being less than 25 feet above the Ordinary High Water line. We recommend confirming this with the Chisago County Zoning Department prior to any building designs.

EXISTING IMPERVIOUS CALCULATIONS:		
Lot Area	: 0.39 Acres	17076 Sq. Ft.
House		797 Sq. Ft.
Bunk House		125 Sq. Ft.
Garage		491 Sq. Ft.
Shed		34 Sq. Ft.
Bituminous Surface		548 Sq. Ft.
Concrete and Curb Surfaces		195 Sq. Ft.
Total Existing Impervious Surfaces		2,190 Sq. Ft.
Percent Impervious		12.8%



LEGEND

- DENOTES FOUND 2" IRON PIPE UNLESS NOTED OTHERWISE
- DENOTES SET 1/2" IRON PIPE CAPPED 42648
- ⊙ LIFT STATION
- ⊙ TELE PEDESTAL
- ⊙ ELECTRIC METER
- ⊙ GAS METER
- CONIFEROUS TREE
- ⊙ WELL
- ⊙ ELECTRIC POLE
- ⊙ GUYWIRE
- ⊙ MAILBOX
- ⊙ SEPTIC DRAINFIELD



DATE	10/05/2022	BY	PREPARED FOR: Candace Thomas
SCALE	AS SHOWN	DATE	10/05/2022
DESIGNED BY	ALL	DATE	10/05/2022
FILE NUMBER	2022-11810	DATE	10/05/2022

WIDSETH ARCHITECTS • ENGINEERS • SCIENTISTS • SURVEYORS

Comment to include larger garage

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
.39	x 43,560	= 16,989.00

OR	Total area of parcel in square feet
	17,076

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		=	797
garage	24 x 40	=	960
deck		=	
patio		=	
sidewalk		=	
driveway	20.3 x 36	=	743
other; list:			
Bunk house		=	125
shed		=	34
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2659

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": 2659 +
Total from "Agricultural Structures": - +
Total from "Other Items": - +
Total square footage of coverage: 2659 =
(divide by total area of parcel, above) /

signature

date

corresponding permit number

TOTAL IMPERVIOUS SURFACE 15.57 %

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
.39	x 43,560	= 16,989

OR	Total area of parcel in square feet
	17,076

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	297 x 220	=	1,017
garage	24 x 40	=	960
deck		=	
patio		=	
sidewalk		=	
driveway	20.3 x 36	=	743
other; list:		=	
Bunk house		=	125
shed		=	34
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2879

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			2879

Calculate:

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

signature

date

corresponding permit number

TOTAL IMPERVIOUS SURFACE 16.89 %

Jayme Ersfeld – Property owner Jayme Ersfeld is requesting a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21 in order to allow the expansion of a non-conforming structure (dwelling) closer to the Ordinary High Water Level (OHWL) than required in the Rural Residential II (RRII) District / Shoreland Management District. The .37± acre subject site is located at 32342 N. Center Lane in Chisago Lake Township, S22, T34, R20 (PID 02.00988.00).

Ersfeld property - 



Jayme Ersfeld – Property owner Jayme Ersfeld is requesting a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21 in order to allow the expansion of a non-conforming structure (dwelling) closer to the Ordinary High Water Level (OHWL) than required in the Rural Residential II (RRII) District / Shoreland Management District. The .37± acre subject site is located at 32342 N. Center Lane in Chisago Lake Township, S22, T34, R20 (PID 02.00988.00).

Ersfeld property -



RESOLUTION NO. BOAA2023-1002

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE ALLOWING THE EXPANSION OF A LEGAL NON-CONFORMING STRUCTURE
CLOSER TO THE ORDINARY HIGH WATER LEVEL THAN REQUIRED ON PROPERTY LOCATED AT
32342 N. CENTER LANE IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owner Jayme Ersfeld submitted an application dated received September 25, 2023 and considered complete on October 4, 2023 for a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.21; and

WHEREAS, the property owner desires to expand a legal non-conforming structure by adding an addition to the easterly side of the dwelling closer to the Ordinary High Water Level than allowed by the Shoreland Management Ordinance; and

WHEREAS, the subject site is legally described as:

PID 02.00988.00
*Lot 15, Baldy Beach,
Chisago County, Minnesota*

WHEREAS, notice was provided and on October 26, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, the property owner, and invited members of the public to comment; and

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

- | | |
|-------------|---|
| Criteria #1 | The proposed action will not impair an adequate supply of light and air to adjacent property; |
| Finding #1 | <i>The proposed addition is located approximately 40' from the southerly property boundary and approximately 30' from the northerly property boundary (side yards) and the subject site is bordered by a public roadway along the easterly property boundary and bordered by a public body of water along the westerly property boundary. Therefore, the County finds that the proposed addition will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.</i> |
| Criteria #2 | The proposed action will not unreasonably increase the congestion in the public right-of-way; |
| Finding #2 | <i>The proposed dwelling expansion will not create additional bedrooms or change the use of the subject site. 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 N. Center Lane or surrounding roadways.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| Finding #3 | <i>The property owner will be required to obtain a building permit prior to construction of the proposed dwelling addition, and it will, therefore, be constructed in compliance with all applicable building and fire codes. Being compliant with all applicable building and</i> |

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 related detached accessory structures. The proposed action will not change how the property is being used and the proposed addition will comply with the required side yard setbacks, where there is greatest potential for impacting surrounding 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 the use of the subject site; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.

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

Finding #6 The proposed action will not change the use of the subject site; therefore, the County finds that there will be no negative fiscal impact upon the County or school district.

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

Finding #7 The subject site is zoned Rural Residential II (RRII) District / Shoreland Management District and Zoning Ordinance Section 5.09 allows dwellings and related accessory structures as permitted uses in the RRII District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from these setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the application materials satisfy these three factors and, believes that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance. Further, the County finds that the proposed action will remedy the existing non-conforming

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

1. This approval grants the following Variances:
 - a. A Variance to expand a legal non-conforming structure.
 - b. An approximate 5.3' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling addition to be located no closer than 69.7' from the OHWL of North Center Lake.
2. The dwelling addition shall be constructed in general conformance with the application materials, including site plan, dated received September 25, 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 owner's expense.

3. The proposed 10' x 13' office shall not be used as a bedroom until and unless the septic system is deemed compliant for the total number of bedrooms within the dwelling or the septic system is expanded to accommodate all bedrooms.
4. The permit holder shall obtain a building permit prior to construction and, further, the dwelling addition shall comply with all applicable codes and regulations.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 26th day of October, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Encroach on Required Right-of-Way and Ordinary High Water Level Setbacks
 11960 Mentzer Trail, Chisago Lake Township
 DATE: October 26, 2023

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order construct a dwelling, deck and attached garage closer to the Ordinary High Water Level (OHWL) and township Right-of-Way (R-O-W) than required in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s):	David & Crystal Neuman
Property Owner(s):	David & Crystal Neuman
Property Address:	11960 Mentzer Trail Chisago Lake Township
General Location:	Section 5, Township 33, Range 20
PID:	02.01626.00
Property Area:	.29± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	South Lindstrom Lake
South:	Rural Residential I (RRI) District / Shoreland Management District
East:	Rural Residential I (RRI) District / Shoreland Management District
West:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	September 29, 2023
Date Application Complete:	October 4, 2023
60-Day Review Period:	December 3, 2023

BACKGROUND

Property owners David & Crystal Neuman are proposing to develop their now-vacant lakeshore property by constructing a dwelling with deck and attached garage. The Neumans received Variance approval for a similar request in February 2020 but failed to utilize the approved Variance within one year or request an extension, which means that the Variance became null and void. At the time that the Neumans received Variance approval in 2020, the subject site was developed with a 1,220 sf dwelling, shed and detached garage, all of which encroached on the required setbacks. The



property owners intended to demolish all existing structures and construct a new dwelling with deck and attached garage, with the dwelling being slightly smaller in size and the structure being situated in a manner which lessened the non-conforming setbacks. Ultimately, the structures were demolished but plans for construction were put on hold. The 2020 Variance also included approval to exceed the maximum allowable amount of accessory storage space by 92 sf (for a total of 1,092 sf), and staff notes that the current request has been slightly altered so that the proposed attached garage is within the allowable amount of accessory storage space.

