



Chisago County, MN
BOARD OF ADJUSTMENT & APPEALS
Meeting Agenda
March 28, 2024 | 7:00 pm

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

Tour Time and Date: Wednesday, March 27, 2024 at 8:15 am
Departing from Chisago County Highway Department, 31325 Oasis Road, Center City, MN

- 1. Call to Order and Pledge of Allegiance**
- 2. Roll Call and Determination of a Quorum**
- 3. Approval of Agenda**
- 4. Approval of Minutes**
 - a. February 29, 2024
- 5. Receive all Materials and Submittals into Record**

Previously Distributed Materials:

 - a. Complete meeting packet including staff report(s) with attachments for agenda item(s) 6a and 6b
- 6. Public Hearings – New Applications**
 - a. **Jason Budzynski & Tiffany Pearson Budzynski** – Property owners Jason Budzynski & Tiffany Pearson Budzynski are requesting approval of a Variance allowing the expansion of a non-conforming structure and allowing more impervious surface coverage than permitted in the Rural Residential I (RRI) District / Shoreland Management District. The .20± acre subject site is located at 1498 509th Street in Nessel Township, S22, T37, R22 (PID 06.00463.00).
 - b. **Kelly & Tana Karnes** – Property owners Kelly & Tana Karnes are requesting approval of a Variance allowing the expansion of a non-conforming structure in the Rural Residential I (RRI) District / Shoreland Management District. The .30± acre subject site is located at 29305 Glader Boulevard in Chisago Lake Township, S3, T33, R20 (PID 02.01311.00).
- 7. Public Hearings – Continued Hearings**

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

The next meeting is scheduled for Thursday, April 25, 2024 at 7:00 pm.

Board of Adjustment and Appeals

Tour Date and Time:

Wednesday, March 27, 2024 at 8:15 am

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

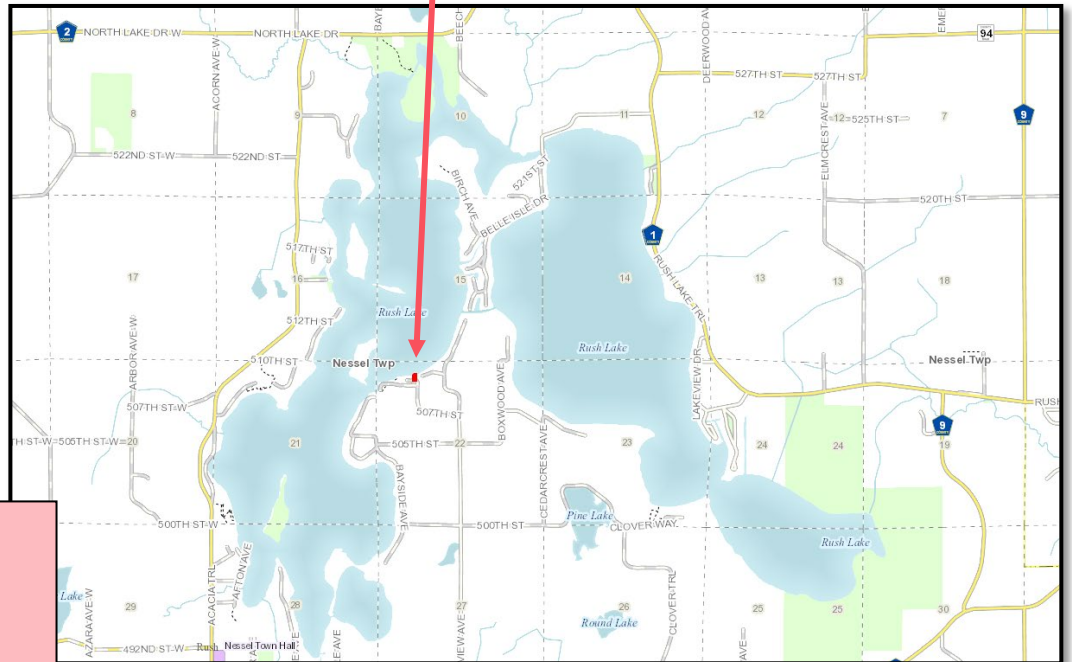
Jason Budzynski & Tiffany Pearson Budzynski

Jon Ramey

1498 509th Street

Nessel Township

PID 06.00463.00



Kelly & Tana Karnes
29305 Glader Boulevard
Chisago Lake Township
PID 02.01311.00



**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 BUSINESS

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 BUSINESS

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



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Expand a Non-Conforming Structure and Exceed the Maximum Allowable Amount of Impervious Surface Coverage
 1498 509th Street, Nessel Township
 DATE: March 28, 2024

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing the expansion of a non-conforming structure and allowing more impervious surface coverage than permitted in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s):	Jason Budzynski & Tiffany Pearson Budzynski and Jon Ramey
Property Owner(s):	Jason Budzynski & Tiffany Pearson Budzynski
Property Address:	1498 509 th Street Nessel Township
General Location:	Section 22, Township 37, Range 22
PID:	06.00463.00
Property Area:	.20± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	West Rush 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:	February 15, 2024
Date Application Complete:	February 27, 2024
60-Day Review Period:	April 27, 2024

BACKGROUND

Property owners Jason Budzynski & Tiffany Pearson Budzynski and applicant Jon Ramey wish to expand their non-conforming dwelling by adding a second story and to exceed the maximum allowable amount of impervious surface coverage by 9% on property located at 1498 509th Street in Nessel Township. The existing dwelling is considered non-conforming due to the fact that it's approximately 50'-56' from Ordinary High Water Level (OHWL) where the required setback is 75' and the existing / proposed amounts of impervious surface coverage are 34% where the maximum allowed is 25%.



SITE ANALYSIS

According to the attached survey / site plan, the .20± acre unplatted property has been developed with a 960 sf dwelling, 440 sf detached garage, and 70 sf shed. According to records from the Chisago County Assessor's Office, the dwelling was constructed in or prior to 1964 (based on adjacent photo which was taken in September 1964) and the garage appeared on Assessor's Office records as early as 1979 (although it may have been constructed prior to 1979).



The subject site is generally located on the eastern shore of West Rush Lake. Per the attached survey / site plan, the subject site is 60'± wide at the "roadway" (roadway easement) and shoreline and 144'± deep. Due to substandard lot dimensions and lot area and lack of frontage on a public road, the subject site is considered non-conforming. Additionally, the dwelling is situated approximately 50'-56' from the OHWL where the required setback is 75'. Given that the subject site was created and developed prior to the County's adoption of official land use controls, the property and the dwelling are considered legal non-conforming.

Topography of the subject site includes fairly level elevations ranging from 922' near the south property boundary / roadway easement to 915' near the north property boundary / lakeshore. Surrounding properties range widely in size from .18 acres to 29 acres, with most nearby lakeshore properties developed with dwellings / seasonal cabins and accessory structures.

Department of Environmental Services records indicate that the property owners installed a new septic system (holding tank) in 2021. While it's a relatively new system and new systems aren't required to have compliance inspections within the first five years, there is no record that the system received a final inspection or that a Certificate of Occupancy was issued by the County. Therefore, the County Sanitarian and Building Official are requiring that a septic compliance inspection occur prior to the issuance of a Certificate of Occupancy for the proposed dwelling addition.

PROPOSAL ANALYSIS

The attached application materials explain that the property owners would like to expand their legal non-conforming dwelling by constructing a second story and they're seeking approval for the existing non-conforming amount of impervious surface coverage of 34%.

The attached building plans show that the existing first story includes one bedroom, den, great room, kitchen and bathroom, and the proposed second story will include two additional bedrooms and one additional bathroom. The footprint of the dwelling will remain the same, which means that, despite the proposed expansion, the dwelling will not encroach on the OHWL any more so than the existing structure. Likewise, given that the footprint of the dwelling will not be changing, the already exceeding amount of impervious surface coverage will not increase.

The property owners have provided worksheets for existing and proposed amounts of impervious surface coverage which indicate an overall amount of 2,887 sf or 34% where the maximum allowable

amount would be 2,178 sf or 25%. Staff is basing 2,178 sf on a lot area of .20 acres / 8,712 sf rather than the property owners reported area of 8,625 sf. While staff is not questioning the dimensions of the structures, the driveway is reported to be 1,242 sf where the County's GIS Viewer shows an amount closer to 1,400 sf. Aside from indicating that the amount of impervious surface will not be affected by the proposed dwelling addition, the attached written narrative doesn't provide explanation or justification for the existing / proposed amount of impervious surface coverage. Upon review of historical aerial imagery, it appears that the driveway and sidewalk accounted for approximately 521± sf of impervious surface in 2013 whereas the current driveway accounts for approximately 1,400± sf of impervious surface. This increase alone bumps the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage. The left adjacent photo was taken in 2013 and the right adjacent photo was taken in 2022.



In an effort to address the State mandated practical difficulty standard, the property owners have provided a written narrative which addresses reasonableness, uniqueness, and essential character as follows (with staff comments shown in *italics*):

- In regard to **reasonableness**, the property owners explain that expanding the dwelling upwards is the most reasonable way to achieve their goal of additional square footage, adding that a second story addition will not affect setbacks from neighboring properties or disturb the neighbors' views.
- In regard to **uniqueness**, the property owners explain that the subject site was created and developed prior to the County's adoption of official land use controls. The County refers to this circumstance as pre-existing development.
- In regard to **essential character**, the property owners explain that the general appearance of the dwelling will not change in that the existing half-log siding will be used for the second story and at least one neighboring lakeshore property has also been developed with a two story dwelling.

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

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	NA (road easement only)	NA (road easement only)
OHWL Setback	75'	Approximately 50'-56' to OHWL
Side Yard Setback	10' for Dwelling	12.8' and 15.5' from the west and east property boundaries
Impervious Surface Coverage	25%	34% (no change reported from current amount)

REVIEW PROCESS

The Technical Review Committee met with Jason Budzynski on March 13, 2024. The group did not identify any concerns during the meeting; however, the County Sanitarian and Building Official later discussed the need for a septic compliance inspection prior to issuance of a Certificate of Occupancy for the proposed dwelling addition.

The Nessel Town Board considered the request on March 13, 2024 and recommended approval with no conditions.

The State mandated 60-day review period expires on April 27, 2024.

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 subject site was created and developed prior to the County's adoption of official land use controls which constitutes pre-existing development. The property owners had no control over this circumstance. Staff believes that this circumstance provides justification for the existing dwelling and proposed dwelling addition; however, it does not provide justification for the amount of impervious surface coverage which appeared to be compliant until approximately 2013.

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

Literal interpretation of the Zoning Ordinance would not deprive the applicants of rights commonly enjoyed by other RRI District / Shoreland Management District properties. Properties located in the RRI District / Shoreland Management District have the right to be developed with dwellings and accessory structures in compliance with the Zoning and Shoreland Management Ordinances, and the subject site has been developed with a dwelling and two accessory structures. Additionally, the site has been developed with an excessive amount of impervious surface coverage. Staff believes that the

amount could be reduced while still providing the subject site / property owners with sufficient driveway area to accommodate the single-family dwelling.

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 circumstance of pre-existing development is not a result of actions of the current property owner or any previous owners under the current Zoning and Shoreland Management Ordinances. The subject site was created and developed well before the County adopted official land use controls. However, the existing / proposed amount of impervious surface coverage appears to have been created since 2013, which means that either the current property owners or the previous property owners had control over this action under the current Shoreland Management Ordinance.

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

Dwellings and impervious surfaces 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;

While the subject site and dwelling are considered legal non-conforming, the property owners are proposing to expand the dwelling upwards so as to create the least amount of impact possible. The proposed expansion will not increase the footprint of the dwelling or encroach on the OHWL any more so than the existing dwelling.

The property owners have not provided any indication that they've considered decreasing the amount of impervious surface coverage in an effort to reduce or eliminate the need for Variance. Based on the County's GIS Viewer, it appears that much of the concrete driveway has been added since 2013 without Variance approval. Rough estimates indicate that the 2013 driveway and sidewalk accounted for approximately 521± sf of impervious surface whereas the 2022 / current driveway accounts for approximately 1,400± sf of impervious surface. This increase alone bumps the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage.

The current property owners have owned the subject site since 2021, so it isn't clear if they were responsible for increasing the size of the driveway / amount of impervious surface coverage; however, they do have the ability to bring the amount of impervious surface coverage back into compliance by reducing the size of the driveway or reconstructing the driveway with pervious materials.

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

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance related to the property, and when it will not alter the essential character of the surrounding area. Staff believes that the request to expand the legal non-conforming dwelling by adding a second story is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the expansion will not increase the footprint of the dwelling or increase the non-conforming OHWL setback; that the subject site is unique in that it was created and developed prior to the County's adoption of official land use controls; and, that the proposed expansion fits the essential character of the residential lakeshore neighborhood. Further,

staff does not believe that the Variance, if approved, would be detrimental to other properties in the RRI District / Shoreland Management District.

In regard to the Variance request for impervious surface coverage, staff does not believe that the property owners have provided satisfactory justification for the existing / proposed amounts and suggests that they do have the ability to reduce the amount of impervious surface coverage in a way that would bring the subject site back into compliance with the Shoreland Management Ordinance so as to protect their property, surrounding properties, and the adjacent lake.

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.

The subject site is 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 County finds that the proposed dwelling expansion will be constructed in a manner that complies with the required side yard setbacks so as not to impair an adequate supply of light and air to neighboring properties to the west and east. The north property boundary is adjacent to West Rush Lake and the south property boundary is adjacent to an established roadway easement, where there are no impacts on the supply of light and air to other properties. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the 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 proposed dwelling expansion will not change the primary use of the subject site. Therefore, the County finds that the proposed expansion will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding roadways. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on congestion.

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

Finding #3 The property owner will be required to obtain a building permit prior to construction of the proposed dwelling expansion and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the danger of fire or to public 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 two detached accessory structures, and the property owners are reporting that the existing and proposed amounts of impervious surface coverage are 34%. The proposed dwelling addition and amount of impervious surface coverage 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 either the dwelling addition or the existing / proposed amount of impervious surface coverage will have any negative impact to surrounding properties.

-OR-

Finding #4 The subject site is currently developed with a dwelling and two detached accessory structures, and the property owners are reporting that the existing and proposed amounts of impervious surface coverage are 34%. The proposed dwelling addition 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 the dwelling addition will have any negative impact to surrounding properties. However, the County further finds that a significant amount of impervious surface was installed since 2013, moving the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage, without Variance approval. Based on the amount of hard surfaced driveway and the configuration of the driveway, the County believes that the amount of impervious surface may very likely have a negative impact to surrounding properties by diverting water from the subject site westerly and easterly to neighboring properties.

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

Finding #5 The proposed dwelling expansion will not change the primary use of the subject site or the need for additional facilities and services; therefore, the County finds that the proposed dwelling expansion will not create any strain or increased impact upon existing facilities and services. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the need for 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 There is no evidence to suggest that the proposed dwelling addition or amount of impervious surface coverage will have any negative fiscal impact on the County or school district. The County finds that the dwelling addition may increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.

