

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
October 26, 2023**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, October 26, 2023, in the County Board Room of the Chisago County Government Center.

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

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

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

APPROVAL OF MINUTES – Motion by Yeager to approve the September 28, 2023 meeting minutes as presented; second by Greene. The **motion passed** and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECORD – Motion by Strand to receive all applications, submittals, reports, and other materials into the record; second by Sutcliffe. The **motion passed** and carried unanimously. Meeting materials distributed in advance to the Board of Adjustment & Appeals for their review included: staff reports with attachments. 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

David & Melissa Donatell – Coordinator Gervais provided background information on David & Melissa Donatell's Variance request for property located at 11980 Lyman Lane in Chisago Lake Township, S17, T33, R20, (PID 02.01444.00), explaining that the property owners were requesting a Variance to expand their non-conforming dwelling closer to the Ordinary High Water Level (OHWL), township Right-of-Way (R-O-W) and County State Aid Highway (CSAH) than required; to expand their non-conforming detached garage closer to the southerly property boundary (side yard), township R-O-W and CSAH than required; and, to exceed the maximum allowable amount of impervious surface coverage. The .58±-acre subject site was located in the Rural Residential I (RRI) District / Shoreland Management District. Gervais reviewed details of the subject site and surrounding area, noting that the subject site was platted as part of Lilygren's Beach in 1956 and was considered legal non-conforming due to lot area. Without the benefit of a survey, Gervais provided the Board with approximate existing setbacks based on the County's GIS Viewer, as well as topographical information. Gervais shared that the bluff status was unknown.

Gervais explained that the Donatells were proposing to further develop their lakeshore property by expanding their 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 would encroach on the required OHWL, township R-O-W, and CSAH setbacks. The Donatells were also proposing to expand their detached garage by constructing a 20' x 24' (480 sf) addition on the southeasterly side (roadside). The proposed garage addition would 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 would increase from 18% to 31.25%.

The application materials explained that the proposed dwelling addition would provide such amenities as a dining room, a front closet, and generally more space for the family of five. The narrative also suggested that the land located between the existing dwelling and detached garage often flooded in the spring due to the sloping elevations and the property owners believed that the proposed addition would help remedy this issue. Gervais noted that the written narrative did not address the need or justification for the proposed covered patio / porch or the "open" patio. The application materials explained that the proposed detached garage addition would be constructed at some point in the future and would allow for additional storage of "outdoor things". The narrative suggested that the property owners would remove the existing 56 sf shed. Additionally, the written narrative explained that the property owners were 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.

To address the State mandated practical difficulty standard, the written narrative explained that the property owners believed that the required Variances were due to circumstances out of their control in that the County's ordinances were established after the dwelling was constructed in 1956. Further, they believed that the existing dwelling already encroached on the required OHWL and roadway setbacks and there was no location on the property which would be in compliance with the required setbacks. The property owners believed that other dwellings in the immediate vicinity encroached on the required OHWL and roadway setbacks and, therefore, the proposed dwelling additions would be consistent with the surrounding area.

The Technical Review Committee met with the Donatells on October 11, 2023. Land Services Coordinator Gervais shared her concerns about not knowing the exact location of the property boundaries, specifically the southerly property boundary. The County Sanitarian stated that a septic compliance inspection would be required being that the site was 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 60-day review period was scheduled to expire on December 2, 2023.

Gervais reviewed several concerns related to the proposed Variances. The property owners had not had a survey prepared or located the property pins to verify existing and proposed setbacks or definite locations of property boundaries. Staff was concerned that the proposed garage addition may be closer to the neighboring property than suggested on the site plan or possibly even encroaching onto the neighboring property. It was also concerning to Gervais that the site plan didn't show the lake or the OHWL. It was unclear if the elevations constituted a bluff status. Gervais explained that there was an indication from DNR and County staff, as part of a 2007 Variance request for the same property, that the elevations may have constituted a bluff, but it did not appear that this was verified in 2007. If there was 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. Staff believed that the dwelling additions may be reasonable in that they weren't exacerbating the OHWL setback encroachment, and they weren'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 were concerning. The proposed garage addition would be exacerbating non-conforming roadway setbacks and, without identifying the location of the southerly property boundary, the exact southerly side yard setback was questionable. The proposed increase in impervious surface coverage was also concerning in that a large portion of it was for a parking area which was, in part, being proposed as an area for the property owners' children to play. Staff did not believe that the property owners had provided sufficient justification for the proposed amount of impervious surface coverage and, specifically, the need for a 2,090 sf parking area which was in addition to a 24' x 46' detached garage and driveway. If this 2,090 sf parking area were eliminated, staff estimated that the total amount of impervious surface would be reduced to 23%, which was an allowable amount.