SITE ANALYSIS

The subject site is located approximately one-third (1/3) of a mile west of the intersection of 292nd Street and Mentzer Trail on the south shore of South Lindstrom Lake. Topography of the site includes elevations ranging from 910' near the roadway / south property boundary to 897' near the shoreline / north property boundary (the OHWL is 900.2'). The subject site is approximately 70' wide x 175' deep and .29 acres in size. Based on lot dimensions and area, the subject site is considered non-conforming. Given that the property was platted in 1952, prior to the County's adoption of official land use controls, it's considered legal non-conforming.

As previously mentioned, the subject site was previously developed; however, all structures were demolished in order to allow construction of a new dwelling with deck and attached garage. The subject site is currently vacant.

The subject site is located in the Rural Residential I (RRI) District / Shoreland Management District and is surrounded by the RRI District / Shoreland Management District to the south, west and east, and bordered by South Lindstrom Lake to the north. Surrounding properties located along the north side of Mentzer Trail are similarly sized and the vast majority are developed with dwellings and related accessory structures. Based on aerial imagery, it appears that many structures in the immediate vicinity encroach on the required OHWL and/or R-O-W setbacks, presumably either as legal non-conforming structures (constructed prior to the County's adoption of official land use controls) or by Variance approval.

PROPOSAL ANALYSIS

The property owners wish to develop their lakeshore property by constructing a 1,110 sf dwelling with 366 sf deck and 954 sf attached garage. The deck, being the closest structure to the OHWL, is shown to be 63' from OHWL where the required setback is 75' (which equates to a 12' setback Variance). The attached garage, being the closest structure to the township R-O-W, is shown to be 24' from R-O-W where the required setback is 40' (which equates to a 16' setback Variance). All structures are shown to be 10' from the side property boundaries, where the required setback is 10'. The proposed dwelling will be served by existing holding tanks, shown to be located 22' north of the deck.

Information provided by the property owners also indicates the installation of a 24' x 38' (912 sf) concrete driveway and 12' x 15' (180 sf) concrete patio underneath the deck. The proposed amount of impervious surface coverage is reported to be 24.98% (rounded up to 25% by the property owners on the impervious surface calculation worksheet), which is within the maximum allowable amount.

The written narrative explains that the property owners have made an effort to keep the proposed dwelling footprint small with the proposed setback Variances allowing a reasonable amount of living space and a garage without need for detached accessory structures. The written narrative explains that the subject site is long and narrow with sloping elevations. The proposed dwelling location is intended to create the least amount of impact on the lake while remaining consistent with neighboring dwellings.

Finally, the written narrative explains that the proposed structures and placement of structures will not alter the character of the neighborhood. Staff recognizes that the property owners have addressed the State mandated practical difficulty standard by explaining how the requested Variance is reasonable, how the property is unique, and how the proposed structures fit the essential character of the surrounding area.

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

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	40' to township Right-of-Way	24' to township R-O-W
Ordinary High Water Level (OHWL) Setback	75' for structures; 50' for septic systems	63' to OHWL
Side Yard Setback	10' for dwelling + attached garage; 5' for detached accessory structures	10' from westerly and easterly property boundaries
Impervious Surface Coverage	25%	24.98%
Accessory Storage Space	1,000 sf	954 sf

REVIEW PROCESS

The Technical Review Committee met with the Neumans on October 11, 2023. The group discussed septic concerns and impervious surface coverage at length. Typically, new dwellings are required to have, or at least have the ability to have, Type I septic systems rather than holding tanks. However, given that the site currently has holding tanks (installed for former dwelling), those tanks will be allowed to remain. In regard to the total amount of impervious surface, the Neumans initially shared that they would be using pervious pavers or a similar material underneath their deck and for their driveway to help keep the total amount at or below 25%. However, upon further consideration by the property owners, they revised their plans to include a concrete patio and driveway. Staff has reviewed the updated impervious surface calculation worksheet and believes, based on the information provided, that the site will stay at or below 25%.

The Chisago Lake Town Board considered the request on October 17, 2023 and recommended approval with no conditions.

The State mandated 60-day review period is scheduled to expire on December 3, 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 explains that the property is narrow and long with sloping elevations. Staff would add to this by offering that the property was platted in 1952, which was prior to the County's adoption of official land use controls and the property is considered to be legal non-conforming based on substandard lot dimensions and lot area. The property owners had no control over the lot configuration or circumstance of pre-existing development.

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 likely deprive the applicants of rights commonly enjoyed by other property owners within the RRI District / Shoreland Management District. Properties in the RRI District / Shoreland Management District have the right to be developed with dwellings (960 sf minimum as measured at the foundation), in addition to other uses identified by the Zoning Ordinance, and the Board has historically viewed garages as a necessity in Minnesota. Based on lot dimensions, it's not entirely clear that the subject site could be developed with a minimum 960 sf dwelling and garage without encroaching on the required township R-O-W and/or OHWL setbacks.

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

The subject site was platted in its current configuration in 1952, which means that neither the applicants nor the previous owner(s) created the special circumstance of pre-existing development.

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

Dwellings, decks and attached garages are permitted uses in the RRI District / Shoreland Management District; therefore, the Variance is not considered a use Variance.

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

The Zoning Ordinance requires that new dwellings be a minimum of 960 sf as measured at the foundation and the Board has historically viewed garages as a necessity in Minnesota. Based on lot dimensions, it's not entirely clear that the subject site could be developed with a 960 sf dwelling and garage without encroaching on the required township R-O-W and/or OHWL setbacks. Given that the proposed dwelling is 1,110 sf – only 150 sf greater than the minimum dwelling size required – staff suspects that the applicants have requested the minimum Variance needed. Further, staff notes that the property owners have reduced their current Variance request from their 2020 request by reducing the size of the attached garage to be in compliance with the Zoning Ordinance.

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

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

area. Staff believes that the written narrative satisfactorily addresses all three factors. Further, the County has granted similar Variances in the distant and recent past.

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

The application materials do not cite economic conditions as a practical difficulty.

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

While the northernmost 40' of the subject site is located in a flood district, the proposed structures are located entirely outside of the flood district.

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

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

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

1. Reasonableness

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

2. Uniqueness

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

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

3. Essential Character

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

FINDINGS OF FACT

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

Criteria #1	The proposed action will not impair an adequate supply of light and air to adjacent property;
Finding #1	<i>The proposed structures will be situated at least 10' from either side property boundary where the required setback is 10', bordered by a public roadway along the southern property boundary and bordered by a public body of water along the northern property boundary. Therefore, the County finds that the proposed structures will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.</i>
Criteria #2	The proposed action will not unreasonably increase the congestion in the public right-of-way;
Finding #2	<i>The subject site was originally platted for residential use and the proposed action will result in the subject site being developed for residential use. While the proposed action includes a township Right-of-Way setback Variance, the application materials demonstrate that the site will be developed with a 24-foot driveway outside of the township Right-of-Way, which is enough distance to accommodate vehicles parked entirely on the private property. Therefore, the County finds that the proposed use will not unreasonably increase the amount of traffic generated in the general area or increase the amount of congestion on Mentzer Trail.</i>
Criteria #3	The proposed action will not increase the danger of fire or endanger the public safety;
Finding #3	<i>The property owners will be required to obtain a building permit prior to construction of the proposed structures, and they will therefore be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County finds that the proposed action will have no impact on the danger of fire or public endangerment.</i>
Criteria #4	The proposed action will not unreasonably cause undue negative impact to surrounding properties;
Finding #4	<i>The proposed action will result in the subject site being developed for residential purposes in a zoning district intended for residential development. Further, the proposed</i>

structures will comply with the required side yard setbacks, where there is greatest potential for impacting surrounding 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 subject site utilizes a private well and private holding tanks and accesses a public roadway known as Mentzer Trail. Mentzer Trail is a well-established and well-maintained public roadway intended to serve a residential neighborhood. Therefore, the County finds that the proposed action will not cause unreasonable strain upon existing facilities or 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 subject site is currently vacant. The County finds that the proposed action will result in an increased property valuation which will result in a positive impact upon all taxing jurisdictions.