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

Finding #7 The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.52 is

to regulate the amount of impervious surface coverage on lots within the Shoreland Management District. While the proposed dwelling is considered legal non-conforming in that it's situated approximately 50'-56' from Ordinary High Water Level (OHWL) where the required setback is 75', the County finds that the expansion will not increase the footprint of the dwelling or exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings and impervious surfaces are reasonable uses in the Rural Residential I (RRI) District / Shoreland Management District and the property owners are not constructing the proposed dwelling addition any closer to the OHWL than the existing dwelling or increasing the amount of impervious surface coverage; that there is a unique circumstance in that the non-conforming property was created and developed well before the County adopted official land use controls; and, that the proposed structure and amount of impervious surface coverage generally fit the essential character of the residential lakeshore neighborhood.

-OR-

Finding #7 The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.52 is to regulate the amount of impervious surface coverage on lots within the Shoreland Management District. While the proposed dwelling is considered legal non-conforming in that it's situated approximately 50'-56' from Ordinary High Water Level (OHWL) where the required setback is 75', the County finds that the expansion will not increase the footprint of the dwelling or exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a reasonable use in the Rural Residential I (RRI) District / Shoreland Management District and the property owners are not constructing the proposed dwelling addition any closer to the OHWL than the existing dwelling; that there is a unique circumstance in that the non-conforming property was created and developed well before the County adopted official land use controls; and, that the proposed structure fits the essential character of the residential lakeshore neighborhood. *However, the County further finds that the request to exceed the maximum allowable amount of impervious surface coverage fails to satisfactorily address the practical difficulty standard. The County recognizes that the property owners are not proposing to increase the amount of impervious surface coverage as part of the dwelling addition project and that they're only seeking Variance approval for the existing amount of 34%; however, the County believes that the existing / proposed amount was primarily created since 2013 (which does not constitute pre-existing development) and likely moved the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage without Variance approval. Without sufficient demonstration of compliance with the practical difficulty standard and without prior Variance approval, the County has determined that the property owners must reduce the overall amount of impervious surface coverage to no more than 25%.*

STAFF RECOMMENDATION

Staff believes that the requested Variance to expand a legal non-conforming dwelling by adding a second story is reasonable and supports this portion of the request; however, staff reluctantly cannot support the request to exceed the maximum allowable amount of impervious surface coverage given that the property owners have not provided sufficient demonstration of compliance with the State mandated practical difficulty standard and after learning that a significant amount of impervious surface has been added since 2013 without Variance approval. If the Board were to deny the request to exceed the maximum allowable amount of impervious surface coverage, it would require that the property owners either eliminate some impervious surfaces (most likely a portion of the driveway) and/or replace some of the existing impervious materials with new pervious materials.

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff supports approval of a Variance to expand a legal non-conforming structure and denial of a Variance to exceed the maximum allowable amount of impervious surface coverage** with draft Findings of Fact (see above, including those findings shown in *red*) and recommended conditions (see below) and has prepared a resolution for the Board's consideration.

Recommended conditions:

1. **The Variance request to expand a legal non-conforming dwelling which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance is approved, allowing for the construction of a second story.** The dwelling footprint shall not increase and the dwelling, upon completion, shall not be located any closer to the OHWL than the existing dwelling.
2. **The Variance request to exceed the maximum allowable amount of impervious surface coverage by 9%± is denied,** requiring that the property owners reduce the total amount of impervious surface to an amount no greater than 2,178 sf (lot area of 8,712 sf x 25% = 2,178 sf) through elimination of existing impervious surfaces and/or replacement of existing impervious materials with new pervious materials. Further, reduction of impervious surface coverage to an amount no greater than 2,178 sf shall be complete within one year from the date of this resolution.
3. The dwelling addition shall be constructed in general conformance with the application materials dated received February 15, 2024 and the updated building plans dated received March 6, 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 owners' expense.
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 except as permitted by this Variance.
5. The permit holder shall request and obtain a septic compliance inspection prior to issuance of a Certificate of Occupancy for the dwelling addition.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Alternatively, should the Board determine that the request for Variance fully satisfies the State mandated practical difficulty standard and the Board adopts Findings of Fact (including all those findings

shown in *black* and excluding those findings shown in *red*) to support approval of the request for Variance, staff encourages the Board to consider the following recommended conditions of approval:

Recommended conditions:

1. This approval grants the following Variances:
 - a. A Variance allowing the expansion of a legal non-conforming dwelling which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance is approved, allowing for the construction of a second story. The dwelling footprint shall not increase and the dwelling, upon completion, shall not be located any closer to the OHWL than the existing dwelling.
 - b. A 9% Variance to the impervious surface coverage requirement established by the Chisago County Shoreland Management Ordinance, allowing a total existing amount of impervious surface coverage of 34%. No additional impervious surface shall be added as part of this request and no additional impervious surface shall be added to the subject site without prior Variance approval.
2. The dwelling addition shall be constructed in general conformance with the application materials dated received February 15, 2024 and the updated building plans dated received March 6, 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 owners' expense.
3. The permit holder shall obtain a building permit prior to construction and, further, the dwelling addition shall comply with all applicable codes and regulations except as permitted by this Variance.
4. The permit holder shall request and obtain a septic compliance inspection prior to issuance of a Certificate of Occupancy for the dwelling addition.
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 as requested** and based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to adopt all draft findings shown in black.*
2. **Approve / Deny the Variance as recommended by staff** and based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to adopt draft Findings #1 - #3 and #5 - #6 shown in black and draft Finding #4 and #7 shown in red.*
3. **Deny the Variance** based on amended Findings of Fact or other contributing factors deemed appropriate.
4. **Table** action to allow for further review and consideration. The current review period expires on April 27, 2024, allowing for further review and consideration at the Board's April 25, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-0301, a resolution approving a Variance allowing the expansion of a legal non-conforming structure and denying a Variance allowing more impervious surface coverage than permitted on property located at 1498 509th Street in Nessel Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Survey / site plan
 - d. Building plans
 - e. Impervious surface calculation worksheets
 - f. Site and neighborhood photos
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-0301 (approval / denial)
5. Draft Resolution No. BOAA2024-0301 (approval)



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-0177

Township Nessel S/T/R 22/037/022 PID# 060046300
Project Address 1498-509th St. Rush City, MN 55069
Property Owner(s) Jason & Tiffany Budzynski
Mailing Address (If Different from Project Address) 14350 Vermillion St. ne Ham Lake, MN 55304
Phone# [REDACTED] Email [REDACTED]
Applicant(s) Jason & Tiffany Budzynski & Jon Ramey (Representative)
Mailing Address (If Different from Project Address) 14350 Vermillion St. ne Ham Lake, MN 55304
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)

Add 2nd story to Existing Structure
(See plan's & Survey) Impervious Surface Request to 34%

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

☒ Full Legal Description

☒ Detailed Site Plan

☒ Detailed Written Narrative

☐ Plat Drawings

(DEED) Survey
[Signature]
Applicant Signature

2/15/2024
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

\$ 600.00

Recording Fee

\$ 46.00

Plat Fee — No Road(s) / With Road(s)

\$ _____

Septic Compliance Fee

\$ _____

Wetland Fee

\$ _____

TOTAL FEE

\$ 646.00

Dates

Application Received

2/15/24 ALH

Application Complete

2-27-24

60 / 120 Day Review Period

4-27-24

Extended Review Period



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Nessel S/T/R 22/037/022 PID# 060046300
Project Address 1498 509th St. Rush City, MN 55069
Property Owner(s) Jason & Tiffany Budzynski
Mailing Address (If Different from Project Address) 14350 Vermillion St. ne Ham Lake, MN 55304
Phone# [REDACTED] Email [REDACTED]
Applicant(s) Jason & Tiffany Budzynski & Jon Ramey (Representative)
Mailing Address (If Different from Project Address) 14350 Vermillion St. ne Ham Lake, MN 55304
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) Add 2nd story on existing structure
(See Attached plans & Survey) Impervious Surface Request to 39%

[Signature]
Applicant Signature

2/15/2024
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 MARCH 28, 2024

Date of Township Presentation MARCH 13, 2024

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Signatures of Township Officials or Authorized Personnel

Michelle Meis
Stacy Iskh

[Signature]

[Signature]



Chisago County Department of Environmental Services
Planning & Zoning Application

Authorization to Pursue Application

Submittal of this form is only necessary if the applicant is NOT the property owner

I, the undersigned, being the property owner of record as noted on the accompanying Planning & Zoning Application Form do hereby authorize Jon Ramey, the applicant for this planning proposal, to pursue this zoning application on / for my property, as legally described on the attached application.

Jason Budzynski
Print Property Owner Name(s)

Tiffany Budzynski

[Signature]
Signature(s) of Property Owner(s)

Tiffany Budzynski 2/15/24
Date

Practical Difficulties

Jason & Tiffany Budzynski

Site Address:

1498 509th St
Rush City (Nessel Twp) MN 55069

Mailing Address:

14350 Vermillion St ne
Ham Lake, MN 55304

Description & Challenges:

My family is looking to add additional square footage to our Lake Home. To achieve our goals there are quite a few circumstances with the pre-existing, Sub-standard lot.

1. The lot size is small by standards @ roughly 144' x 60' and total of 8,625 sq ft. (0.2 Acre)
2. The existing Structure (Lake Home) is Set 56' from the lake shore (OHW) line
3. The existing side yard setbacks are 15.5' & 12.8'
4. There is an existing 1,250 holding tank with no space for a drain field (Noted on drawing/survey)
5. The existing impervious surface coverage is 34% (2,887 sq ft)

Taking considerations from challenges & data above we have designed a Second story addition to the existing Structure (Lake Home) that would add the square foot we are searching for. This addition would NOT encroach to the lakeshore, and side yard setbacks, and would NOT affect impervious surfaces. We have determined this is the simplest way to add/gain the additional square footage without encroaching on any existing conditions.

Reasonableness

We believe that going up is the most reasonable way to achieve our additional square footage goals. A Second Story addition will not affect either neighbor's distance/space between homes or affect any existing views.

Uniqueness

The property is a Sub-standard lot, created before lot division requirements. My best estimate is that the property & lake home were built in the early 1950's. It's said & rumored that the 6 lake cottages were built for the siblings of an existing landowner.

The Current Road/access is 509th St. which is a dead-End, granted easement access road with (NO-maintenance) from city or county to the 6 lake homes. The homes sits at the bottom of a steep hill. Four of the six existing properties are 60' in width with the end two lots being the largest. See attached GIS of 509th St.

Essential Character

If variance is granted to go up & add a 2nd story, this will not alter, nor affect the existing design of lake home. The existing lake home is complete Half log siding (See existing pics) The new design will carry on the Half log siding and with adding Cedar shakes at gables & cedar details that will only enhance the existing character of the lake home (See plans).

The design will be similar to the neighbors newly constructed lake home property to the west. The owner, My father built 2 years ago (neighbor to west). He Completely demo'd and rebuilt a new 2-story lake home. This was approved by Nessel & Chisago County (See pics)

In Conclusion, by Approving a Variance to Go up & adding Second story. With using the Uniqueness of the property this does not alter, nor affect many factors; Impervious surfaces calc's, Side, Lake shore & road setbacks/ measurements. This also does not impact any neighboring views and matches essential character of the neighborhood.

~~Prepared for KENNETH WASH~~



LEGEND

-  DENOTES FOUND COUNTY MONUMENT
 DENOTES SET IRON MONUMENT
 DENOTES FOUND MONUMENT
 DENOTES EXISTING POWER POLE W/ GUY WIRE
 DENOTES OVERHEAD ELECTRIC, PHONE, CABLE

Commencing at the west quarter corner of said Section 22; thence North 00 degrees 13 minutes ^{seconds} West

Commencing at the west quarter corner of said Section 22, thence North 00 degrees 13 minutes 17 seconds West, assumed bearing, along the west line of said Section 22, a distance of 1511.72 feet, thence North 56 degrees 48 minutes 25 seconds East, a distance of 1056.31 feet, thence North 89 degrees 45 min. 14 sec. East a distance of 89.43 feet, thence South 00 degrees 01 minutes 39 seconds East, a distance of 48.00 feet, thence North 84 degrees 12 minutes 16 seconds East, a distance of 367.36 feet, more or less, to the east line of said Government Lot 1; thence South 84 degrees 12 minutes 16 seconds West, retracing degrees 26 minutes 02 seconds West, parallel with said east line of Government Lot 1, a distance of 60.28 feet, thence North 03 degrees 12 minutes 02 seconds West, parallel with said east line of Government Lot 1, a distance of 143 feet, more or less, to the shoreline of Rush Lake; thence easterly along said shoreline to its intersection with said line that is parallel with said east line of Government Lot 1 running from said point of beginning, thence South 00 degrees 26 minutes 02 seconds East, along said parallel line, a distance of 145 feet, more or less, to said point of beginning and thence terminating.

Subject to easements, restrictions, or reservations of record, if any.

TOGETHER WITH a 20 foot roadway easement across part of Government Lot 1, Section 22, Township 37, Range 22, Chisago County, Minnesota. Said easement is lying 20 feet southerly and adjacent to the following described line:

Commencing at the west quarter corner of said Section 22; thence North 00 degrees 13 minutes 49 seconds West, assumed bearing, along the west line of said Section 22, a distance of 1511.72 feet; thence North 56 degrees 46 minutes 15 seconds East a distance of 1056.31 feet; thence North 68 degrees 45 minutes 34 seconds East a distance of 89.43 feet; thence South 00 degrees 01 minutes 33 seconds East a distance of 48.00 feet; thence North 84 degrees 12 minutes 16 seconds East a distance of 367.58 feet, more or less, to the east line of said Government Lot 1, being the point of beginning of the line to be described; thence South 84 degrees 12 minutes 16 seconds West, retracing the last described line, a distance of 116.38 feet and said line there terminating.

The sidelines of said easement are to be prolonged or shortened to terminate at the east line of said Government Lot 1.

ALSO TOGETHER WITH A 20 foot roadway easement across the East 20 feet of said Government Lot 1, Section 22, Township 37, Range 22, Chicago County, Minnesota lying southerly of the following described line: Commencing at the west quarter corner of said Section 22, thence North 00 degrees 13 minutes 49 seconds assumed bearing along the west line of said Section 22, a distance of 1511.12 feet; thence North 56 degrees 48 minutes 15 seconds East a distance of 1056.31 feet; thence North 89 degrees 45 minutes 44 seconds East a distance of 89.43 feet; thence South 00 degrees 01 minutes 39 seconds East a distance of 48.00 feet to the point of beginning of the line to be described; thence North 84 degrees 12 minutes 16 seconds East a distance of 367.56 feet, more or less to the east line of said Government Lot 1 and said line there terminating.

