

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
February 29, 2024**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, February 29, 2024 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator.

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

APPROVAL OF AGENDA – Motion by John Sutcliffe to approve the agenda as presented and with the addition of Resolution No. 24/0221-3, a resolution of the Board of Commissioners of Chisago County, Minnesota, approving Planning Commission and Board of Adjustment and Appeals Policy on Commission / Board Structure, Meeting Order and General Procedure; second by Doug Greene. The **motion passed** and carried unanimously.

APPROVAL OF MINUTES – Motion by Gregg Carlson to approve the January 25, 2024 meeting minutes as presented; second by Chip Yeager. The **motion passed** and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECORD – Motion by John Sutcliffe to receive all applications, submittals, reports, and other materials into the record; second by Doug Greene. The **motion passed** and carried unanimously. Meeting materials distributed in advance to the Board of Adjustment & Appeals for their review included the complete meeting packet with staff reports and attachments. Copies of all correspondence and meeting materials were made available at the entrance to the County Board Room and for electronic distribution.

PUBLIC HEARINGS – NEW APPLICATIONS

Brody Halseth – Coordinator Gervais provided background information on property owner Brody Halseth's Variance request for property located at 50491 Arbor Avenue W. in Nessel Township (PID 06.00397.03), explaining that Halseth was requesting a Variance in order to have more accessory storage space in the Rural Residential II (RRII) District than allowed. Gervais stated that the applicant wished to construct a 60' x 80' (4,800 sf) detached accessory structure in addition to a 1,352 sf attached garage for a total of 6,152 sf of accessory storage space in a district which allowed a maximum of 2,000 sf. The subject site was 7.13± acres in size and platted as Lot 3, Block 1, Arbor Hills in 2004. Gervais reviewed details of the subject site and surrounding area, as well as details about the proposed structure.

Gervais stated that Halseth's application materials included a written narrative which addressed the State mandated practical difficulty standard, explaining that the subject site was more than seven acres in size, was adjacent to the Agricultural (AG) District, and required commercial grade equipment to maintain it; that there was not enough space in the attached garage to accommodate personal vehicles and the equipment necessary to maintain the property; and, that neighboring properties within the same zoning district had approximately 4,000 sf and 4,800 sf of accessory storage space. In response to these statements, Gervais commented that it wasn't uncommon for properties within the RRII District to be larger than two acres (the minimum lot area required) or for properties in the RRII District to abut the AG District; that the desire for additional accessory storage space was related to personal circumstances and preferences rather than unique circumstances related to the property; and, that the detached accessory structures on neighboring properties were suspected to be

examples of legal non-conforming structures. Gervais explained that the Board had reviewed and approved Variance requests for additional accessory storage space in the past, and she provided four examples from 2022 and 2023 to demonstrate that the Halseth request far exceeded what had been previously approved by the Board.

The Technical Review Committee met with Halseth on February 14, 2024. The Committee's discussion focused on the scale of the request, with the Committee encouraging Halseth to consider a smaller structure which would result in a lesser Variance. The Nessel Town Board considered the request on February 13, 2024 and recommended approval with no conditions. The State mandated 60-day review period was scheduled to expire on March 12, 2024.

Gervais shared staff's concerns about the request with the Board, explaining that the applicant had not cited any exceptional or extraordinary circumstances which applied to the subject site and not to other properties in the same district; that the property had 648 sf of additional accessory storage space remaining, which would allow a smaller structure without need for Variance; and, that the application did not fully or satisfactorily address the State mandated practical difficulty standard, specifically in terms of reasonableness and uniqueness.

Gervais concluded by offering a recommendation of denial with draft Findings of Fact for the Board's consideration. In the event that the Board supported the request, Gervais provided the Board with alternate draft Findings of Fact and conditions of approval for consideration. Gervais reviewed options available to the Board.

Chair Strand invited the applicant to address the Board. Brody Halseth approached the Board and immediately verbally amended his Variance request downward from a total of 6,152 sf of accessory storage space to a total of 4,552 sf, which would allow the construction of a 3,200 sf detached accessory structure in addition to his 1,352 sf attached garage. Gregg Carlson inquired about the proposed structure dimensions with the amended request. Halseth responded that the amended request would allow a 40' x 80' or 50' x 64' structure.

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

Gregg Carlson commented that the Board had visited the subject site on February 28, 2024 and it was his opinion that the originally proposed 60' x 80' structure far exceeded what the Board had allowed in the past but he would be in support of the amended request. Chip Yeager inquired about the amended request and its approximate percentage of lot area. Gervais responded that the amended request resulted in lot coverage of approximately 1.465%, which was a reduction from 1.981% and more consistent with past approvals.