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

Finding #7 The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 allows dwellings and related accessory structures as permitted uses in the RRI District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from these setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the application materials satisfy these three factors and, further, believes that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance.

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

Recommended condition(s):

1. This approval grants the following Variances:
 - a. A 16' Variance to the township Right-of-Way setback requirement allowing the proposed structures to be located no closer than 24' from the Mentzer Trail Right-of-Way.
 - b. A 12' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed structures to be located no closer than 63' from the OHWL of South Lindstrom Lake.
2. Except as specifically required herein, the site shall be developed in general conformance with the application materials, including site plan stamped received October 16, 2023. Any significant deviation, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.

3. The permit holder shall obtain a building permit prior to construction and, further, the structures shall comply with all applicable codes and regulations.
4. The permit holder shall obtain a compliance inspection for the existing holding tanks prior to or in conjunction with the building permit application process.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended.
2. **Deny** the Variance based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
 - a. The request for Variance, as presented, is not consistent with the Chisago County Zoning Ordinance due to _____.
 - b. The proposed Variance will have a negative impact to surrounding properties due to _____.
 - c. The request for Variance, as presented, does not meet the threshold for “practical difficulty” as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.
3. **Table** action to allow for further review and consideration. The current review period expires on December 3, 2023, allowing the Board to further review and consider the request at its November 30, 2023 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2023-1003, a resolution approving a Variance allowing reduced Right-of-Way and Ordinary High Water Level setbacks on property located at 11960 Mentzer Trail in Chisago Lake Township, as presented or amended.

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

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plan (stamped received October 16, 2023)
 - d. Building plans
 - e. Impervious surface calculation worksheet (stamped received October 16, 2023)
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2023-1003

CC: David & Crystal Neuman, property owners
County file



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 2023-1899

Township Chisago Lakes Township S/T/R S05/T33/R20 PID# 02-01626.00

Project Address 11960 Mentzer Trail

Property Owner(s) David and Crystal Neuman

Mailing Address (If Different from Project Address) PO Box 150, Lindstrom MN 55045

Phone# [REDACTED] Email [REDACTED]

Applicant(s) David and Crystal Neuman

Mailing Address (If Different from Project Address) PO Box 150 Lindstrom MN 55045

Phone# [REDACTED] Email [REDACTED]

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

☒ Variance

☐ Administrative Appeal

Planning Commission

☐ Conditional Use Permit (CUP)

☐ Interim Use Permit (IUP)

☐ Amendment to CUP or IUP

☐ Preliminary Plat

☐ Rezoning

☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) See attached

requesting 16' variance towards street setback
and 12' variance towards OTHW setback

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

☐ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☐ Plat Drawings

Crystal Neuman
Applicant Signature

September 6, 2023
Date of Application

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

Fees		Dates	
Base Fee	\$ <u>500.00</u>	Application Received	<u>9-29-23</u>
Recording Fee	\$ <u>46.00</u>	Application Complete	<u>10-4-23</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	60/120 Day Review Period	<u>12-3-23</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>546.00</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Chisago Lakes Township S/T/R S05/T33/R20 PID# 02.01626.00
Project Address 11960 Mentzer Trail
Property Owner(s) David and Crystal Neuman
Mailing Address (If Different from Project Address) PO Box 150 Lindsrum MN 55045
Phone# [REDACTED] Email [REDACTED]
Applicant(s) David and Crystal Neuman
Mailing Address (If Different from Project Address) PO Box 150 Lindsrum MN 55045
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) see attached
requesting 16' variance towards street and 12' variance
towards OHW setback

Crystal Neuman
Applicant Signature

September 6, 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 OCT 26, 2023 Date of Township Presentation OCT 17, 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

Sherry L. [Signature] Wm. M. [Signature]
Read

Variance request for David and Crystal Neuman – 11960 Mentzer Trail, Chisago Lake Township

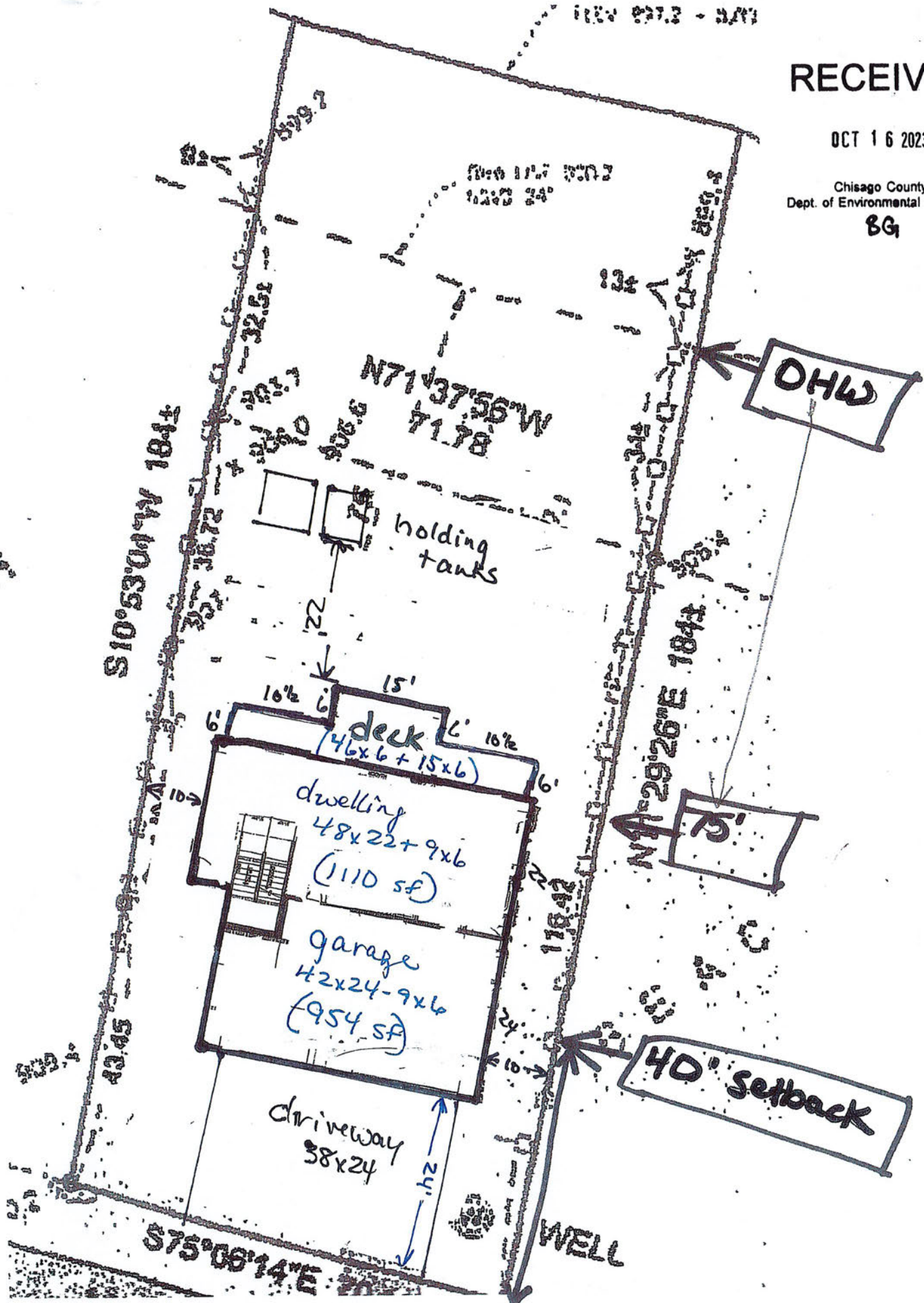
We would like to build our small Chisago Lakes Township home with the foundation starting at the 75 foot OHW allowed setback and extending towards the road 16 feet closer than the 40 foot setback.