Gervais concluded by recommending that the Board table the request in order for the property owners to have a survey prepared as well as provide a bluff determination. Gervais reviewed all options available to the Board and provided suggested conditions of approval if the Board supported the request.

Chair Carlson invited the property owners to address the Board. Property owners David & Melissa Donatell stepped forward. M. Donatell stated that they would like to amend their request by eliminating the Variance request to expand their detached garage and by eliminating the Variance request allowing them to exceed the maximum allowable amount of impervious surface coverage (i.e., the installation of a paved area next to the garage and road). Chair Carlson clarified for the record that, with the verbal amendment, the amended Variance request would only include expansion of the dwelling closer to the OHWL, township R-O-W and CSAH than required.

Strand inquired if the property owners had included all existing patio areas in their impervious surface calculation. M. Donatell confirmed that the patio was included. The Board and property owners reviewed details of the impervious surface calculations. Chair Carlson sought clarification on the survey and bluff determination processes and questioned if a survey would still be necessary given that the Donatells had eliminated the garage addition portion of their request. Gervais responded that surveyors were able to make bluff determinations and, if the property owners did not want to have a complete survey prepared, they could inquire about locating specific property boundaries and the OHWL. Chair Carlson spoke about the importance of knowing exact setbacks as well as having a bluff determination. M. Donatell commented that, by removing the garage addition from the Variance request, she did not believe that it would be necessary to obtain a survey. Chair Carlson commented that he was in favor of having the property owners provide a survey and bluff determination. Yeager questioned the impact of the amended request on the total amount of impervious surface coverage. Chair Carlson responded that, with the amended request, the total amount of impervious surface would be less than 25%.

Chair Carlson opened the public hearing and sought public comment.

Peggy Sue Novak of 12017 Lyman Lane, Chisago Lake Township - Novak offered her support for the Donatell's Variance request.

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

Chair Carlson again expressed that he was in favor of the property owners providing a survey and bluff determination.

Motion by Strand to table the amended request for a bluff determination and identification of the Ordinary High Water Level; second by Sutcliffe. Sutcliffe inquired if having a survey would make a future Variance for detached garage expansion easier. Gervais confirmed that a survey would be extremely beneficial for any future Variance process. Board members discussed whether or not a bluff determination was necessary given that the proposed addition would not be encroaching any closer toward the OHWL or possible top-of-bluff than the existing dwelling. After some discussion about the proposed patio addition, Gervais explained that the patio was not considered a structure because it was at ground level and therefore not subject to the same setback requirements as structures. With this understanding, Strand withdrew her motion and Sutcliffe withdrew his second.

Motion by Sutcliffe to approve the request for Variance as verbally amended by property owners David & Melissa Donatell and to direct staff to amend the draft Findings of Facts and recommended conditions of

approval accordingly; second by Chair Carlson. Greene suggested a friendly amendment to include a condition requiring that run-off be directed away from the lake. Sutcliffe and Chair Carlson accepted the friendly amendment. The **motion passed** and carried unanimously.

Approved Conditions:

1. This approval grants the following Variances:
 - a. 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.
 - b. 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. The addition shall not be located any closer to the OHWL than the existing dwelling.
2. The sizes and locations of the dwelling additions 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 additions and 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.

Jayme Ersfeld – Coordinator Gervais provided background information on Jayme Ersfeld's Variance request for property located at 32342 N. Center Lane in Chisago Lake Township, S22, T34, R20, (PID 02.00988.00), explaining that the property owner was requesting a Variance in order to expand a legal non-conforming structure closer to the Ordinary High Water Level (OHWL) than required in the Rural Residential II (RRII) District / Shoreland Management District. Gervais reviewed details of the subject site and surrounding area and explained that the subject site was considered legal non-conforming being that it was platted in 1951 and did not meet current minimum dimensional requirements.

Gervais shared that Ersfeld was proposing to expand her legal non-conforming dwelling by constructing an addition on the easterly side of the dwelling (roadside). The addition would include a 6' x 13' covered entrance, a 6'6" x 13' entryway, and a 10' x 13' office. The survey included in the application materials showed that the existing dwelling was located 47.2' from the OHWL and the proposed addition would be located 69.7' from the OHWL, where the required setback was 75'. The survey also showed that the existing dwelling was 797 sf in size, where the required minimum size was 960 sf. Gervais commented that the proposed addition would not exacerbate the OHWL setback encroachment and it would bring the dwelling size into compliance.

In support of the request, the written narrative explained that the dwelling was constructed in the 1950s, that the proposed addition would not look out of place when compared to surrounding properties, and that it would better serve the residents in case of emergencies and for their current work arrangements. Further, the proposed addition would meet the roadway and side yard setbacks and would not exacerbate the OHWL setback encroachment.