The sidelines of said equipment are to be prolonged or shortened to terminate at the south line of said Govt. lot 1 and the above described line.

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

DATE: 10/15/14

8,625± S.Q.F.T.

EXISTING HOUSE

POINT OF BEGINNING
(PROPOSED PROPERTY DESC.)

EAST LINE OF GOVT. LOT 1
SEC. 22, TWP. 37, RNG. 22

WEST LINE OF THE
EAST 20 FEET OF GOVT. LOT 1
SEC. 22, TWP. 37, RNG. 22

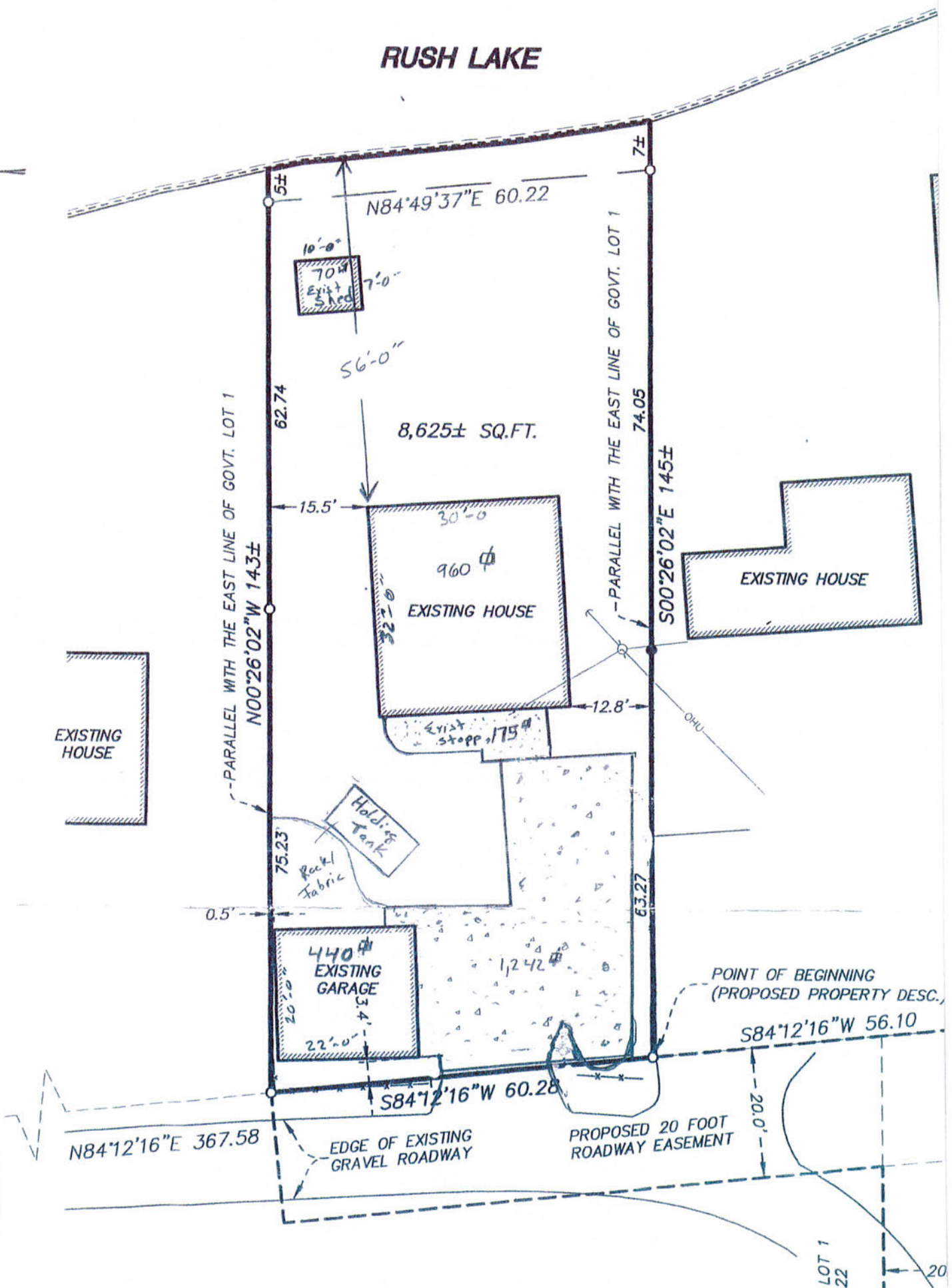
PROPOSED 20 FOOT
ROADWAY EASEMENT

SE CORNER OF GOVT. LOT 1
SEC. 22, TWP. 37, RNG. 22

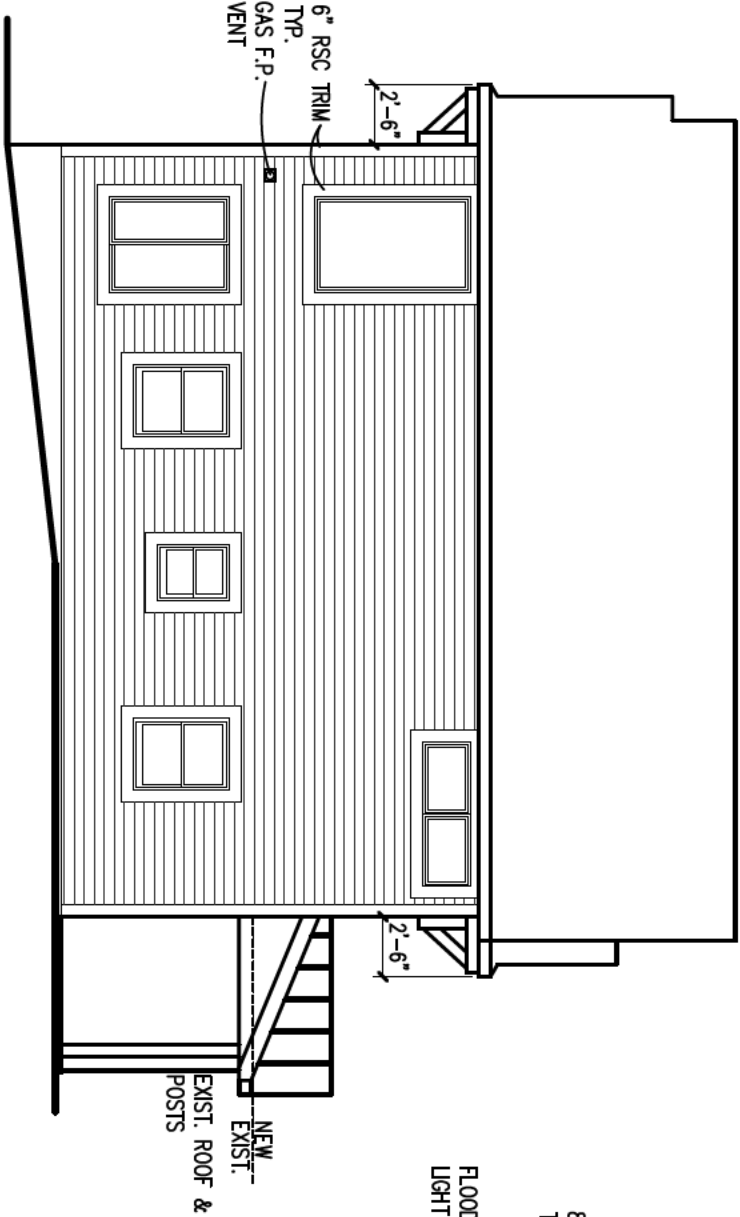
 **ANDERSON-PASSELL**
ASSOCIATES

200 THIRD AVENUE NE, SUITE 100 - CAMBRIDGE, MN 55008
(763) 689-4042 PH. (763) 689-6681 FAX
CIVIL ENGINEERS LAND SURVEYORS P/L

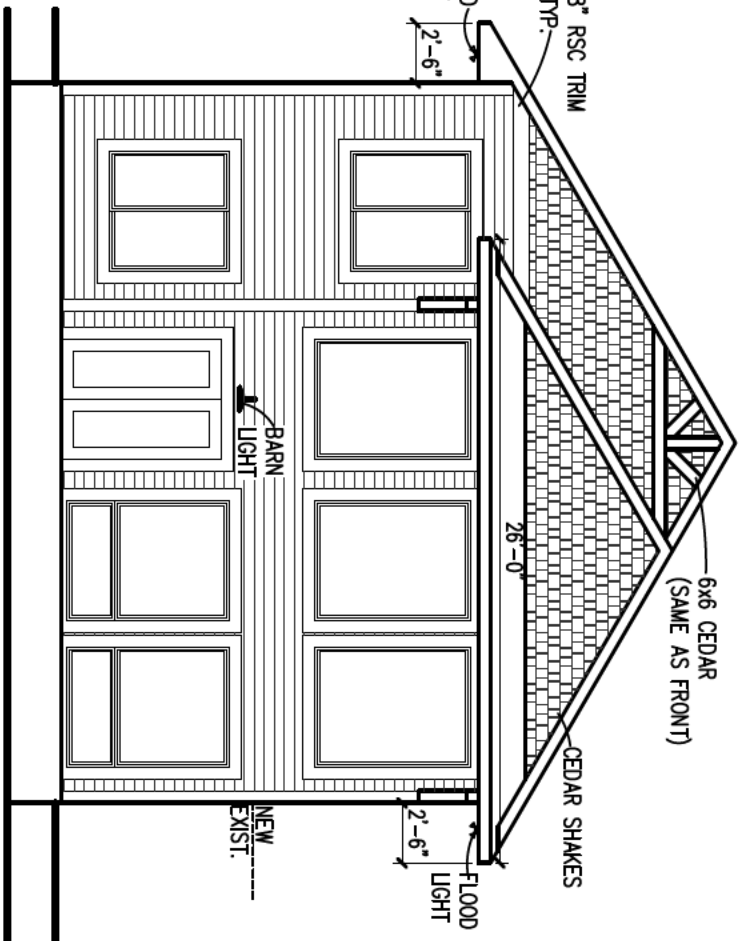
RUSH LAKE



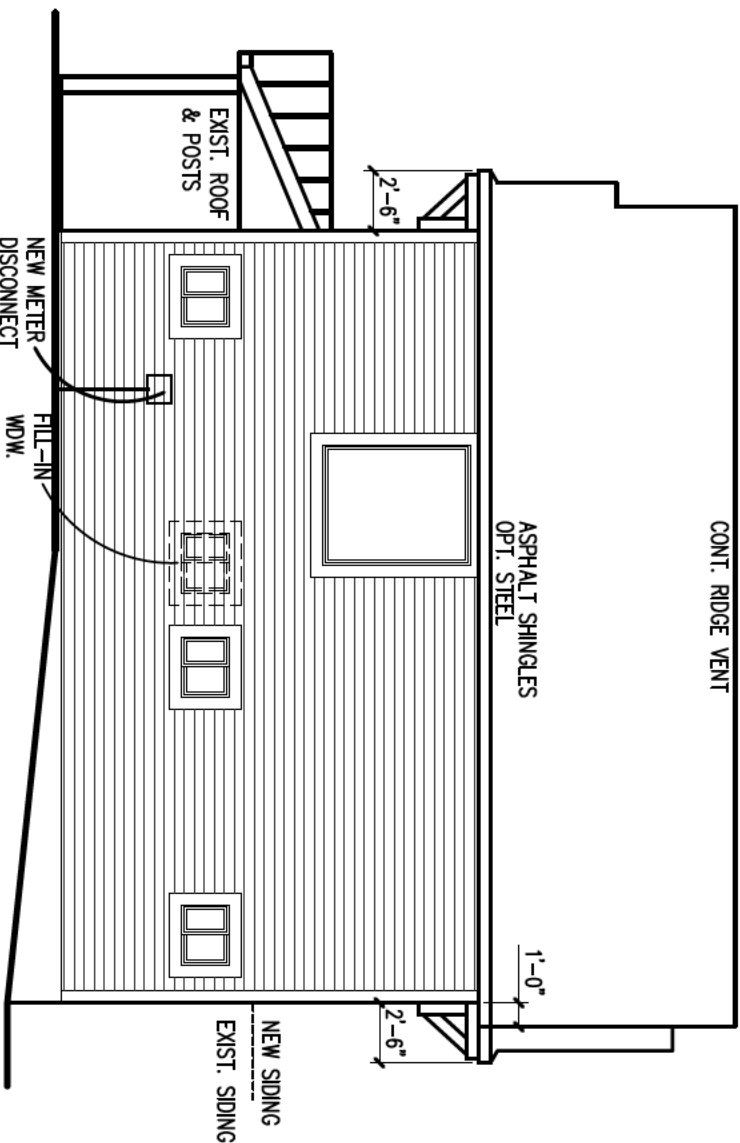
PROJECT: ADD SECOND FLOOR
1498 509TH ST.
RUSH CITY MN
NESSEL TOWNSHIP
55069



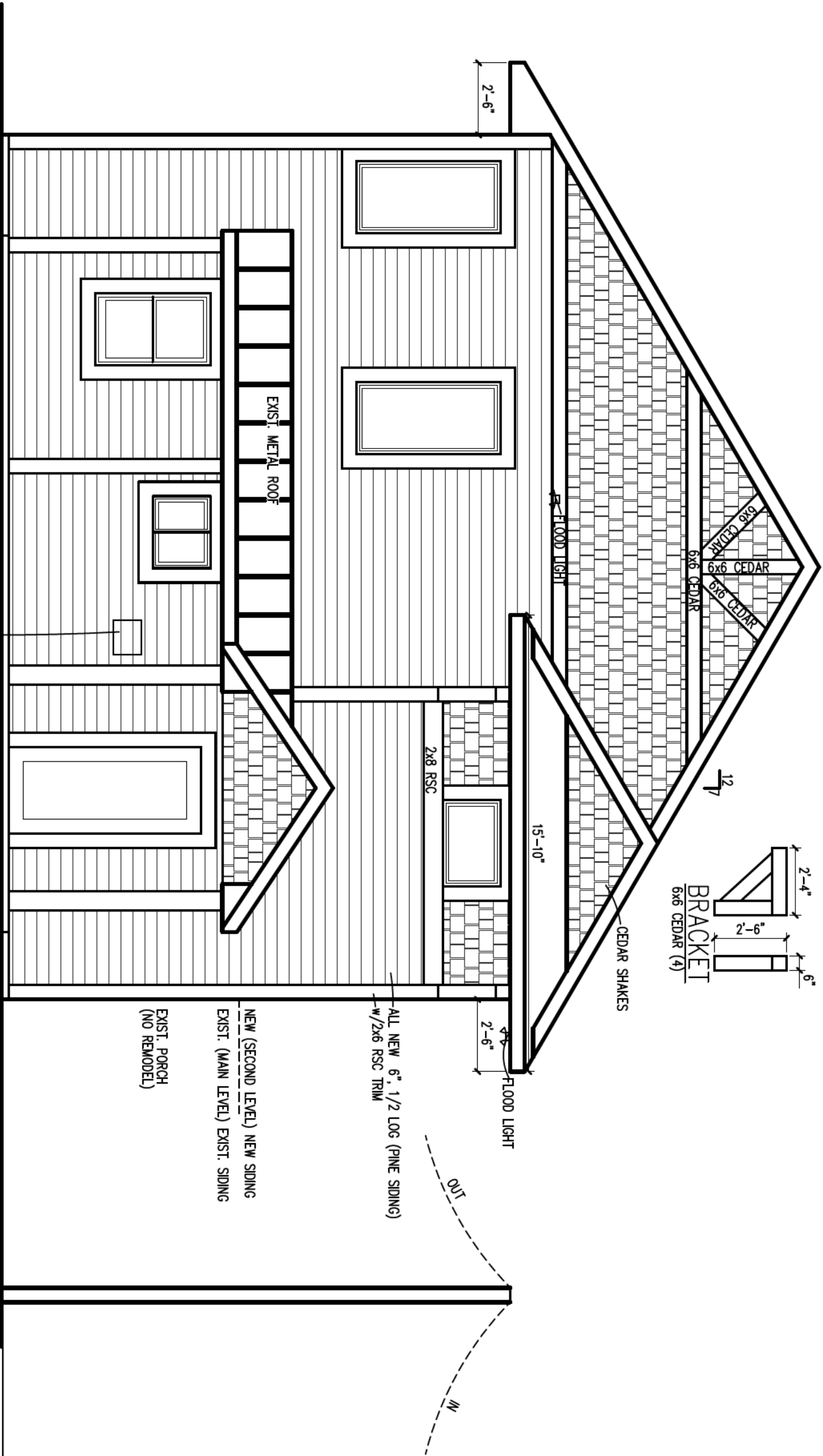
LEFT ELEVATION
SCALE: 1/8" = 1'-0"