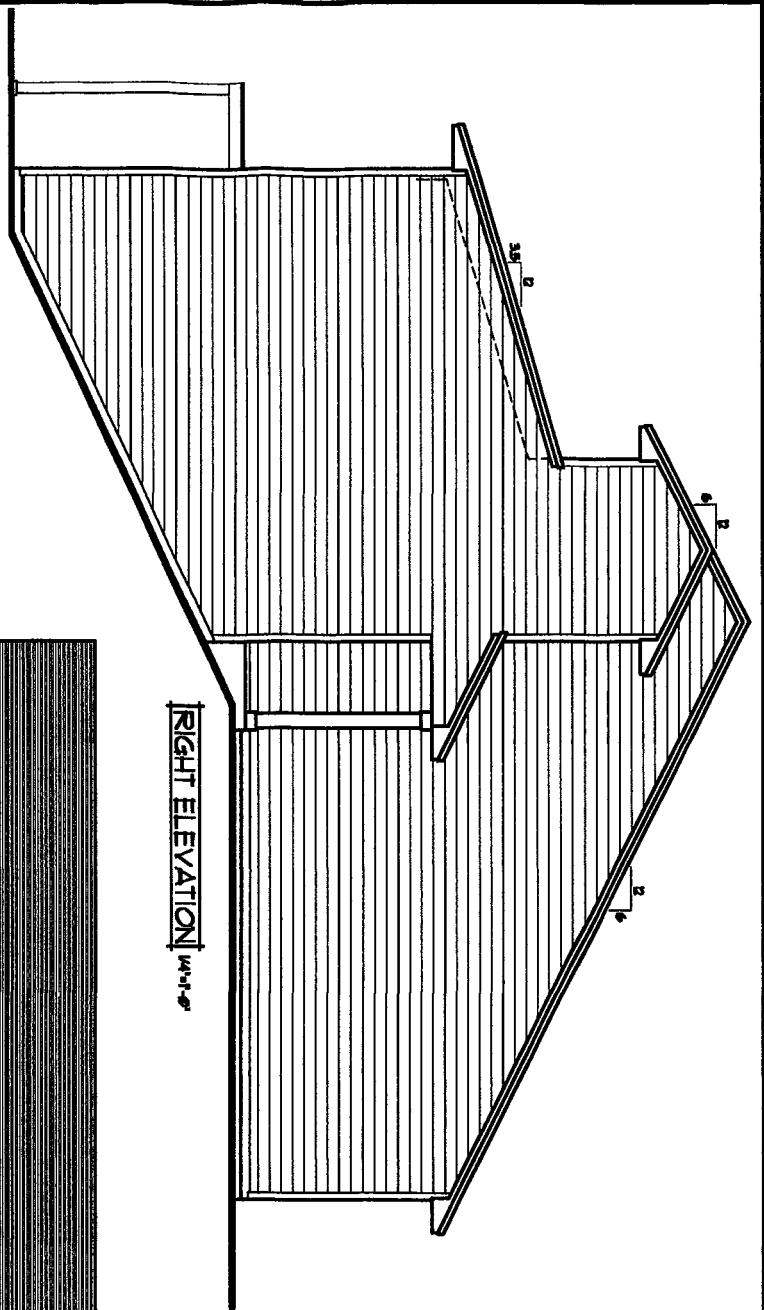
We would also like to add a deck to the structure that would extend 12 feet past the OHW 75 foot setback.

We are trying to keep our home footprint small, and as environmentally friendly as possible. We need the 16 foot variance towards the roadway so that we are able to have a reasonable living space and attached garage, without needing additional outbuildings.

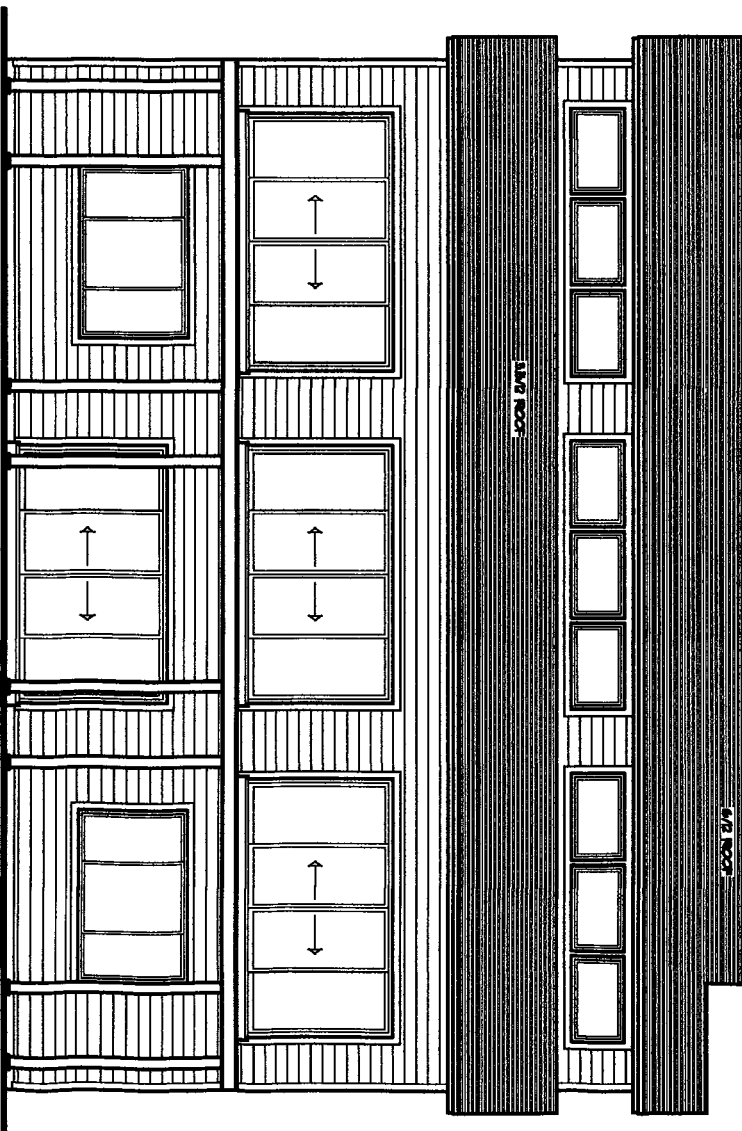
Our property is narrow and long, with a sloping topography. The placement of the home allows the least impact on the lakeside and allows consistency with neighboring homes.

Our plans do not alter the character of the neighborhood, in fact, we believe it enhances the simplicity of lakeshore living.

BG₁



RIGHT ELEVATION 1/4" = 1'-0"



FRONT ELEVATION 1/4" = 1'-0"
LAKE SIDE

CLIENT:
NUEMANN RES.