The Technical Review Committee met with Ersfeld on October 11, 2023. Ersfeld confirmed that the detached garage was 24' x 40' (960 sf) in size rather than 20.3' x 24.2' (491 sf) as the 2022 survey indicated, and that the "bunk house" was 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 with the request. The Chisago Lake Town Board considered the request on October 17, 2023 and recommended approval with no conditions. The 60-day review period was scheduled to expire on December 3, 2023.

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

Chair Carlson invited the applicant and her husband to address the Board. Neither Ersfeld nor her husband had any additional comments to offer. Chair Carlson expressed his appreciation that the property had included a survey with her application.

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

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

Approved 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.

David & Crystal Neuman – Coordinator Gervais provided background information on David & Crystal Neuman's Variance request for property located at 11960 Mentzer Trail, Chisago Lake Township, S5, T33, R20 (PID 02.01626.00), explaining that the property owners were requesting a Variance in order to 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) / Shoreland Management District.

Gervais reviewed details of the subject site and surrounding area and explained that the subject site was considered legal non-conforming being that it was platted in 1952 and did not meet current minimum dimensional requirements. Gervais shared that the property owners had received Variance approval for a similar request in February 2020 but failed to utilize the Variance within one year or request an extension. 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 Gervais noted that the current request had been slightly altered so that the proposed attached garage was within the allowable amount of accessory storage space.

Gervais explained that the property owners wished to develop their now-vacant 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, was shown to be 63' from OHWL where the required setback was 75'. The attached garage, being the closest structure to the township R-O-W, was shown to be 24' from R-O-W where the required setback was 40'. All structures were shown to be 10' from the side property boundaries, where the required setback was 10'. The proposed dwelling would be served by existing holding tanks. The property owners also planned to install 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 was reported to be 24.98%, which was within the maximum allowable amount.

Gervais shared that the application materials explained that the property owners made 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 explained that the subject site was long and narrow with sloping elevations; the proposed dwelling location was intended to create the least amount of impact on the lake while remaining consistent with neighboring dwellings; and, the proposed structures and placement of structures would not alter the character of the neighborhood. Gervais commented that the property owners addressed the State mandated practical difficulty standard by explaining how the requested Variance was reasonable, how the property was unique, and how the proposed structures would fit the essential character of the surrounding area.

The Technical Review Committee met with the property owners on October 11, 2023. The group discussed septic concerns and impervious surface coverage at length. Given that the site currently had holding tanks, which were installed for the former dwelling, those tanks would be allowed to remain for the new dwelling. Regarding the total amount of impervious surface, the Neuman's initially shared that they would be using pervious pavers underneath their deck and for their driveway to help keep the total amount at or below 25%. However, they revised their plans to include a concrete patio and driveway. Staff reviewed the updated impervious surface calculation worksheet and believed, based on the information provided, that the site would stay at or below 25%. The Chisago Lake Town Board considered the request on October 17, 2023 and recommended approval with no conditions. The 60-day Review period was scheduled to expire on December 3, 2023.

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

Chair Carlson invited the property owners to address the Board. The Neumans did not have any additional comment to offer. Yeager noted that the dimensions shown on the site plan included in the PowerPoint presentation did not accurately reflect the information provided in the staff report. Gervais apologized and responded that she had mistakenly included the wrong site plan in the PowerPoint presentation and noted that the correct site plan was included in the staff report. Gervais and the Neumans provided clarification on the proposed dimensions of the dwelling and attached garage.

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

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

Approved 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.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUISNESS

None

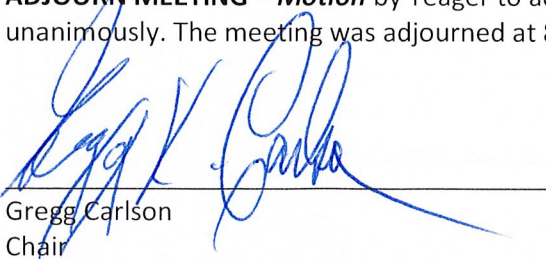
NEW BUISNESS

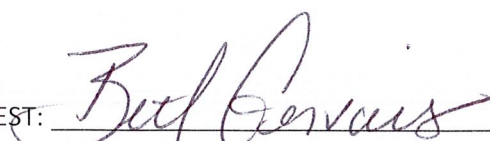
None

MISCELLANEOUS

None

ADJOURN MEETING – Motion by Yeager to adjourn; second by Sutcliffe. The **motion passed** and carried unanimously. The meeting was adjourned at 8:00 p.m.


Gregg Carlson
Chair

ATTEST: 
Beth Gervais
Land Services Coordinator