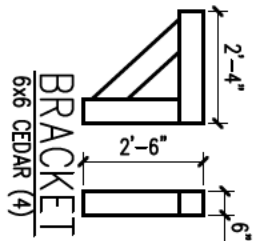
REAR ELEVATION
SCALE: 1/8" = 1'-0"



RIGHT ELEVATION
SCALE: 1/8" = 1'-0"



FRONT ELEVATION
SCALE: 1/4" = 1'-0"



965 SQ. FT. MAIN FLOOR
672 SQ. FT. SECOND FLOOR
1,637 SQ. FT. TOTAL

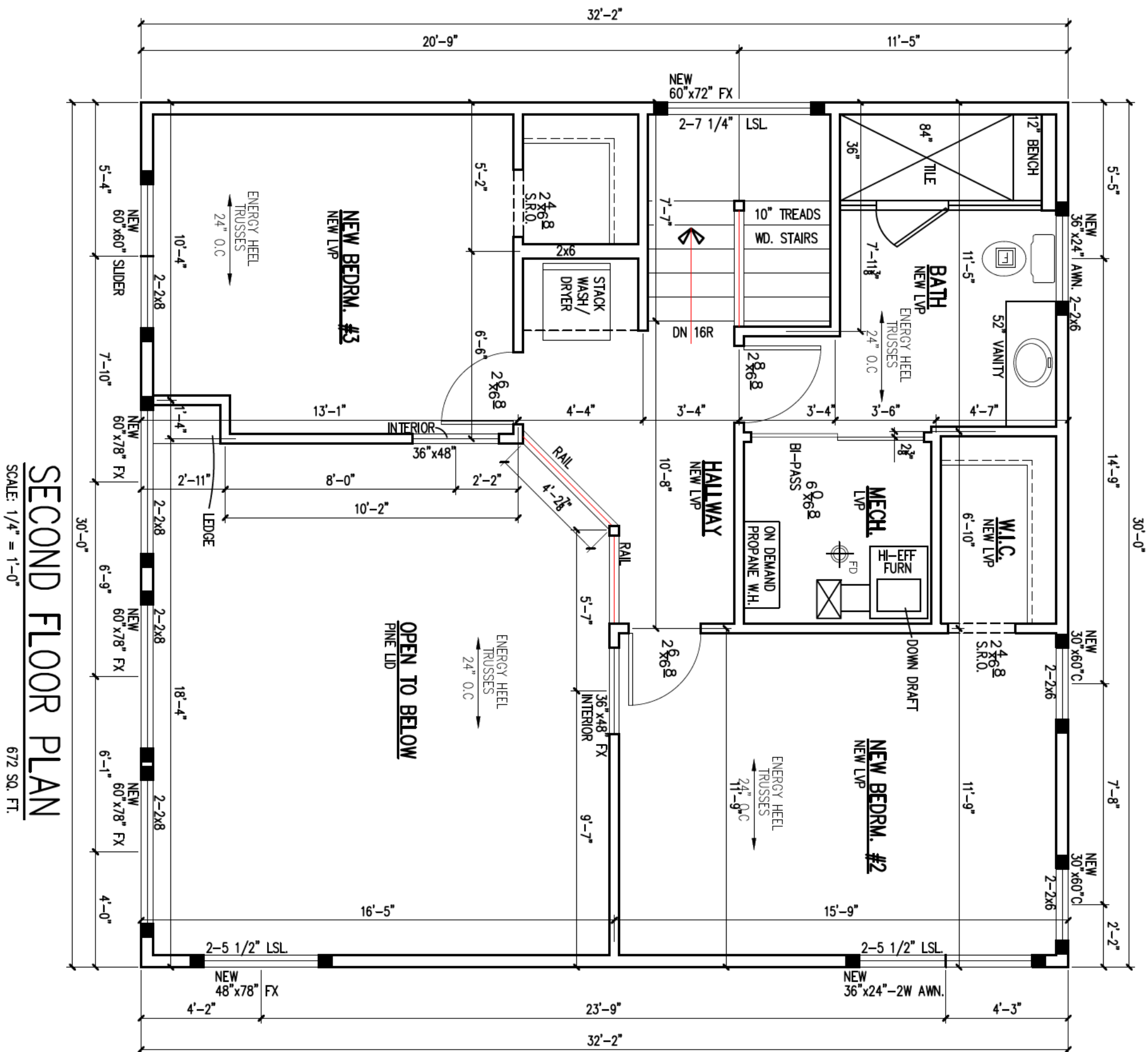
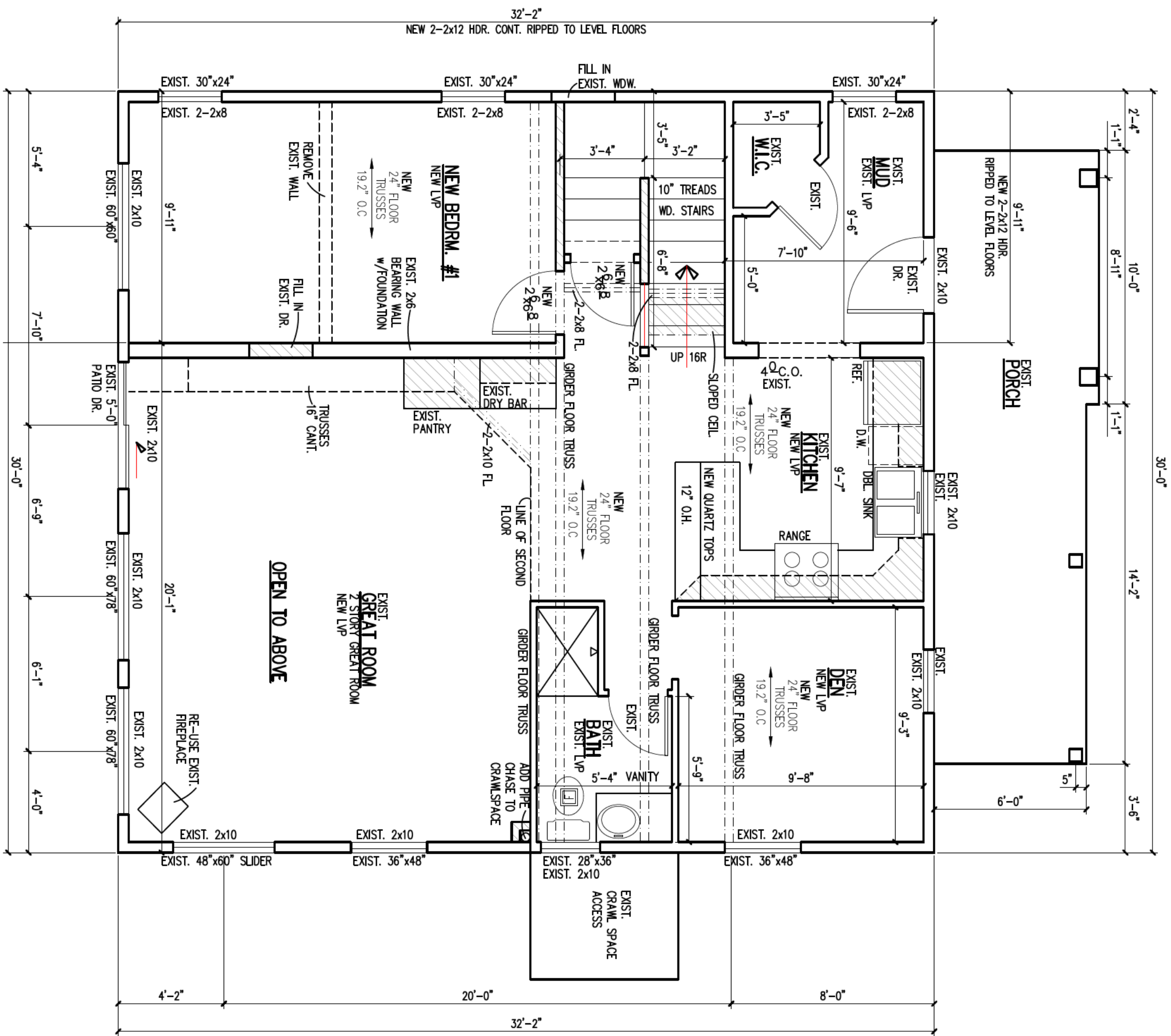
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ANY VIOLATION WILL RESULT IN PROSECUTION
TO THE FULLEST EXTENT AS ALLOWED BY LAW.

TJB HOMES, INC
9100 BALTIMORE ST. NE SUITE 102
BLAINE MN, 55449
JASON BUDZYNSKI

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COPYRIGHT ACT

DATE:
1-9-18
REVISIONS:
10-26-23
2-7-24
3-6-24
DRAWN BY:
JR
COMM. NO.
SHEET NO.
1

1498 509TH ST.
RUSH CITY, MN
55069



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DRAWN BY
JR
COMM. NO.
--
SHEET NO.
2

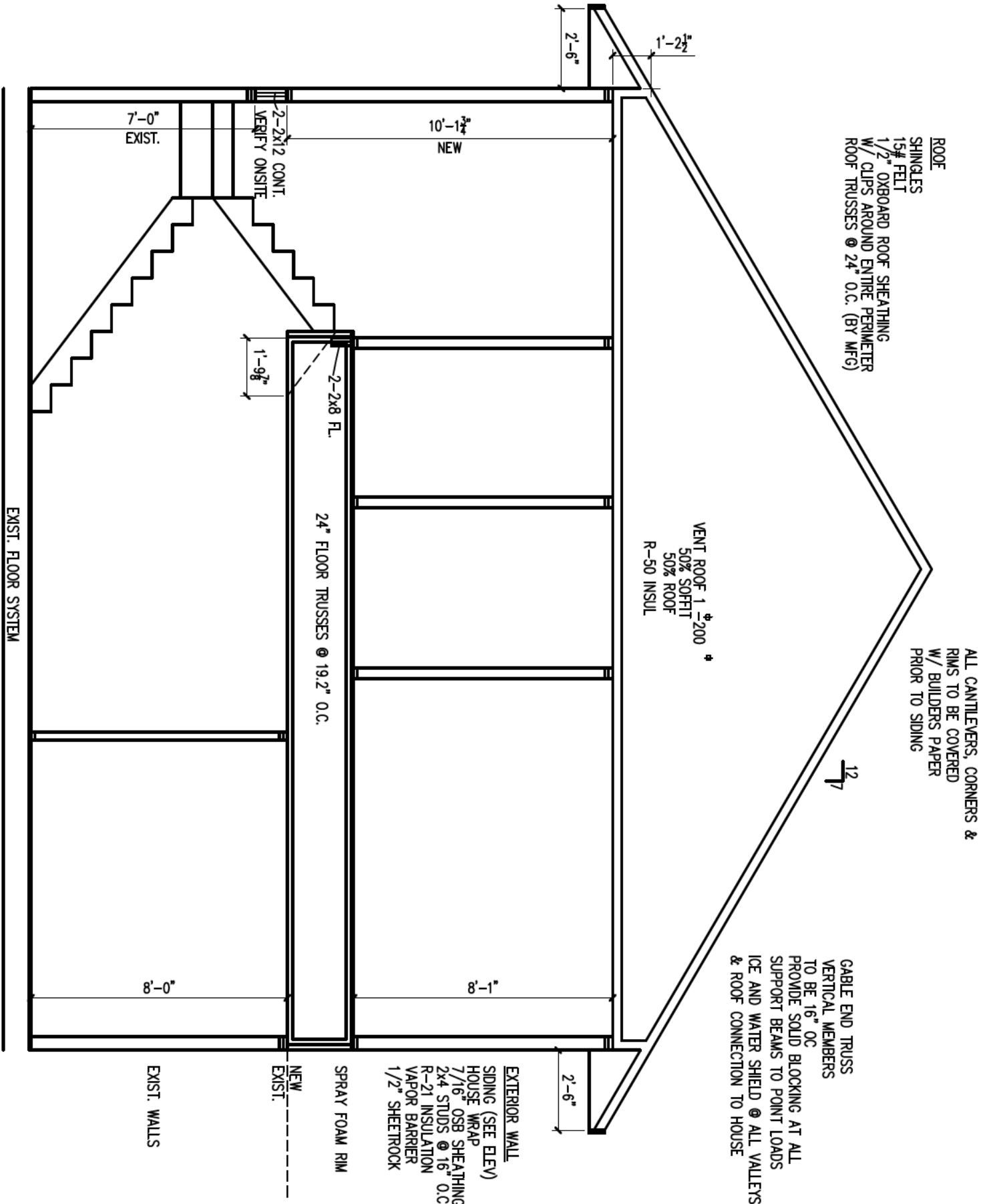
TJB HOMES, INC
9100 BALTIMORE ST. NE SUITE 102
BLAINE MN, 55449
JASON BUDZYNSKI [REDACTED]