BUILT BY:
XXXXXX

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• HOME PLAN SERVICES • CUSTOM HOMES • REMODELING •
• PHONE: 763.737.5997 • ANDOVER, MINNESOTA •
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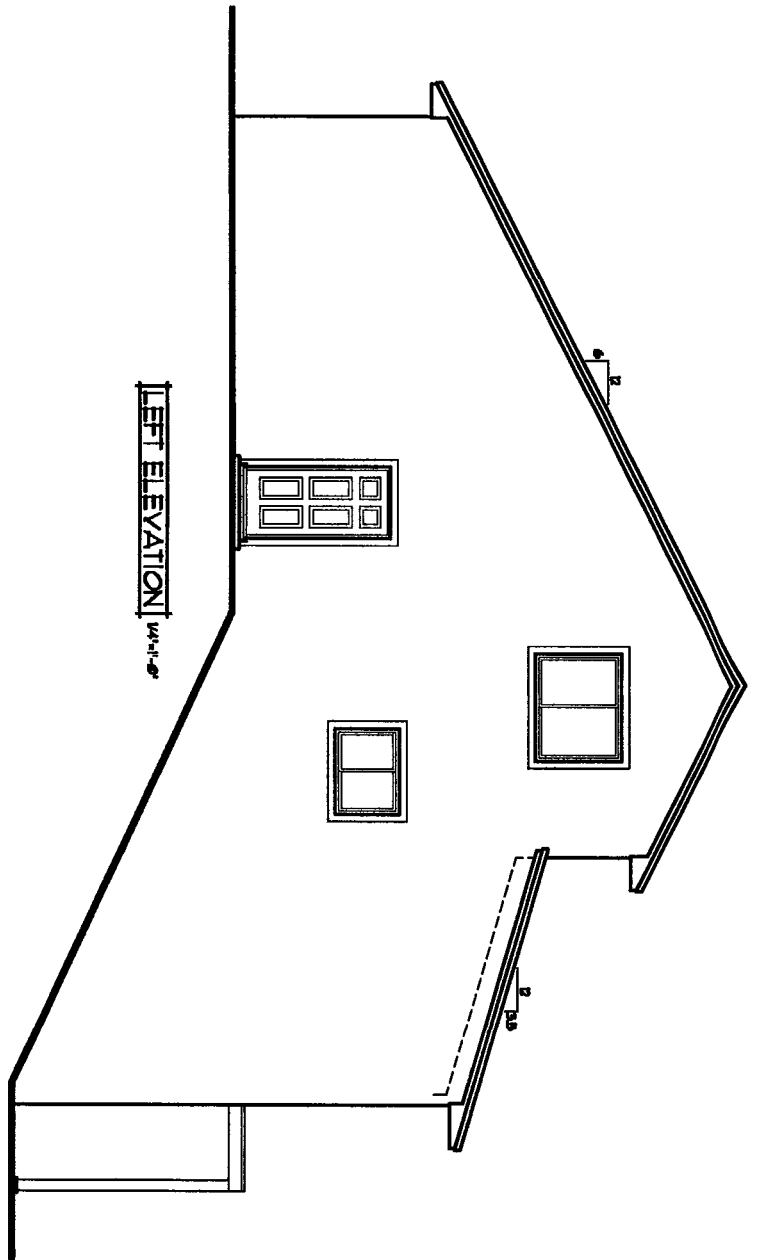
PROJECT ADDRESS:

XXXX
CITY IN
XXXXXX

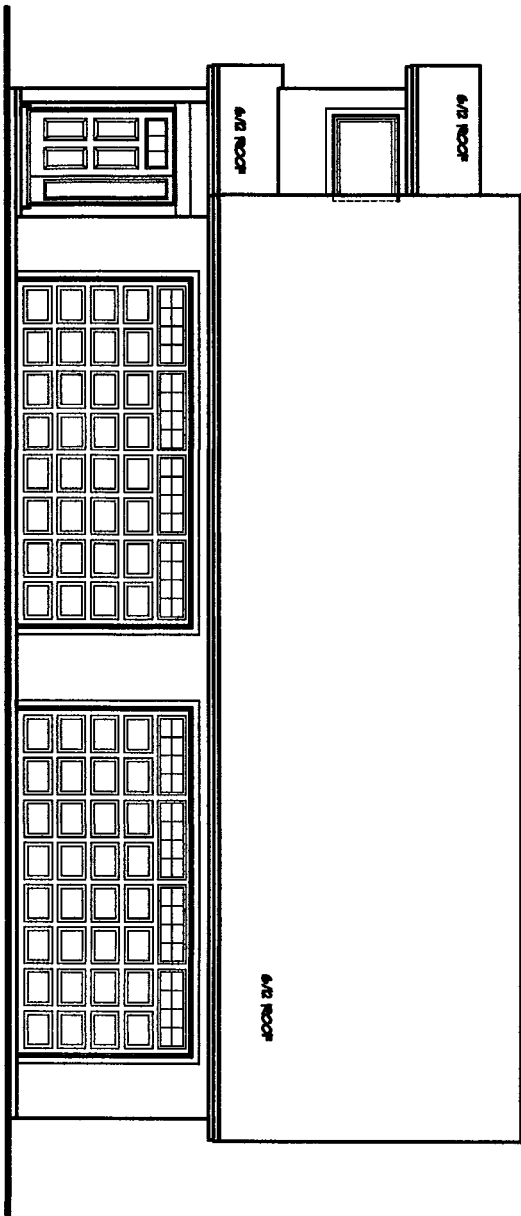
DRAFTING DATE BY
XXXXXXXX AE

CAD FILE •
JAN

SHEET
1 OF 6



LEFT ELEVATION 14'-11"-0"



REAR ELEVATION 14'-11"-0"

STREET SIDE

CLIENT:
NUEMANN RES.

BUILT BY:
XXXXXX

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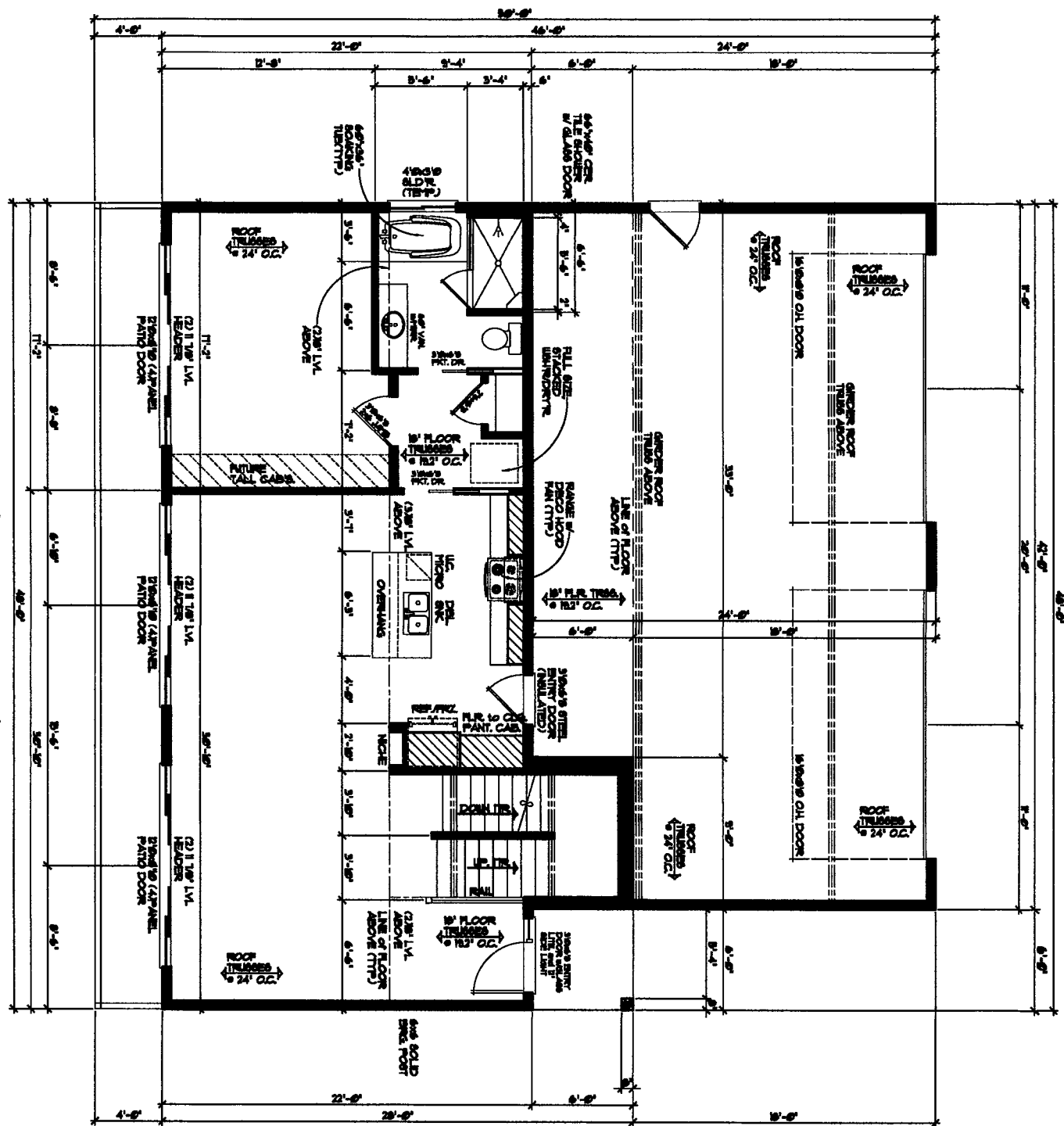
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PROJECT ADDRESS:
XXXX
CITY IN
XXXX

DRAFTING DATE BY
XXXX/XXXX/XXXX S.E.