Motion by Gregg Carlson to adopt Resolution No. BOAA2024-0201, 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 50491 Arbor Avenue W. in Nessel Township, as amended by the property owner; second by John Sutcliffe. The **motion passed** and carried unanimously.

Approved Conditions:

1. This approval grants a ~~4,152~~ 2,552 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the property to have a total of ~~6,152~~ 4,552 square feet of accessory storage space in the Rural Residential II (RRII) District. In addition to the existing 1,352 square foot attached garage, this approval allows the construction of a detached accessory structure up to ~~4,800~~ 3,200 sf in size.
2. The detached accessory structure shall meet all required setbacks.

3. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received January 4, 2024. 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. Any future subdivision or reconfiguration of the property shall only occur in such a manner that does not reduce the existing lot area of 7.13± acres, unless the property is brought into compliance with the regulations for accessory structures / accessory storage space in the Rural Residential II (RRII) District in effect at the time of said subdivision or reconfiguration.
5. The exterior appearance and color of the detached accessory structure shall match as close as possible the exterior material, appearance, and color of the dwelling.
6. 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.
7. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Christopher Perry – Coordinator Gervais provided background information on property owner Christopher Perry's after-the-fact Variance request for property located at 44019 Cedarcrest Trail / CSAH 8 in Fish Lake Township (PID 03.00302.01), explaining that Perry was requesting a Variance in order to allow a recently constructed detached accessory structure to be located closer to the centerline of CSAH 8 than allowed and to exceed the height of the principal structure (dwelling). The detached accessory structure was constructed approximately 73' from the centerline where the required setback was 135' and the structure exceeded the height of the dwelling by approximately 6'. Gervais added that the request for Variance was a direct result of enforcement efforts by the Department of Environmental Services. Gervais reviewed details of the .97± acre subject site and surrounding area, as well as details about the recently constructed structure. Gervais noted that the site was currently developed with a total of five detached accessory structures in a district which only allowed a maximum of two; however, she added that Perry planned to remove three structures in order to bring the number into compliance.

Gervais explained that Perry's application materials included an extensive written narrative which addressed the State mandated practical difficulty standard. In regard to reasonableness, the property owner stated that the use was within the building setbacks and for private use only; it would improve the property and its value by creating a functional recreation and gathering space; it would improve the look of the property by removing vehicles, boats or other possible eye-sores for the surrounding property owners; and, it would also add value to the County of Chisago for potential future homeowners or possible builders new to the area. Further, the property owner stated that he believed the requested Variances would be consistent with the spirit and heritage in the area for the purpose of the Chisago County and the Fish Lake Township Comprehensive Plan to better the future of the County and, with Variance approval, he would be able to enjoy his home and recreational space that would be consistent in the residential zoning and other approved Variances in this area. In regard to uniqueness, the property owner indicated that he believed the subject site was unique by reason of exceptional narrowness, shallowness or shape or by reason of exceptional topographic conditions and that this circumstance deprived him of rights and privileges enjoyed by other property owners in the same zoning district. Further, the property owner believed that the location of the structure was the only location that the garage could be placed. In regard to structure height, the property owner explained that the request for a height Variance was needed due to the uniqueness of the roof trusses. The desired building structure included a gambrel roof to better represent the historical farms that were still common in the area. In regard to essential character, the property owner believed that the structure would fit into the surrounding area with its barn like appearance with surrounding farms in the area. In response to these statements, Gervais commented, among other things, that the structure was not within the required setbacks; much of the explanation related to personal circumstances and preferences; and, the explanation didn't offer a description of the unique circumstances

related to the property.

The Technical Review Committee initially met with Perry on January 10, 2024 (to review Perry's original application which was later withdrawn) and then reviewed an amended request on February 14, 2024. It was determined that the structure met the required setback from the septic system; the applicant informed the Committee that no sanitary facilities would be installed in the structure; and, the County Engineer commented that he had no concerns with the CSAH setback. The Fish Lake Town Board considered the request on February 12, 2024 and recommended approval with no conditions. The State mandated 60-day review period was scheduled to expire on April 2, 2024.

Gervais shared staff's concerns about the request with the Board, explaining that Perry had not fully explained the unique circumstances related to the property; that Perry may have been able to locate the structure on the property in compliance with all setback requirements if he had verified setbacks and obtained a building permit prior to construction; and, that Perry's decision to dismiss zoning regulations and the building permit process was indeed detrimental to the purposes, application and enforcement of the Chisago County Zoning Ordinance.

Gervais concluded by offering a recommendation of denial with draft Findings of Fact for the Board's consideration. In the event that the Board supported the request, Gervais provided the Board with alternate draft Findings of Fact and conditions of approval for consideration. Gervais reviewed options available to the Board.