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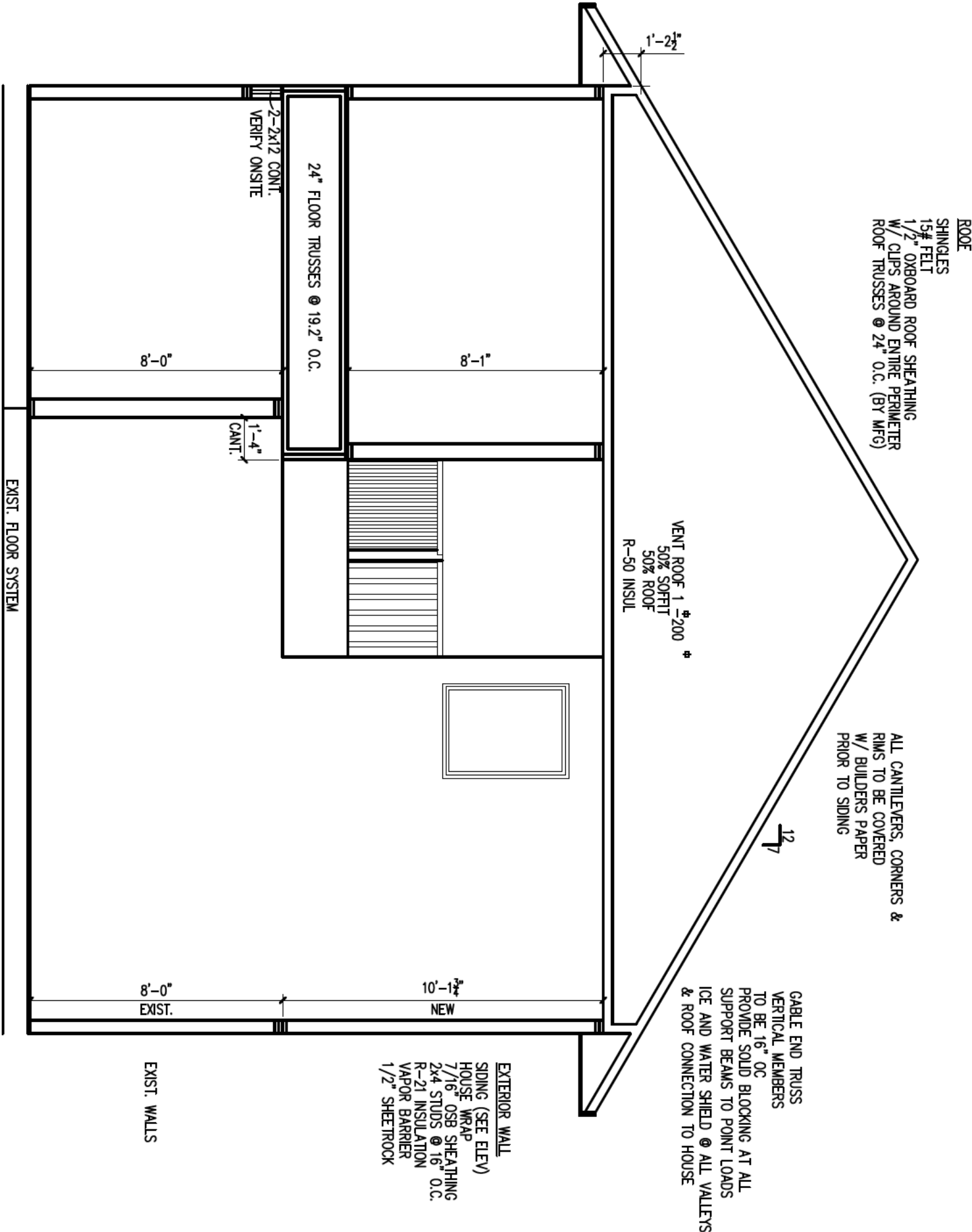
DATE:
1-9-18

REVISIONS:
10-26-23
2-7-24
3-6-24

1498 509TH ST.
RUSH CITY, MN
55069



EXIST. FOUNDATION
CROSS SECTION "A"
SCALE: 1/4" = 1'-0"



EXIST. FOUNDATION
CROSS SECTION "B"
SCALE: 1/4" = 1'-0"

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TJB HOMES, INC
9100 BALTIMORE ST. NE SUITE 102
BLAINE MN, 55449
JASON BUDZYNSKI

DATE:
1-9-18

REVISIONS:
10-26-23

2-7-24

3-6-24

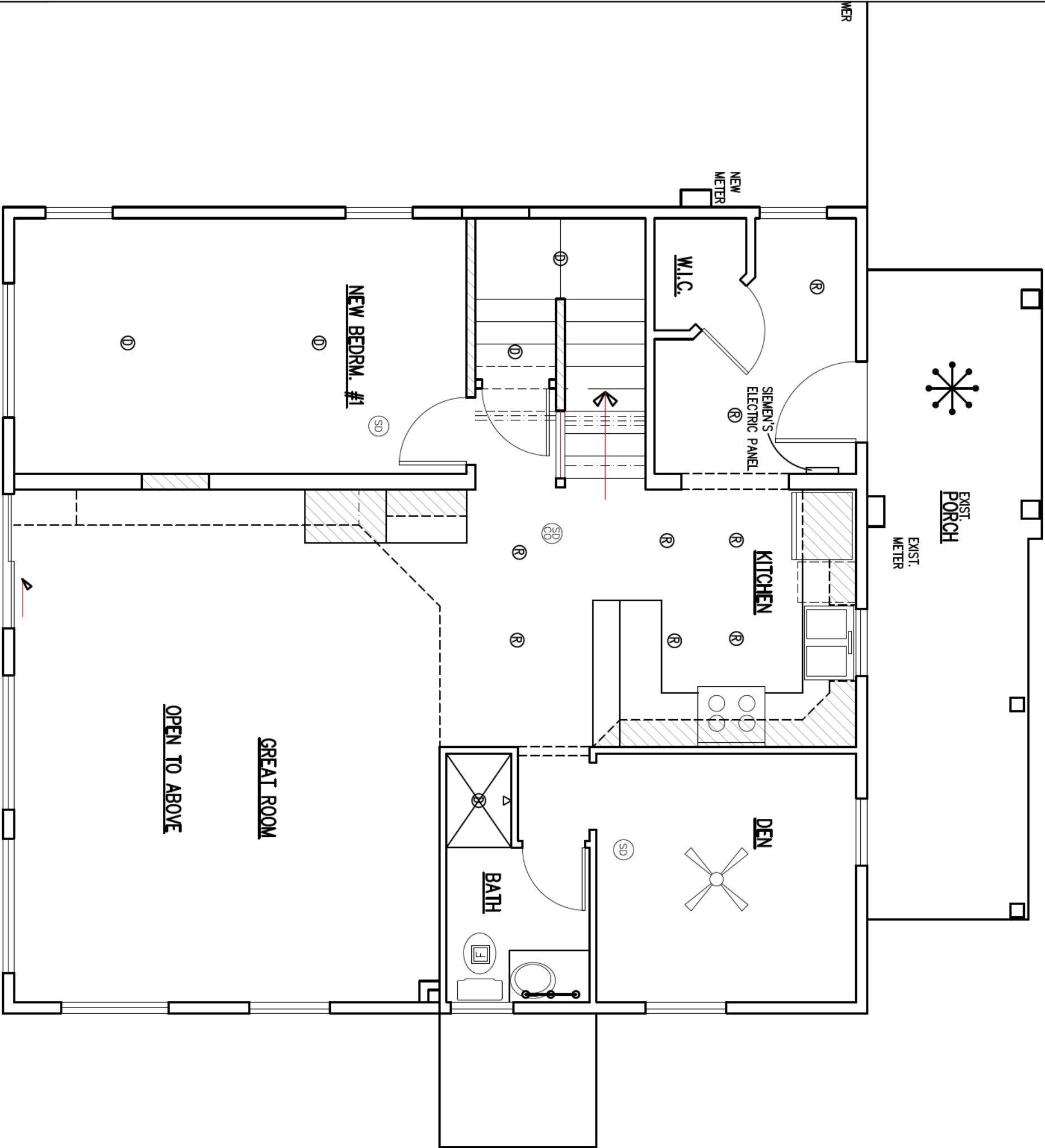
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JR

COMM. NO.

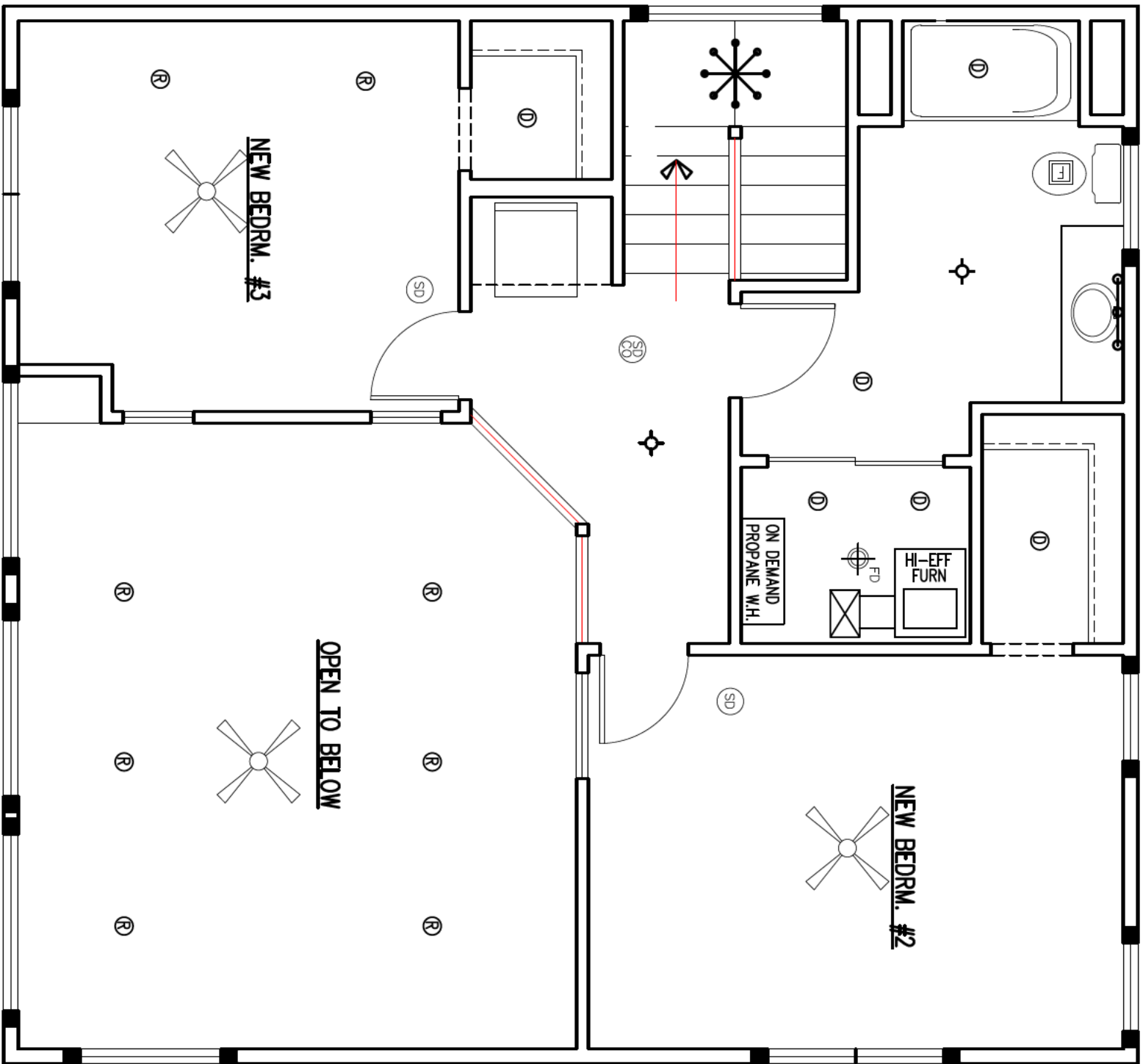
SHEET NO.

3

1498 509TH ST.
RUSH CITY, MN
55069



ELEC. MAIN FLOOR PLAN
SCALE: 1/4" = 1'-0"



ELEC. SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0"

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TO THE FULLEST EXTENT AS ALLOWED BY LAW.

DATE:	1-9-18
REVISIONS:	10-26-23
	2-7-24
	3-6-24
DRAWN BY:	JR
COMM. NO.	---
SHEET NO.	E

TJB HOMES, INC
9100 BALTIMORE ST. NE SUITE 102
BLAINE MN, 55449
JASON BUDZYNSKI

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IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

EXISTING

AREA OF PARCEL

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

OR	Total area of parcel in square feet
	8,625 +/-

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	30 X 32	=	960
garage	22 X 20	=	440
deck		=	
stoop / patio	25' x 7'	=	175
sidewalk		=	
driveway		=	1,242
other; list:		=	
shed	7 x 10	=	70
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2,887

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)		=	0
landscaping with plastic barrier		=	NA
other; list:		=	
		=	
		=	
TOTAL OTHER ITEMS			

Calculate:

Total from "Residential Structures":	2,887	+
Total from "Agricultural Structures":	-	+
Total from "Other Items":	-	+
Total square footage of coverage:	2,887	=
(divide by total area of parcel, above)	8,625	/
		=
TOTAL IMPERVIOUS SURFACE	34	%

signature

date

corresponding permit number

2/5/2024

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
	x 43,560	=

OR	Total area of parcel in square feet
	8,625 ¹ / ₄

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

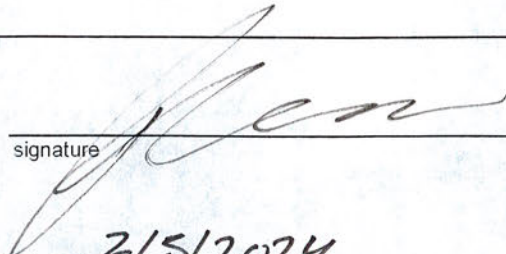
Residential structures:	length X width	=	square foot of structure
(example)	(20 x 40)		(800)
dwelling	30 x 32	=	960
garage	22 x 20	=	440
deck		=	
Stoop / patio	25 x 7	=	175
sidewalk		=	
driveway		=	1,242
other; list:			
Shed	7 x 10	=	70
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2,887

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)		=	0
landscaping with plastic barrier		=	NA
other; list:			
		=	
		=	
TOTAL OTHER ITEMS			0

Calculate:

Total from "Residential Structures":	2,887	+
Total from "Agricultural Structures":	-	+
Total from "Other Items":	-	+
Total square footage of coverage:	2,887	=
(divide by total area of parcel, above)	8,625	/
		=
TOTAL IMPERVIOUS SURFACE	34	%