CADD FILE •
2001

SHEET 2 OF 6



FIRST FLOOR PLAN 1/8"=1'-0"

NOT TO SCALE
NOT TO SCALE
NOT TO SCALE

CLIENT:
NUEMANN RES.

BUILT BY:
XXXXXX

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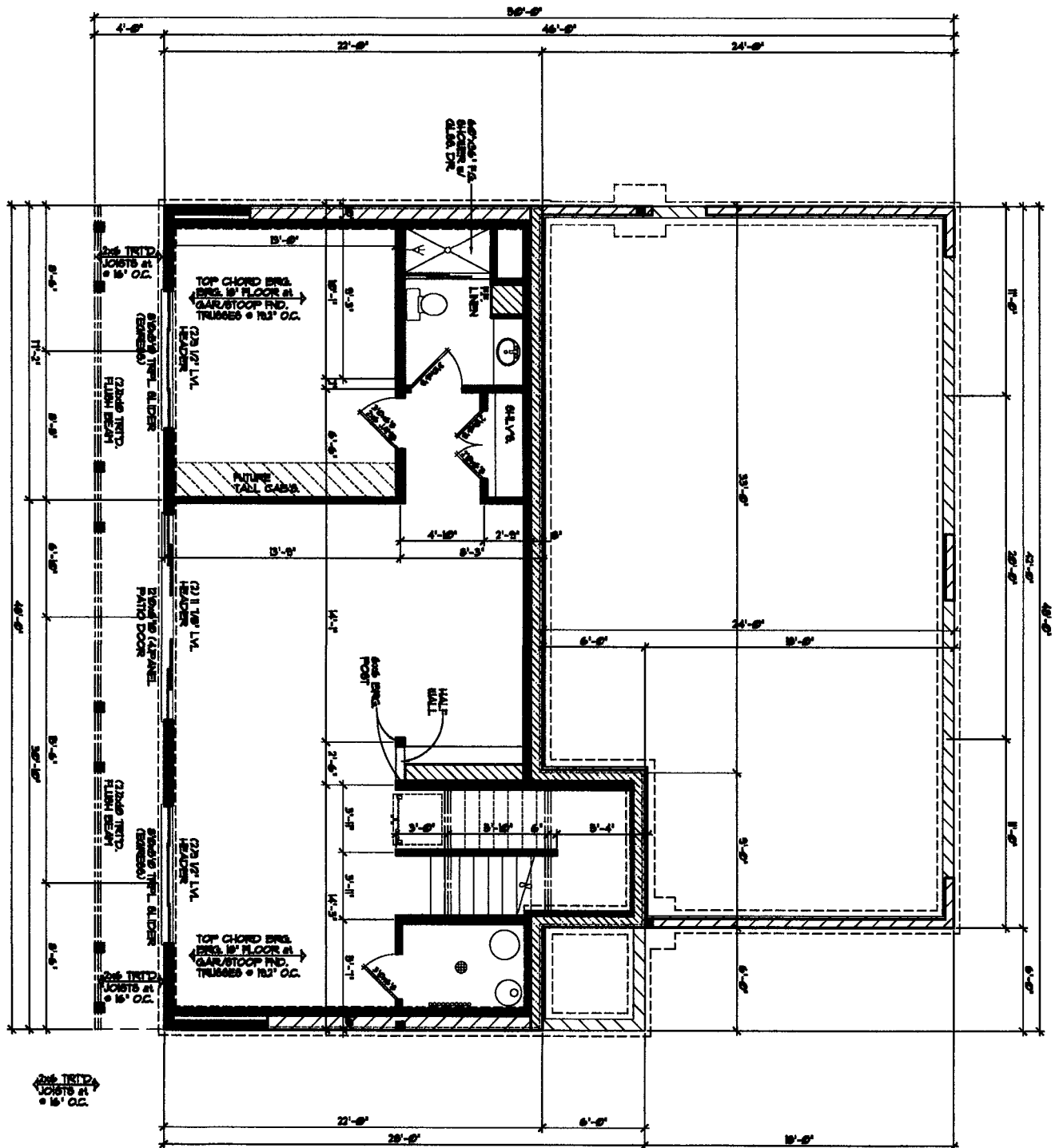
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PROJECT ADDRESS:
XXXX
CITY, MN
XXXXXX

DRAFTING DATE: BY
XXXXXXXXXX AE

CADD FILE •
2001

SHEET **4** OF 6



FINISHED BASEMENT 14'-11"

CLIENT:
NUEMANN RES.

BUILT BY:
XXXXXX

DESIGN and DRAFTING BY:

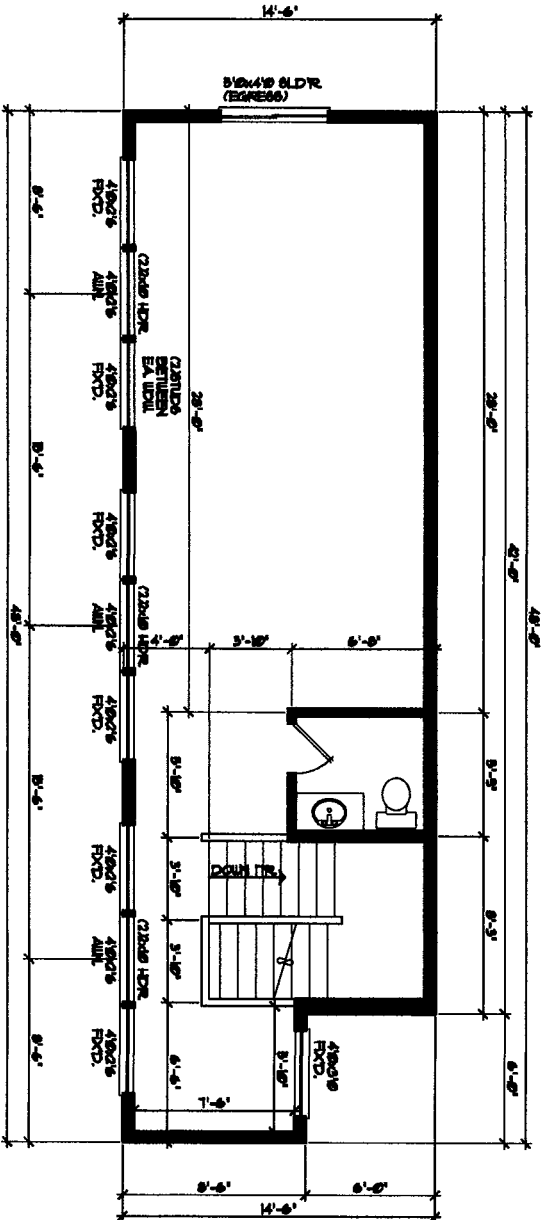
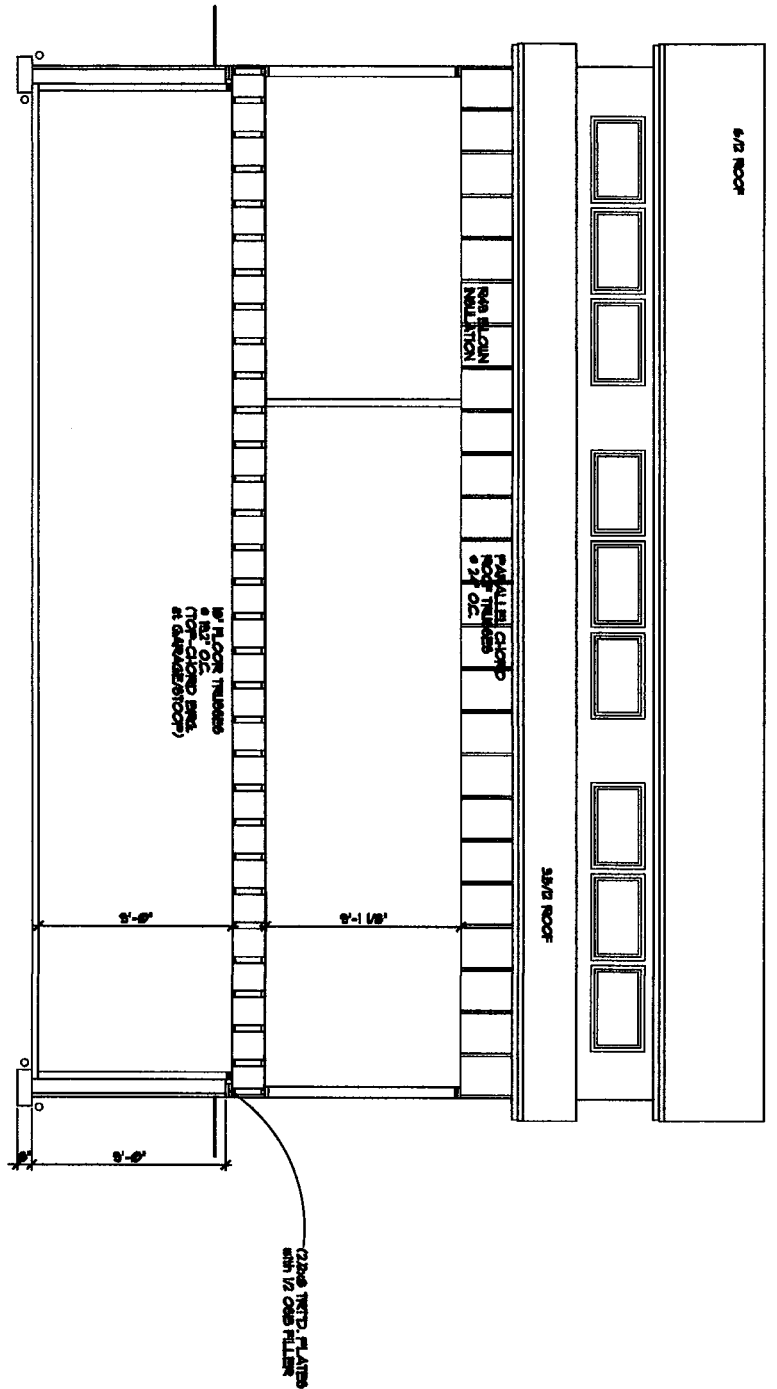