Chair Strand invited the applicant to address the Board. Christopher Perry approached the Board and offered apologies for not verifying zoning regulations or applying for a building permit. Gregg Carlson inquired with Gervais what would happen to the structure if the Board denied the Variance request. Gervais responded that the property owner would have the ability to appeal the Board's decision and, if the District Court upheld the denial or if the property owner chose not to appeal, the property owner would be required to remove the structure. Carlson noted that the Board had visited the subject site on February 28, 2024 and it was his observation that the slab underneath the structure was likely poured a few weeks prior to construction and inquired if Perry had suspected that a permit may be required for the structure. Perry responded that the slab was indeed poured in advance but did not offer any justification for not applying for a building permit. Carlson noted differences between the building plans submitted with the application and the actual structure, including the addition of windows and a service door on the second story. Perry responded that the building plans were prepared after the structure was constructed and did not accurately reflect the structure. Carlson suggested that it appeared as if Perry intended to have living quarters in the second story and added that that use was strictly prohibited by the Zoning Ordinance. Perry acknowledged that his original intention was to have living quarters within the structure but now intended to use the space as a personal woodworking space. Carlson inquired about how Perry chose to place the structure where he did. Perry responded that, due to location of the driveway and well, he believed that the current location was the only possible location. Carlson offered support for the request with the added condition that Perry remove the service door and windows from the second story. Perry requested that he be able to keep the windows for natural light. Doug Greene commented that he supported the height Variance but not the setback Variance, adding that moving the structure would allow the foundation to be inspected. Board members questioned if the structure could be moved to the location of the existing detached garage (which was proposed for demolition). Perry responded that it would be too close to the septic system and he had hoped to construct a dwelling addition. Perry stated that the Board had recently approved a Variance for a detached accessory structure directly across the road from his property for similar circumstances. Greene clarified that the neighboring Variance was different in that the proposed structure did not encroach any closer to the centerline of CSAH 8 than the existing dwelling, adding that the Variance was granted prior to issuance of a building permit and construction.

Chair Strand opened the public hearing and sought public comment.

Christopher Dehen of 38726 Kost Trail, Sunrise Township (and owner of land immediately south of subject site) offered his support for the Variance, explaining that he and his wife intended to develop their Cedarcrest Trail / CSAH 8 property in the future and the placement of Perry's detached accessory structure was ideal for their development plans. Dehen also indicated that the shared driveway which served his property as well as Perry's property would ideally be relocated in the future.

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

Gregg Carlson inquired about Dehen's plan to relocate the shared driveway. Perry responded that he would like his own driveway but understood that it would be up to the Chisago County Highway Department as to whether he would be able to install his own driveway or if he would be required to utilize the shared driveway.

Motion by John Sutcliffe to adopt Resolution No. BOAA2024-0202, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving an after-the-fact Variance allowing for a recently constructed detached accessory structure to encroach on the required County State Aid Highway Setback and to exceed the height of the principal structure on property located at 44019 Cedarcrest Trail / CSAH 8 in Fish Lake Township, as presented and with the added condition that the second story man door be removed from the east wall and allowance for the second story windows to remain on the east wall; second by Gregg Carlson. The **motion passed** and carried unanimously.

Approved Conditions:

1. This approval grants the following after-the-fact Variances:
 - a. An approximate 62' Variance allowing for the proposed / recently constructed detached accessory structure to be approximately 73' from the centerline of Cedarcrest Trail / CSAH 8. The structure shall meet all other required setbacks.
 - b. A Variance allowing the proposed / recently constructed detached accessory structure to exceed the height of the principal structure (dwelling) by approximately 6'.
2. The permit holder shall remove no fewer than three detached accessory structures from the property, leaving a maximum of two detached accessory structures, and the remaining detached accessory structures shall not exceed a cumulative area of 2,000 square feet. Further, the structures which are to be removed shall be removed within six months of Variance approval.
3. The permit holder shall submit an after-the-fact building permit application for construction of the detached accessory structure within 30 days of Variance approval. No further construction shall be allowed until a building permit has been issued.
4. The exterior appearance and color of the proposed / recently constructed detached accessory structure shall match as close as possible the exterior material, appearance, and color of the dwelling.
5. The second story of the proposed / recently constructed detached accessory structure shall be used for personal storage space only and shall not be used for habitable space / living quarters, unless and until it can be done in compliance with the Chisago County Zoning Ordinance.
6. The permit holder shall remove the man door from the east wall of the second story, requiring internal access to the second story. The windows installed on the east wall of the second story are permitted to remain.

Teresa M. Simmons Trust – Coordinator Gervais provided background information on Teresa & Scott Simmons'

Variance request for property located at 32770 N. Center Court in Chisago Lake Township (PID 02.01084.00), explaining that the Simmons' were requesting a Variance in order to enlarge and intensify a non-conforming structure closer to the Ordinary High Water Level (OHWL) than required in the Rural Residential I (RRI) District / Shoreland Management District. Gervais reviewed details of the .31± acre subject site and surrounding area, noting that the subject site was platted as Lot 13, Chi-Gak-Wa Shores in 1955.