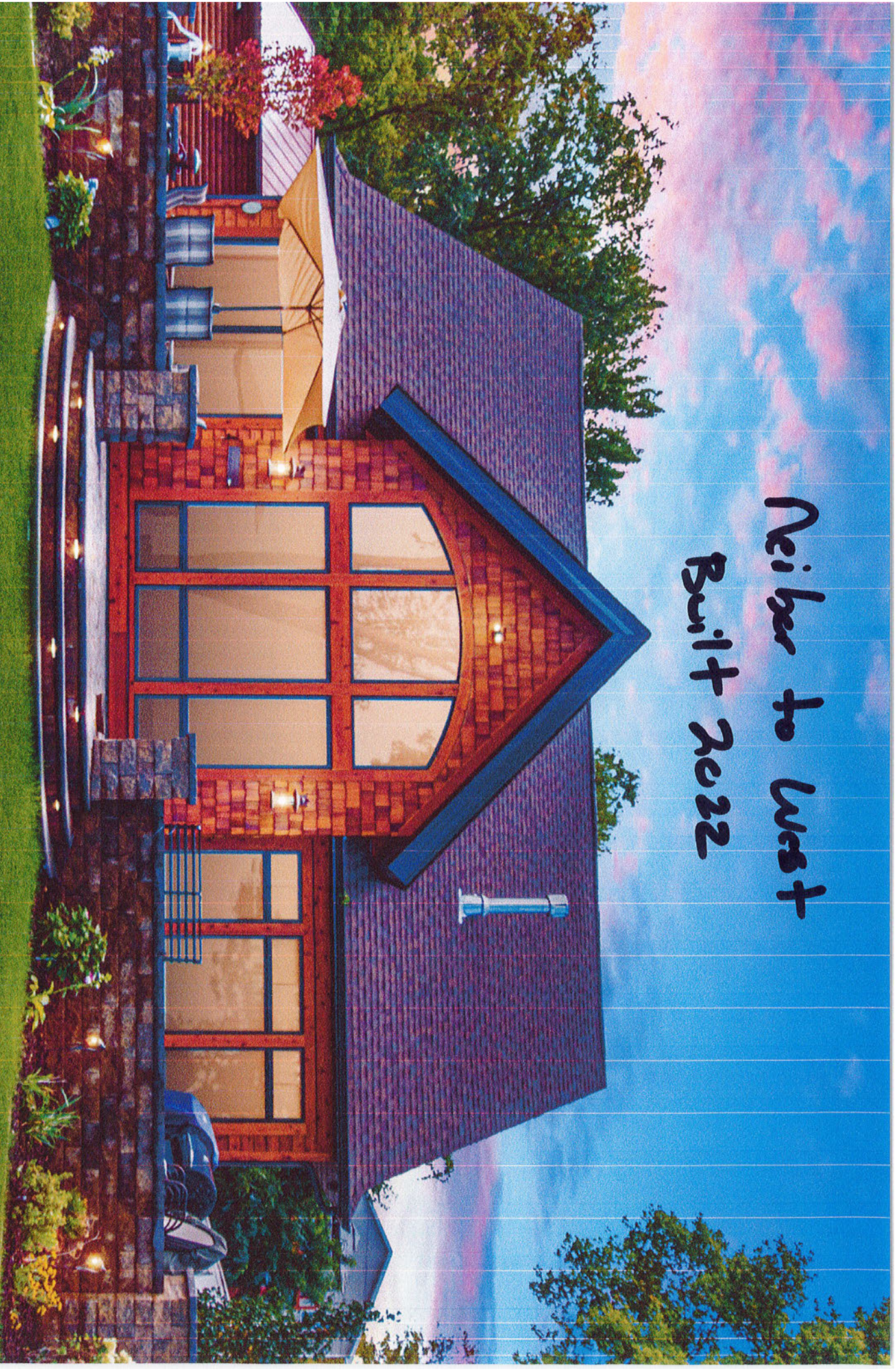
signature	
date	2/5/2024
corresponding permit number	

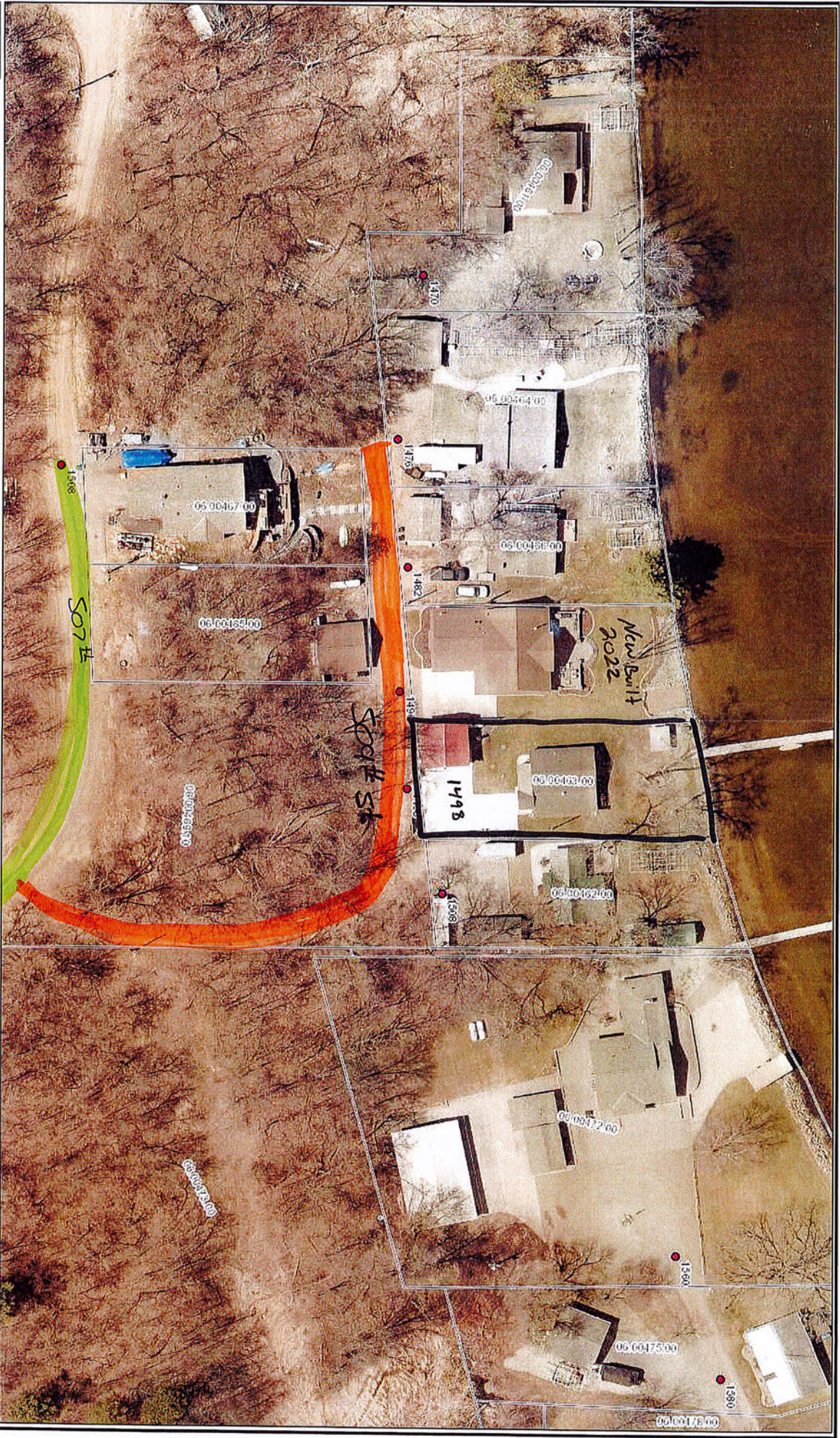
NO change

Existing Lake Home



*Neither to West
Built 2022*





509th St. Neighborhood

Date: 2/6/2024
Time: 1:59:16 PM



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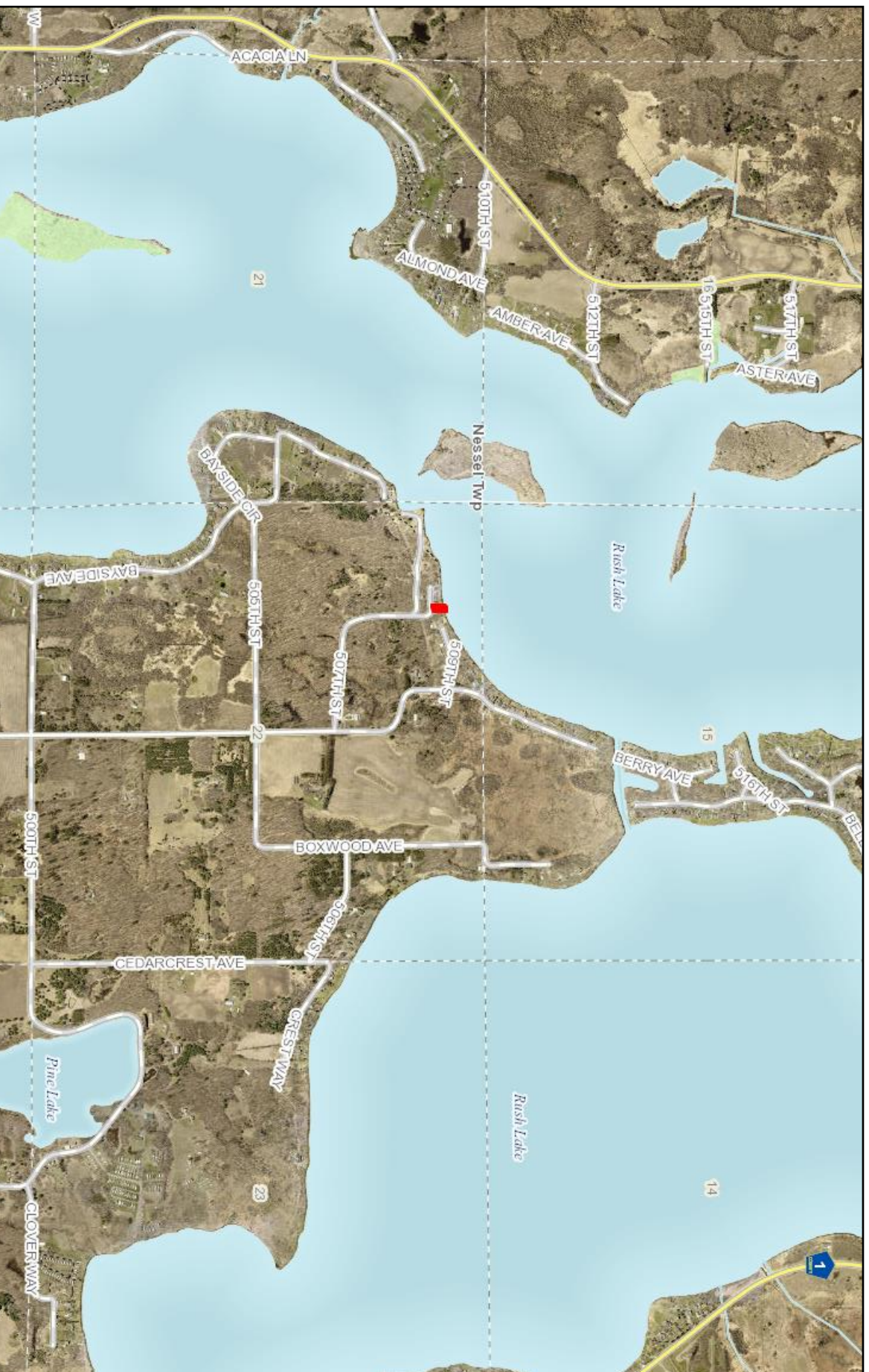
Jason Budzynski & Tiffany Pearson Budzynski – Property owners Jason Budzynski & Tiffany Pearson Budzynski are requesting approval of a Variance allowing the expansion of a non-conforming structure and allowing more impervious surface coverage than permitted in the Rural Residential I (RRI) District / Shoreland Management District. The .20± acre subject site is located at 1498 509th Street in Nessel Township, S22, T37, R22 (PID 06.00463.00).

Budzynski Property - 



Jason Budzynski & Tiffany Pearson Budzynski – Property owners Jason Budzynski & Tiffany Pearson Budzynski are requesting approval of a Variance allowing the expansion of a non-conforming structure and allowing more impervious surface coverage than permitted in the Rural Residential I (RR1) District / Shoreland Management District. The .20± acre subject site is located at 1498 509th Street in Nessel Township, S22, T37, R22 (PID 06.00463.00).

Budzynski Property - 



RESOLUTION NO. BOAA2024-0301

**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
AND DENYING A VARIANCE ALLOWING MORE IMPERVIOUS SURFACE COVERAGE THAN PERMITTED
ON PROPERTY LOCATED AT 1498 509th STREET IN NESSEL TOWNSHIP**

WHEREAS, property owners Jason Budzynski & Tiffany Pearson Budzynski and applicant Jon Ramey submitted an application dated received February 15, 2024 and considered complete on February 27, 2024 for a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.52; and

WHEREAS, the property owners are seeking Variance approval allowing the expansion of a legal non-conforming structure by constructing a second story and to exceed the maximum allowable amount of impervious surface coverage by 9% (existing / proposed coverage is reported to be 34%); and

WHEREAS, the .20 acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 06.00463.00

That part of Government Lot 1, Section 22, Township 37, Range 22, Chisago County, Minnesota, described as follows:

Commencing at the West Quarter corner of said Section 22; thence North 00 degrees 13 minutes 49 seconds West, assumed bearing, along the west line of said Section 22, a distance of 1511.72 feet; thence North 56 degrees 48 minutes 25 seconds East a distance of 1056.31 feet; thence North 89 degrees 45 minutes 34 seconds East a distance of 89.43 feet; thence South 00 degrees 01 minutes 39 seconds East a distance of 48.00 feet; thence North 84 degrees 12 minutes 16 seconds East a distance of 367.58 feet, more or less, to the east line of said Government Lot 1; thence South 84 degrees 12 minutes 16 seconds West, retracing the last described line, a distance of 56.10 feet to the point of beginning of the parcel to be described; thence continuing South 84 degrees 12 minutes 16 seconds West a distance of 60.28 feet; thence North 00 degrees 26 minutes 02 seconds West, parallel with the east line of said Government Lot 1, a distance of 143 feet, more or less, to the shoreline of Rush Lake; thence easterly, along said shoreline, to its intersection with a line that is parallel with said east line of Government Lot 1, running from the point of beginning; thence South 00 degrees 26 minutes 02 seconds East, along said parallel line, a distance of 145 feet, more or less, to the point of beginning.

TOGETHER with a 20 foot roadway easement across part of Government Lot 1, Section 22, Township 37, Range 22, Chisago County, Minnesota, said easement is lying 20 feet southerly and adjacent to the following described line:

Commencing at the West Quarter corner of said Section 22; thence North 00 degrees 13 minutes 49 seconds West, assumed bearing, along the west line of said Section 22, a distance of 1511.72 feet; thence North 56 degrees 48 minutes 25 seconds East a distance of 1056.31 feet; thence North 89 degrees 45 minutes 34 seconds East a distance of 89.43 feet; thence South 00 degrees 01 minutes 39 seconds East a distance of 48.00 feet; thence North 84 degrees 12 minutes 16 seconds East a distance of 367.58 feet, more or less, to the east line of said Government Lot 1, the point of beginning of the line to be described; thence South 84 degrees 12 minutes 16 seconds West retracing the last described line, a distance of 116.38 feet and said line there terminating. The sidelines of said easement are to be prolonged or shortened to terminate at the east line of said Government Lot 1.