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PROJECT ADDRESS:	XXXX CITY, MN XXXX
DRAFTING DATE BY:	XXXXXX AE
CADD FILE:	3 OF 6
SHEET	3 OF 6



SECOND FLOOR PLAN 14'-11\"/>

NOT SHOWN LOFT AREA

CLIENT:
NUEMANN RES.

BUILT BY:
XXXXXX

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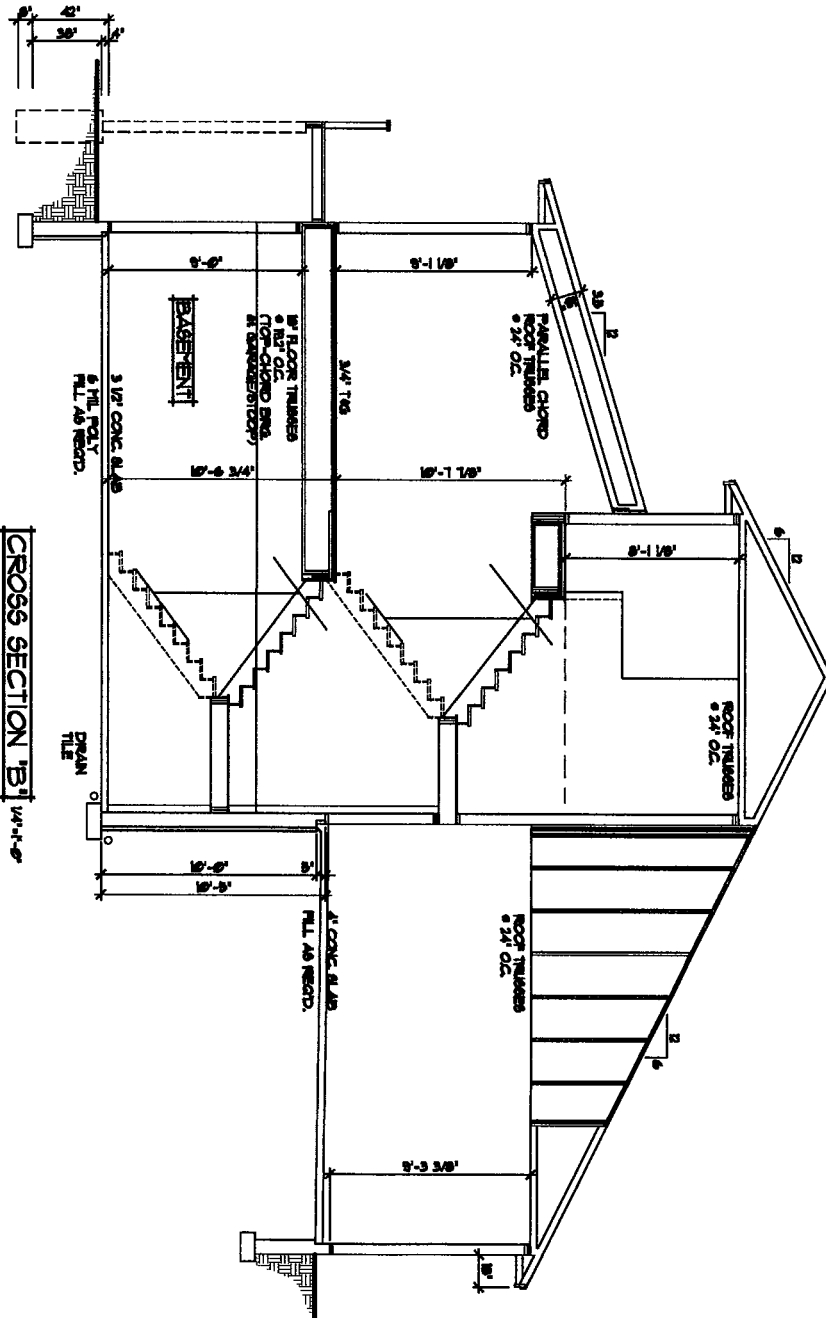
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PROJECT ADDRESS:
XXXX
CITY:
XXXXXX

DRAFTING DATE BY
XXXX/XXXX/XXXX A.E.

CADD FILE •
2587

SHEET 5 OF 6



CROSS SECTION 'B'

CLIENT:
NUEMANN RES.