Gervais explained that the Simmons' wished to replace their existing two season screen porch with a three season porch. With the north and west sides of the structure being angled, the applicants also wished to square off the structure. Gervais estimated that the structure would be increased from 111 sf in size to 128 sf (8' x 16'); however, it would not be constructed any closer to the OHWL than the existing structure. The existing structure appeared to be situated as close as 36' from OHWL and met all other required setbacks. Gervais noted that, while the impervious surface calculation worksheet showed that the amount of impervious surface coverage was 31% where the maximum allowed was 25%, the overall amount would not increase as a result of the proposed project. Gervais suspected that squaring off the structure would create a slight increase; therefore, staff included a recommended condition of approval which stated that the property was not allowed to increase its current amount of impervious surface, which meant that the applicants may be required to eliminate impervious surface elsewhere on the property so as not to exceed 31%.

The Technical Review Committee met with S. Simmons on February 14, 2024 and no concerns were identified. The Chisago Lake Town Board considered the request on February 20, 2024 and recommended approval with no conditions and a comment that it was "basically the same footprint". The State mandated 60-day review period was scheduled to expire on April 2, 2024.

Gervais concluded by offering a recommendation of approval with draft Findings of Fact and conditions for the Board's consideration, and reviewed options available to the Board.

Chair Strand invited the applicant to address the Board. Applicant Scott Simmons approached the Board and explained that the existing structure was deteriorating and beyond repair. Gregg Carlson noted that the Board had visited the subject site on February 28, 2024 and acknowledged that the existing porch was in poor structural condition. Carlson inquired about the impervious surface coverage situation and the likelihood that the applicants would need to remove impervious surface elsewhere on the property in order to not go above 31%. Simmons indicated that he would likely replace rocked areas with grass. Carlson asked other clarifying questions about the impervious surface calculation worksheet and building plans and Simmons provided responses accordingly.

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

Motion by Gregg Carlson to adopt Resolution No. BOAA2024-0203, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance allowing the enlargement and intensification of a non-conforming structure closer to the Ordinary High Water Level than required on property located at 32770 N. Center Court in Chisago Lake Township, as presented; second by Doug Greene. The **motion passed** and carried unanimously.

Approved Conditions:

1. This approval allows for the enlargement and intensification of an existing two season porch which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance. This approval allows for the two season porch to be intensified to a three season

porch and enlarged by squaring off the north and west walls of the structure, but it shall not be located any closer to the OHWL than the existing structure. The structure shall meet all other required setbacks.

2. The structure shall be constructed in general conformance with the application materials, including location and dimensions, dated received January 24, 2024. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.
3. The permit holder shall obtain a building permit prior to construction and, further, the structure shall comply with all applicable codes and regulations except as permitted by this Variance.
4. The County acknowledges that the amount of impervious surface coverage was 31% at time of Variance application, which exceeds the maximum allowable amount of 25%. With this approval, the overall amount of impervious surface coverage shall remain at or less than 31%. This condition shall be verified at time of building permit application.
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

Resolution No. 24/0221-3 – Chair Strand noted that the Board received a copy of the resolution recently adopted by the County Board pertaining to the Planning Commission and Board of Adjustment and Appeals policy on Commission / Board structure, meeting order and general procedure. Gervais noted that the County Board's resolution addressed all concerns and suggestions offered by the Board and Planning Commission. Gregg Carlson inquired if the Board's concerns and suggestions pertaining to conflict of interest were addressed. Board members reviewed the adopted resolution and were satisfied that all concerns and suggestions were addressed.

NEW BUISNESS

None

MISCELLANEOUS

Chip Yeager inquired about the required minimum lot area for the Rural Residential II (RRII) District. Gervais responded that it was a two acre minimum. Yeager suggested that the Board consider whether a 2,000 sf maximum for accessory storage space was sufficient for the Rural Residential Districts given the number of Variance requests submitted on this issue. Gervais noted that the Board had discussed this in the past and provided the Planning Commission with a recommendation that the 2,000 sf maximum be increased to 2,400 sf. Board members discussed different scenarios and options and generally agreed that the number should be increased from 2,000 sf and they also supported an increase above 2,400 sf; however, the Board did not offer a specific recommendation for the Planning Commission's consideration.

ADJOURN MEETING – Motion by Gregg Carlson to adjourn; second by Chip Yeager. The **motion passed** and carried unanimously. The meeting was adjourned at 8:11 p.m.



Rebecca Strand
Chair

ATTEST:



Beth Gervais
Land Services Coordinator