WHEREAS, notice was provided and on March 28, 2024 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s) and/or applicant, and invited members of the public to comment; and

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

- Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;
- Finding #1 *The County finds that the proposed dwelling expansion will be constructed in a manner that complies with the required side yard setbacks so as not to impair an adequate supply of light and air to neighboring properties to the west and east. The north property boundary is adjacent to West Rush Lake and the south property boundary is adjacent to an established roadway easement, where there are no impacts on the supply of light and air to other properties. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the 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 proposed dwelling expansion will not change the primary use of the subject site. Therefore, the County finds that the proposed expansion will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding roadways. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on congestion.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owner will be required to obtain a building permit prior to construction of the proposed dwelling expansion and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the danger of fire or to public 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 two detached accessory structures, and the property owners are reporting that the existing and proposed amounts of impervious surface coverage are 34%. The proposed dwelling addition 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 the dwelling addition will have any negative impact to surrounding properties. However, the County further finds that a significant amount of impervious surface was installed since 2013, moving the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage, without Variance approval. Based on the amount of hard surfaced driveway and the configuration of the driveway, the County believes that the amount of impervious surface may very likely have a negative impact to surrounding properties by diverting water from the subject site westerly and easterly to neighboring properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;

- Finding #5 The proposed dwelling expansion will not change the primary use of the subject site or the need for additional facilities and services; therefore, the County finds that the proposed dwelling expansion will not create any strain or increased impact upon existing facilities and services. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the need for 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 There is no evidence to suggest that the proposed dwelling addition or amount of impervious surface coverage will have any negative fiscal impact on the County or school district. The County finds that the dwelling addition may increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.*
- Finding #7 The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.52 is to regulate the amount of impervious surface coverage on lots within the Shoreland Management District. While the proposed dwelling is considered legal non-conforming in that it's situated approximately 50'-56' from Ordinary High Water Level (OHWL) where the required setback is 75', the County finds that the expansion will not increase the footprint of the dwelling or exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a reasonable use in the Rural Residential I (RRI) District / Shoreland Management District and the property owners are not constructing the proposed dwelling addition any closer to the OHWL than the existing dwelling; that there is a unique circumstance in that the non-conforming property was created and developed well before the County adopted official land use controls; and, that the proposed structure fits the essential character of the residential lakeshore neighborhood. However, the County further finds that the request to exceed the maximum allowable amount of impervious surface coverage fails to satisfactorily address the practical difficulty standard. The County recognizes that the property owners are not proposing to increase the amount of impervious surface coverage as part of the dwelling addition project and that they're only seeking Variance approval for the existing amount of 34%; however, the County believes that the existing / proposed amount was primarily created since 2013 (which does not constitute pre-existing development) and likely moved the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage without Variance approval. Without sufficient demonstration of compliance with the practical difficulty standard and without prior Variance approval, the County has determined that the property owners must reduce the overall amount of impervious surface coverage to no more than 25%.*

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variance to expand a legal non-conforming structure is

hereby **approved** and the request for to exceed the maximum allowable amount of impervious surface coverage is hereby **denied**, subject to the following conditions:

1. The Variance request to expand a legal non-conforming dwelling which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance is approved, allowing for the construction of a second story. The dwelling footprint shall not increase and the dwelling, upon completion, shall not be located any closer to the OHWL than the existing dwelling.
2. The Variance request to exceed the maximum allowable amount of impervious surface coverage by 9%± is denied, requiring that the property owners reduce the total amount of impervious surface to an amount no greater than 2,178 sf (lot area of 8,712 sf x 25% = 2,178 sf) through elimination of existing impervious surfaces and/or replacement of existing impervious materials with new pervious materials. Further, reduction of impervious surface coverage to an amount no greater than 2,178 sf shall be complete within one year from the date of this resolution.
3. The dwelling addition shall be constructed in general conformance with the application materials dated received February 15, 2024 and the updated building plans dated received March 6, 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 owners' expense.
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 except as permitted by this Variance.
5. The permit holder shall request and obtain a septic compliance inspection prior to issuance of a Certificate of Occupancy for the dwelling addition.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 28th day of March, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST:

Beth Gervais
Land Services Coordinator

RESOLUTION NO. BOAA2024-0301

**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
AND ALLOWING MORE IMPERVIOUS SURFACE COVERAGE THAN PERMITTED ON PROPERTY LOCATED
AT 1498 509th STREET IN NESSEL TOWNSHIP**

WHEREAS, property owners Jason Budzynski & Tiffany Pearson Budzynski and applicant Jon Ramey submitted an application dated received February 15, 2024 and considered complete on February 27, 2024 for a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Section 5.52; and

WHEREAS, the property owners are seeking Variance approval allowing the expansion of a legal non-conforming structure by constructing a second story and to exceed the maximum allowable amount of impervious surface coverage by 9% (existing / proposed coverage is reported to be 34%); and

WHEREAS, the .20 acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 06.00463.00

That part of Government Lot 1, Section 22, Township 37, Range 22, Chisago County, Minnesota, described as follows:

Commencing at the West Quarter corner of said Section 22; thence North 00 degrees 13 minutes 49 seconds West, assumed bearing, along the west line of said Section 22, a distance of 1511.72 feet; thence North 56 degrees 48 minutes 25 seconds East a distance of 1056.31 feet; thence North 89 degrees 45 minutes 34 seconds East a distance of 89.43 feet; thence South 00 degrees 01 minutes 39 seconds East a distance of 48.00 feet; thence North 84 degrees 12 minutes 16 seconds East a distance of 367.58 feet, more or less, to the east line of said Government Lot 1; thence South 84 degrees 12 minutes 16 seconds West, retracing the last described line, a distance of 56.10 feet to the point of beginning of the parcel to be described; thence continuing South 84 degrees 12 minutes 16 seconds West a distance of 60.28 feet; thence North 00 degrees 26 minutes 02 seconds West, parallel with the east line of said Government Lot 1, a distance of 143 feet, more or less, to the shoreline of Rush Lake; thence easterly, along said shoreline, to its intersection with a line that is parallel with said east line of Government Lot 1, running from the point of beginning; thence South 00 degrees 26 minutes 02 seconds East, along said parallel line, a distance of 145 feet, more or less, to the point of beginning.

TOGETHER with a 20 foot roadway easement across part of Government Lot 1, Section 22, Township 37, Range 22, Chisago County, Minnesota, said easement is lying 20 feet southerly and adjacent to the following described line:

Commencing at the West Quarter corner of said Section 22; thence North 00 degrees 13 minutes 49 seconds West, assumed bearing, along the west line of said Section 22, a distance of 1511.72 feet; thence North 56 degrees 48 minutes 25 seconds East a distance of 1056.31 feet; thence North 89 degrees 45 minutes 34 seconds East a distance of 89.43 feet; thence South 00 degrees 01 minutes 39 seconds East a distance of 48.00 feet; thence North 84 degrees 12 minutes 16 seconds East a distance of 367.58 feet, more or less, to the east line of said Government Lot 1, the point of beginning of the line to be described; thence South 84 degrees 12 minutes 16 seconds West retracing the last described line, a distance of 116.38 feet and said line there terminating. The sidelines of said easement are to be prolonged or shortened to terminate at the east line of said Government Lot 1.

WHEREAS, notice was provided and on March 28, 2024 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s) and/or applicant, and invited members of the public to comment; and

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

- Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;
- Finding #1 *The County finds that the proposed dwelling expansion will be constructed in a manner that complies with the required side yard setbacks so as not to impair an adequate supply of light and air to neighboring properties to the west and east. The north property boundary is adjacent to West Rush Lake and the south property boundary is adjacent to an established roadway easement, where there are no impacts on the supply of light and air to other properties. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the 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 proposed dwelling expansion will not change the primary use of the subject site. Therefore, the County finds that the proposed expansion will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding roadways. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on congestion.*
-
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owner will be required to obtain a building permit prior to construction of the proposed dwelling expansion and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the danger of fire or to public 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 two detached accessory structures, and the property owners are reporting that the existing and proposed amounts of impervious surface coverage are 34%. The proposed dwelling addition and amount of impervious surface coverage 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 either the dwelling addition or the existing / proposed amount of impervious surface coverage will have 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 dwelling expansion will not change the primary use of the subject site or the need for additional facilities and services; therefore, the County finds that the proposed dwelling expansion will not create any strain or increased impact upon existing facilities and services. The County further finds that the existing / proposed amount of impervious surface coverage has no impact on the need for 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 *There is no evidence to suggest that the proposed dwelling addition or amount of impervious surface coverage will have any negative fiscal impact on the County or school district. The County finds that the dwelling addition may increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.52 is to regulate the amount of impervious surface coverage on lots within the Shoreland Management District. While the proposed dwelling is considered legal non-conforming in that it's situated approximately 50'-56' from Ordinary High Water Level (OHWL) where the required setback is 75', the County finds that the expansion will not increase the footprint of the dwelling or exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings and impervious surfaces are reasonable uses in the Rural Residential I (RRI) District / Shoreland Management District and the property owners are not constructing the proposed dwelling addition any closer to the OHWL than the existing dwelling or increasing the amount of impervious surface coverage; that there is a unique circumstance in that the non-conforming property was created and developed well before the County adopted official land use controls; and, that the proposed structure and amount of impervious surface coverage generally fit the essential character of the residential lakeshore neighborhood.*

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variance to expand a legal non-conforming structure and to exceed the maximum allowable amount of impervious surface coverage is hereby **approved**, subject to the following conditions:

1. This approval grants the following Variances:
 - a. A Variance allowing the expansion of a legal non-conforming dwelling which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance is approved, allowing for the construction of a second story. The dwelling footprint shall not increase and the dwelling, upon completion, shall not be located any closer to the OHWL than the existing dwelling.
 - b. A 9% Variance to the impervious surface coverage requirement established by the Chisago County Shoreland Management Ordinance, allowing a total existing amount of impervious surface coverage of 34%. No additional impervious surface shall be added as part of this request and no additional impervious surface shall be added to the subject site without prior Variance approval.

2. The dwelling addition shall be constructed in general conformance with the application materials dated received February 15, 2024 and the updated building plans dated received March 6, 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 owners' expense.
3. The permit holder shall obtain a building permit prior to construction and, further, the dwelling addition shall comply with all applicable codes and regulations except as permitted by this Variance.
4. The permit holder shall request and obtain a septic compliance inspection prior to issuance of a Certificate of Occupancy for the dwelling addition.
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 28th day of March, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
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
 29305 Glader Boulevard, Chisago Lake Township
 DATE: March 28, 2024

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing the expansion of a non-conforming structure in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s):	Kelly & Tana Karnes
Property Owner(s):	Kelly & Tana Karnes
Property Address:	29305 Glader Boulevard Chisago Lake Township
General Location:	Section 3, Township 33, Range 20
PID:	02.01311.00
Property Area:	.30± 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:	South Center Lake
West:	Rural Residential I (RRI) District / Agricultural (AG) District / Shoreland Management District
Date Application Received:	February 21, 2024
Date Application Complete:	March 5, 2024
60-Day Review Period:	May 4, 2024

BACKGROUND

Property owners Kelly & Tana Karnes wish to expand their non-conforming dwelling by increasing the height of the northerly portion by approximately two feet to match the height of the remaining portion of the dwelling. The northerly end of the dwelling was originally constructed as a 10' x 20' attached garage which was later converted to living space, and a new detached garage was constructed near the westerly property boundary / roadway.



SITE ANALYSIS

The .30± acre subject site is generally located east of the T-intersection of Glader Boulevard and Olympic Trail on the south side of South Center Lake. According to Chisago County Assessor's Office records, the original 400 sf dwelling with 200 sf attached garage was constructed in 1950. Since that time there appears to have been a few additions to the dwelling, conversion of the attached garage to living space, construction of a detached garage near the roadway, and an addition to the east end / lake side of the detached garage. The adjacent image, taken in May 1972, shows the original dwelling and attached garage and also shows that the roof of the attached garage is lower than the roof of the dwelling.



The original property, having been platted as Lot 7, Addition to J.G. Holt's Beach in 1948, was roughly 9,800 sf or .22± acres in size. Over time and possibly due to a road reconfiguration project, the property owners were able to acquire additional land and bring the total lot area up to approximately 13,068 sf or .30± acres. Being that the minimum lot size in the Shoreland Management District is 30,000 sf with at least 125' of width at the building setback lines, the subject site is considered substandard or legal non-conforming. The dwelling with attached deck, being situated approximately 25' from Ordinary High Water Level (OHWL), where the required setback is 75', means that the structure is also considered non-conforming.

Topography of the subject site includes elevations ranging from 920' near the westerly property boundary / roadway to 898' near the easterly property boundary / lakeshore, with mature trees scattered throughout the property. Surrounding properties range in size from .17 acres to 11± acres, with most nearby lakeshore properties developed with dwellings / seasonal cabins and accessory structures.

The subject site is connected to municipal sewer, which means that there is no need for a septic compliance inspection as part of the Variance request.

PROPOSAL ANALYSIS

The attached application materials explain that the property owners would like to expand their non-conforming dwelling by replacing old and broken trusses with new trusses and, in the process, raising the height of the roof two feet to match the roof height of the rest of the dwelling. The only proposed expansion of the non-conforming dwelling is the height, which means that the footprint of the dwelling will not change and the proposed expansion will not exacerbate the non-conforming OHWL setback. With the new trusses in place, the property owners have indicated that they'll replace the existing roof materials with metal roof panels. The proposed expansion will not create any additional living / habitable space; it will simply result in a consistent roof height.

The property owners have provided an impervious surface calculation worksheet, as well as a supporting sketch, indicating that the existing / proposed amount of impervious surface coverage is 21%. Staff has questioned the accuracy of the worksheet, noting that, per the County's GIS Viewer,

there are other impervious structures on the subject site which are not included on the worksheet, including a portion of Olympic Trail. Staff also notes that the worksheet may or may not include all sidewalks and hard surfaced areas near and around the structures and that the dimensions provided for the driveway do not seem accurate. When staff questioned property owner K. Karnes about the accuracy of the impervious surface calculation worksheet, he offered no indication that he was willing to make any adjustments being that the requested Variance has no impact on the amount of impervious surface coverage. Staff calls this out as a concern being that it was also identified as a concern by the Board during a 2003 Variance request / public hearing for the same property. Even if the requested Variance does not directly impact the amount of impervious surface on any given property, staff still encourages property owners who have an amount more than 25% to include that in the Variance request as a means of “endorsing” the existing non-conforming amount of impervious surface and creating a baseline for future use / requests. Staff suspects that the actual amount of impervious surface coverage for the subject site exceeds 25%; however, the property owners seem reluctant to address this concern and, as already mentioned, the Variance request will have no direct impact on the amount of impervious surface coverage. The Board may or may not wish to explore this issue further with the property owners.