BUILT BY:
 XXXXXX

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DRAFTING DATE BY:	XXXX/XXXX A.E.
CADD FILE #	
SHEET	6 OF 6

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

RECEIVED

OCT 16 2023

Chisago County
Dept. of Environmental Services

BG

AREA OF PARCEL		
acres:	square feet per acre:	Total area of parcel in square feet
.29	x 43,560	= 12,632.40

OR	Total area of parcel in square feet
	12,632.40

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	48x22+6x9	=	1110
garage	42x24-6x9	=	954
deck	46x6+15x6	=	(not impervious)
patio	15x12	=	180
sidewalk	24x3	=	(pervious pavers)
driveway	38x24	=	912
other; list:		=	
		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			

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":	3156	+
Total from "Agricultural Structures":		+
Total from "Other Items":		+
Total square footage of coverage:	3156	=
(divide by total area of parcel, above)		/
		=
TOTAL IMPERVIOUS SURFACE	25	%

signature Cybil Ann

date 9/29/23

corresponding permit number

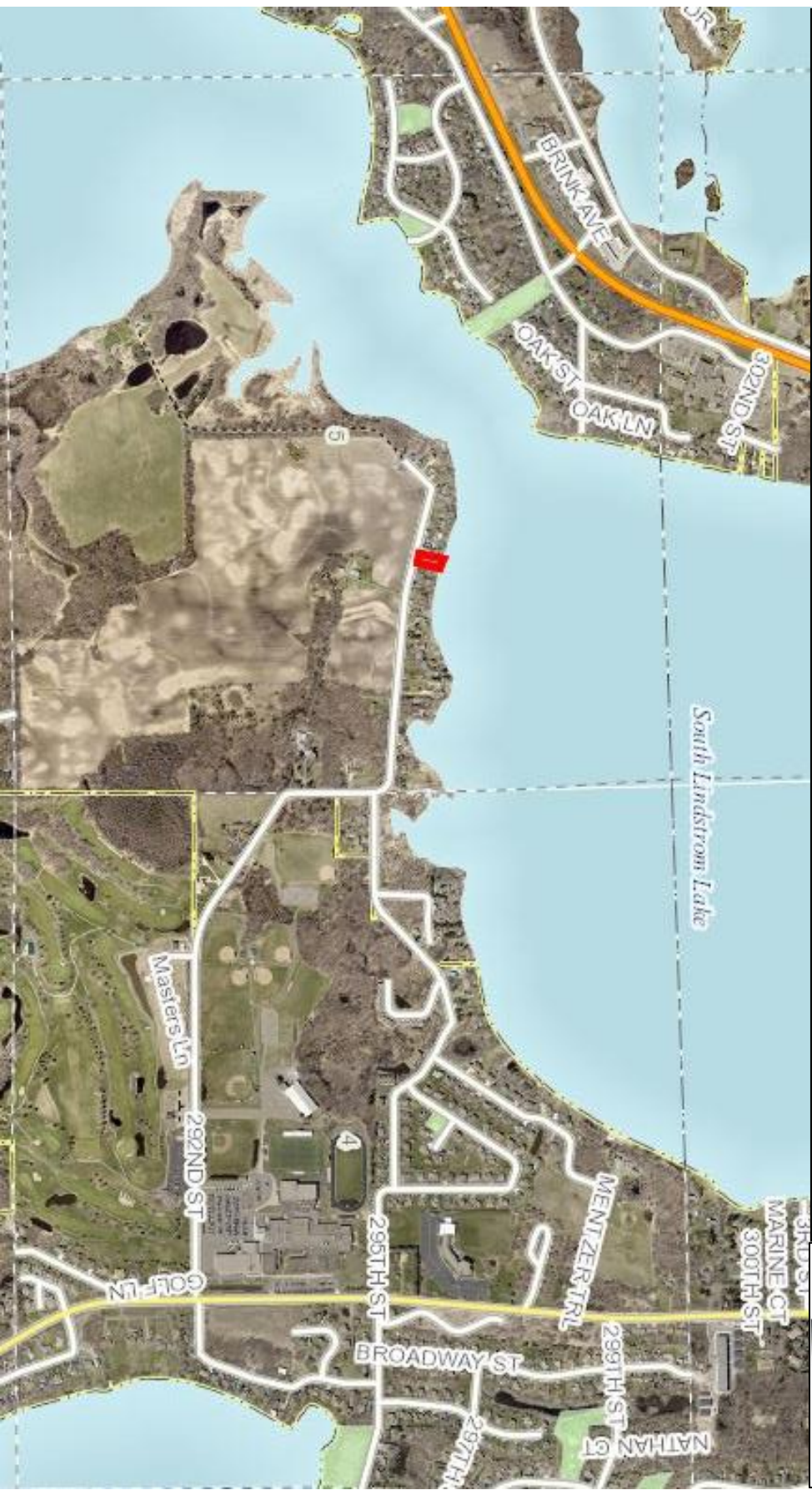
David & Crystal Neuman – Property owners David & Crystal Neuman are requesting a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order construct a dwelling, deck and attached garage closer to the Ordinary High Water Level and township Right-of-Way than required in the Rural Residential I (RRI) District / Shoreland Management District. The .29± acre subject site is located at 11960 Mentzer Trail in Chisago Lake Township, S5, T33, R20 (PID 02.01626.00).

Neuman property - 



David & Crystal Neuman – Property owners David & Crystal Neuman are requesting a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 in order to construct a dwelling, deck and attached garage closer to the Ordinary High Water Level and township Right-of-Way than required in the Rural Residential I (RR) District / Shoreland Management District. The .29± acre subject site is located at 11960 Mentzer Trail in Chisago Lake Township, S5, T33, R20 (PID 02.01626.00).

Neuman property - 



RESOLUTION NO. BOAA2023-1003

**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 11960 MENTZER TRAIL IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owners David Neuman & Crystal Neuman submitted an application dated received September 29, 2023 and considered complete on October 4, 2023 for a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21; and

WHEREAS, the property owners desire to develop their legal non-conforming property with a dwelling, deck and attached garage closer to the township Right-of-Way than allowed by the Zoning Ordinance and closer to the OHWL than allowed by the Shoreland Management Ordinance; and

WHEREAS, the subject site is legally described as:

PID 02.01626.00
*Lot 15, South Beach,
Chisago County, Minnesota*

WHEREAS, notice was provided and on October 26, 2023 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, 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 proposed structures will be situated at least 10' from either side property boundary where the required setback is 10', bordered by a public roadway along the southern property boundary and bordered by a public body of water along the northern property boundary. Therefore, the County finds that the proposed structures will be sufficiently distanced from neighboring properties so as not to impair an adequate supply of light and air to adjacent properties.

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

Finding #2 The subject site was originally platted for residential use and the proposed action will result in the subject site being developed for residential use. While the proposed action includes a township Right-of-Way setback Variance, the application materials demonstrate that the site will be developed with a 24-foot driveway outside of the township Right-of-Way, which is enough distance to accommodate vehicles parked entirely on the private property. Therefore, the County finds that the proposed use will not unreasonably increase the amount of traffic generated in the general area or increase the amount of congestion on Mentzer Trail.

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 structures, and they will therefore be constructed in compliance with all

applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County finds that the proposed action will have no impact on the danger of fire or public endangerment.

- Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
- Finding #4 *The proposed action will result in the subject site being developed for residential purposes in a zoning district intended for residential development. Further, the proposed structures will comply with the required side yard setbacks, where there is greatest potential for impacting surrounding 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 subject site utilizes a private well and private holding tanks and accesses a public roadway known as Mentzer Trail. Mentzer Trail is a well-established and well-maintained public roadway intended to serve a residential neighborhood. Therefore, the County finds that the proposed action will not cause unreasonable strain upon existing facilities or 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 subject site is currently vacant. The County finds that the proposed action will result in an increased property valuation which will result in a positive impact upon all taxing jurisdictions.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 allows dwellings and related accessory structures as permitted uses in the RRI District. The Zoning and Shoreland Management Ordinances do provide minimum setback requirements; however, the Zoning Ordinance also allows for Variances from these setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the application materials satisfy these three factors and, further, believes that the proposed action is in keeping with the spirit and intent of the Chisago County Zoning Ordinance.*

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

1. This approval grants the following Variances:
 - a. A 16' Variance to the township Right-of-Way setback requirement allowing the proposed structures to be located no closer than 24' from the Mentzer Trail Right-of-Way.

- b. A 12' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed structures to be located no closer than 63' from the OHWL of South Lindstrom Lake.
2. Except as specifically required herein, the site shall be developed in general conformance with the application materials, including site plan stamped received October 16, 2023. Any significant deviation, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.
 3. The permit holder shall obtain a building permit prior to construction and, further, the structures shall comply with all applicable codes and regulations.
 4. The permit holder shall obtain a compliance inspection for the existing holding tanks prior to or in conjunction with the building permit application process.
 5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 26th day of October, 2023.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Gregg Carlson
Chair

ATTEST:

Beth Gervais
Land Services Coordinator