The property owners have provided a written narrative to explain what they’re hoping to accomplish through this Variance request. While the narrative doesn’t directly address the State mandated practical difficulty standard, staff would suggest that the request is **reasonable** in that the proposed expansion will not increase the footprint of the dwelling or exacerbate the non-conforming OHWL setback; the property is **unique** in that a majority of the subject site was platted and developed prior to the County adopting official land use controls (i.e., pre-existing development); and, the proposed expansion will be consistent with existing development on the subject site as well as being consistent with the **essential character** of the neighborhood.

REVIEW PROCESS

The Technical Review Committee met with Kelly Karnes on March 13, 2024. The group briefly discussed staff’s concerns with the impervious surface calculation worksheet but no other concerns were identified.

The Chisago Lake Town Board considered the request on March 19, 2024 and recommended approval with no conditions and a comment that “footprint of garage is not changing – lot lines need to [be] clarified”. Staff is not fully aware of the Town Board’s discussion or comment pertaining to clarification of the lot lines; however, it was later determined by the County Surveyor that the legal description provided by the property owners only accounts for the southernmost part of the property, including the portion which extends into the improved roadway (everything outside of Lot 7, Addition to J.G. Holt’s Beach). The Board may wish to discuss the Town Board’s comment with the property owner(s) and may even wish to consider requiring that the property owners obtain a survey prior to taking action on the Variance request.

The State mandated 60-day review period expires on May 4, 2024.

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 subject site was platted and developed prior to the County's adoption of official land use controls which constitutes pre-existing development. The property owners had no control over this circumstance.

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

Literal interpretation of the Zoning Ordinance would not deprive the applicants of rights commonly enjoyed by other RRI District / Shoreland Management District properties. Properties located in the RRI District / Shoreland Management District have the right to be developed with dwellings and accessory structures in compliance with the Zoning and Shoreland Management Ordinances, and the subject site has been developed with a dwelling and a detached accessory structure.

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

The circumstance of pre-existing development is not a result of actions of the current property owners or any previous owners under the current Zoning and Shoreland Management Ordinances. The subject site was platted and developed well before the County adopted official land use controls.

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 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;

While the subject site and dwelling are considered legal non-conforming, the property owners are proposing to expand the dwelling upwards which will create the least amount of impact possible. The proposed expansion will not increase the footprint of the dwelling or encroach on the OHWL any more so than the existing dwelling.

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

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance related to the property, and when it will not alter the essential character of the surrounding area. Staff believes that the request to expand the legal non-conforming dwelling by increasing the height of a portion of the dwelling by two feet to match the height of the remaining dwelling is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the expansion will not increase the footprint of the dwelling or increase the non-conforming OHWL setback; that the subject site is unique in that it was platted and developed prior to the County's adoption of official land use controls; and, that the proposed expansion fits the essential character of the subject site and surrounding residential lakeshore neighborhood. Further, staff does not believe that the Variance, if approved, would be detrimental to other properties in the RRI District / Shoreland Management District.

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

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

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

While the easterly 12'± of the subject site are located in the flood district, all structures – including the dwelling proposed for expansion – are 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 action will increase the height of the northerly portion of the dwelling by two feet to match the remaining portion of the dwelling. The proposed action will not increase the footprint of the dwelling or extend the dwelling any closer to neighboring properties. Therefore, the County finds that the proposed dwelling expansion will be constructed in a manner so as not to impact the supply of light and air to neighboring properties.

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

Finding #2 The proposed dwelling expansion will not change the primary use of the subject site or increase the amount of habitable space within the dwelling. Therefore, the County finds that the proposed expansion will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways.

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

Finding #3 The property owners will be required to obtain a building permit prior to construction of the proposed dwelling expansion and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.

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

Finding #4 The subject site is currently developed with a dwelling and detached garage. The proposed dwelling expansion will not change how the property is being used and the proposed expansion appears to 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 the dwelling expansion will have any negative impact to surrounding properties.

Criteria #5	The proposed action will not cause an unreasonable strain upon existing facilities and services;
Finding #5	<i>The proposed dwelling expansion will not change the primary use of the subject site or increase the amount of habitable space; therefore, the County finds that the proposed dwelling expansion will not create 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 County finds no evidence to suggest that the proposed dwelling expansion will have any negative fiscal impact on 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 intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses. While the existing dwelling is considered legal non-conforming in that it's situated approximately 25' from Ordinary High Water Level (OHWL) where the required setback is 75', the County finds that the expansion will not increase the footprint of the dwelling or exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the expansion will not increase the footprint of the dwelling or increase the non-conforming OHWL setback; that the subject site is unique in that it was platted and developed prior to the County's adoption of official land use controls; and, that the proposed expansion fits the essential character of the subject site and surrounding residential lakeshore neighborhood.</i>

STAFF RECOMMENDATION

While staff is concerned with the accuracy of the attached impervious surface calculation worksheet and suspects that the actual amount of impervious surface may be more than the maximum allowable amount of 25%, staff acknowledges that the Variance, if approved, will not increase the existing amount of impervious surface coverage. Therefore, 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 draft Findings of Fact (see above) and recommended conditions (see below) and has prepared a resolution for the Board's consideration.

Recommended conditions:

1. This approval grants a Variance allowing the expansion of a legal non-conforming structure by increasing the height of the northerly portion of the dwelling (the portion which was originally constructed as an attached garage) by two feet to match the height of the remaining portion of the dwelling.
2. The dwelling expansion shall be constructed in general conformance with the application materials dated received February 21, 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 owners' expense.

3. Roofing materials for the proposed expansion area shall be the same type and color as the roofing materials for the remaining portion of the dwelling.
4. The permit holder shall obtain a building permit prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

While staff is recommending approval, the Board may wish to consider whether or not a survey should be required prior to taking action on the Variance request. This consideration is based on the Chisago Lake Town Board's March 19, 2024 recommendation / comment that the lots lines need to be clarified. Staff believes that a survey could also be useful in establishing the current amount of impervious surface coverage. If the Board is in favor of the property owners submitting a survey, staff would recommend that the Board table the request.

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 May 4, 2024, allowing the Board to continue its review at the April 25, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-0302, a resolution approving a Variance allowing the expansion of a legal non-conforming structure on property located at 29305 Glader Boulevard in Chisago Lake Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plan
 - d. Impervious surface calculation worksheet and supporting sketch
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-0302



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-0195

Township Chisago Lakes S/T/R 3/33/20 PID# 02.01311.00

Project Address 29305 GLADER BLVD LINDSTROM, MN

Property Owner(s) KELLY & TANA KARNES

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) KELLY & TANA KARNES

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) TO REPLACE THE OLD RAFTERS WITH TRUSSES ON THE OLD ATTACHED GARAGE WHICH IS PART OF THE HOUSE. ALSO RAISED THE TRUSSES TO THE EXISTING ROOFLINE OF THE HOUSE

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

☐ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☒ Plat Drawings

Kelly Karnes

Applicant Signature

2/10/24

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>6000-</u>	Application Received	<u>2-21-24</u>
Recording Fee	\$ <u>46-</u>	Application Complete	<u>3-5-24</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	60/120 Day Review Period	<u>5-4-24</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>6046-</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Chisago S/T/R 3/33/20 PID# 02.01311.00

Project Address 29305 GLADER BLVD LINDSTROM, MN

Property Owner(s) KELLY & TANA KARNES

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) KELLY & TANA KARNES

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) REPLACE OLD RAFTERS WITH TRUSSES ON THE OLD ATTACHED GARAGE (10x20) AND RAISE TO EXISTING ROOFLINE OF THE HOUSE

Kelly Karnes
Applicant Signature

2/10/24
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 MARCH 28, 2024 Date of Township Presentation MARCH 19, 2024

Township Action Taken (Township Use Only)

- ☒ Recommendation of Approval ☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

footprint of garage is not changing - but lines need to be clarified

Signatures of Township Officials or Authorized Personnel

[Signature] [Signature]
Will J. Reed

To whom it might be concerned

We would like to replace the old rafters which are bowing and one being broke, with new truces and raise them to the present roofline of the main house, they would be raised around 2 feet to match the existing roofline, the total area is 10' x 20' that would be getting replaced with truces, this would not be increasing the footprint of the house. We also will be replacing the roof with new metal roof panels.

KELLY KARNES

GLADER BLVD

95'

DRIVEWAY
15'x30'

18'x20'
GARAGE

LOT IS

13,200 SQ FT

80'x165'

165'

162'

1300 SQ FT

HOUSE

10'

20'

67'

SOUTH CENTER LAKE



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
x	43,560	=

OR	Total area of parcel in square feet
	13,200 sq ft

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	32 x 45	=	1300
garage	20 x 26	=	520
deck	35 x 10	=	350
patio		=	
sidewalk	60 x 3	=	180
driveway	30 x 15	=	450
other; list:		=	
SHED	8 x 10	=	80
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2880

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":	2880	+
Total from "Agricultural Structures":	-	+
Total from "Other Items":	-	+
Total square footage of coverage:	2880	=
(divide by total area of parcel, above)		/
TOTAL IMPERVIOUS SURFACE	21	%

signature	Kelly Kanner
date	3/4/24
corresponding permit number	

GLADER BLVD
95'

DRIVEWAY
15x30

450 SQ FT

18 x 20

GARAGE

216 SQ FT

160 SQ FT

20'

8'

60 x 3

SIDEWALK

1300 SQ FT

HOUSE

35

DECK

32
DECK

SQ FT
3,300 = 25%

LOT IS

13,200 SQ FT

80 x 165

350 DECK

1300 HOUSE

450 DRIVEWAY

216 GARAGE

160 ADDITION

2,126 TOTAL
SQ FT

162'

67'

SOUTH CENTER LAKE



Kelly & Tana Karnes – Property owners Kelly & Tana Karnes are requesting approval of a Variance allowing the expansion of a non-conforming structure in the Rural Residential I (RR) District / Shoreland Management District. The .30± acre subject site is located at 29305 Glader Boulevard in Chisago Lake Township, S3, T33, R20 (PID 02.01311.00).

Karnes Property -



Kelly & Tana Karnes – Property owners Kelly & Tana Karnes are requesting approval of a Variance allowing the expansion of a non-conforming structure in the Rural Residential I (RR) District / Shoreland Management District. The .30± acre subject site is located at 29305 Glader Boulevard in Chisago Lake Township, S3, T33, R20 (PID 02.01311.00).

Karnes Property - 



RESOLUTION NO. BOAA2024-0302

**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 ON
PROPERTY LOCATED AT 29305 GLADER BOULEVARD IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owners Kelly Karnes & Tana Karnes submitted an application dated received February 21, 2024 and considered complete on March 5, 2024 for a Variance to Zoning Ordinance Section 4.03; and

WHEREAS, the property owners wish to expand their legal non-conforming dwelling by increasing the height of the northerly portion of the dwelling (originally constructed as an attached garage) by approximately two feet to match the height of the remaining portion of the dwelling; and

WHEREAS, the subject site is located in the Rural Residential I (RRI) District / Shoreland Management District and legally described as:

PID 02.01311.00

Lot 7, Addition to J.G. Holt's Beach, Chisago County, Minnesota

AND

That part of Government Lot 2, Section 3 and that part of Government Lot 7, Section 2, both of Township 33 North, Range 20 West, Chisago County, Minnesota, described as follows:

Commencing at the most southerly corner of Lot 7 of the recorded plat of Addition to J. G. Holt's Beach on Chisago Lake; thence South 56 degrees 50 minutes East, plat bearing along the southeasterly extension of the southwesterly line of said Lot 7, a distance of 15.00 feet to the point of beginning of the parcel to be described; thence South 44 degrees 20 minutes West, to the center line of Olympic Trail; thence northwesterly, along said center line to its intersection with a line drawn parallel with and 33 feet southeasterly of (when measured at right angles to) the southerly line of the recorded plat of Glader Point and its easterly extension; thence northeasterly, along said parallel line, to the southwesterly line of said Lot 7 of Addition to J.G. Holt's Beach on Chisago Lake; thence southwesterly, along said southwesterly line, to the most southerly corner of said Lot 7, thence northeasterly, along the southeasterly line of said Lot 7, to the shoreline of South Center Lake; thence southeasterly, along said shoreline, to its intersection with a line that bears North 44 degrees 20 minutes East from the point of beginning; thence South 44 degrees 20 minutes West, along said line, to the point of beginning.

WHEREAS, notice was provided and on March 28, 2024 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 action will increase the height of the northerly portion of the dwelling by two feet to match the remaining portion of the dwelling. The proposed action will not increase the footprint of the dwelling or extend the dwelling any closer to neighboring properties. Therefore, the County finds that the proposed dwelling expansion will be*

constructed in a manner so as not to impact the supply of light and air to neighboring properties.

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

Finding #2 The proposed dwelling expansion will not change the primary use of the subject site or increase the amount of habitable space within the dwelling. Therefore, the County finds that the proposed expansion will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways.

Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
Finding #3 The property owners will be required to obtain a building permit prior to construction of the proposed dwelling expansion and it will, therefore, be constructed in compliance with all applicable codes. Being compliant with all applicable codes will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.

Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
Finding #4 The subject site is currently developed with a dwelling and detached garage. The proposed dwelling expansion will not change how the property is being used and the proposed expansion appears to 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 the dwelling expansion will have 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 dwelling expansion will not change the primary use of the subject site or increase the amount of habitable space; therefore, the County finds that the proposed dwelling expansion will not create 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 County finds no evidence to suggest that the proposed dwelling expansion will have any negative fiscal impact on the County or school district.

Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
Finding #7 The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses. While the existing dwelling is considered legal non-conforming in that it's situated approximately 25' from Ordinary High Water Level (OHWL) where the required setback is 75', the County finds that the expansion will not increase the footprint of the dwelling or exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when

it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the expansion will not increase the footprint of the dwelling or increase the non-conforming OHWL setback; that the subject site is unique in that it was platted and developed prior to the County’s adoption of official land use controls; and, that the proposed expansion fits the essential character of the subject site and surrounding residential lakeshore neighborhood.

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

- 1. This approval grants a Variance allowing the expansion of a legal non-conforming structure by increasing the height of the northerly portion of the dwelling (the portion which was originally constructed as an attached garage) by two feet to match the height of the remaining portion of the dwelling.
- 2. The dwelling expansion shall be constructed in general conformance with the application materials dated received February 21, 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 owners’ expense.
- 3. Roofing materials for the proposed expansion area shall be the same type and color as the roofing materials for the remaining portion of the dwelling.
- 4. The permit holder shall obtain a building permit prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
- 5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 28th day of March, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST:

Beth Gervais
Land Services Coordinator