

Tour Date and Time: Wednesday, August 28, 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. July 25, 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. **Duane & Sandra McCall** – Property owners Duane & Sandra McCall are requesting a Variance in order to exceed the maximum allowable amount of accessory storage space in the Rural Residential II (RRII) District. The 5.01± acre subject site is located at 52469 Belle Isle Drive in Nessel Township, S11, T37, R22 (PID 06.00236.01).
 - b. **James & Kalee Blood** – Property owners James & Kalee Blood are requesting a Variance in order to expand a non-conforming structure (dwelling) and install a new septic system, both with reduced Ordinary High Water Level (OHWL) setbacks, in the Agricultural (AG) District / Shoreland Management District / Sunrise River Overlay (SO) District. The proposed dwelling addition will be located closer to the OHWLs of the Sunrise River and Vibo Creek than required and the proposed septic system will be located closer to the OHWL of the Sunrise River than required. The combined 34± acre subject site is located at 36412 Locke Avenue in Sunrise Township, S31 and 32, T35, R20 (PIDs 09.00386.10 and 09.00367.00).
- 7. Public Hearings – Continued Hearings**

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

The next meeting is scheduled for Thursday, September 26, 2024 at 7:00 pm.

Board of Adjustment and Appeals

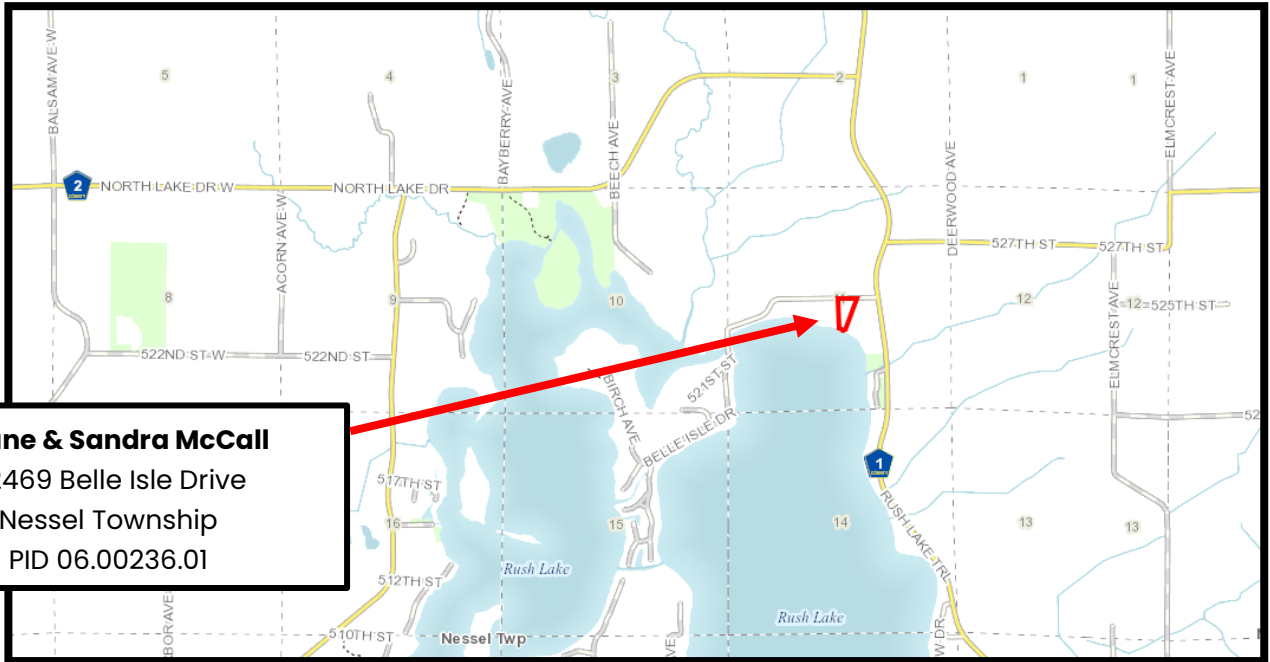
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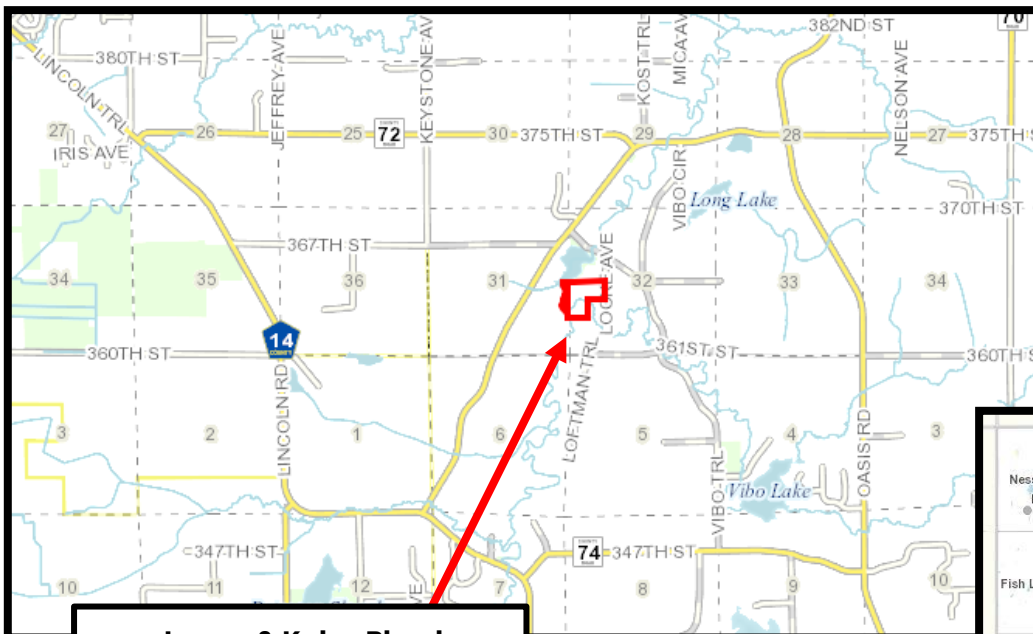
Duane & Sandra McCall

52469 Belle Isle Drive
Nessel Township
PID 06.00236.01



James & Kalee Blood

36412 Locke Avenue
Sunrise Township
PIDs 09.00367.00 & 09.00386.10



CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
July 25, 2024

The Chisago County Board of Adjustment & Appeals met in regular session at 7:01 p.m. on Thursday, July 25, 2024 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator and Sarah Scheunemann, Office Support Specialist – Land Services

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: Gregg Carlson, Doug Greene, John Sutcliffe, Chip Yeager, and Chair Becky Strand. Absent: None. A quorum was established with all members present.

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

APPROVAL OF MINUTES – Motion by Yeager to approve the June 27, 2024 meeting minutes as presented; second by Carlson. The **motion passed** and carried unanimously.

Chair Strand noted that she used to be coworkers with property owner Beth Tatur (agenda item no. 6a), adding that they did not work in the same department. Chair Strand asked the Board if they would like her to recuse herself from agenda item no. 6a, abstain from the vote, or participate as normal. Chair Strand then turned the meeting over to Vice Chair Greene to conduct the vote. Through discussion, the Board generally agreed that there was no conflict of interest. **Motion** by Carlson to allow Chair Strand to fully participate in agenda item no. 6a; second by Greene. The **motion passed** 4-0 (Chair Strand abstained).

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

PUBLIC HEARINGS – NEW APPLICATIONS

Beth Tatur and Level Contracting, LLC – Property owner Beth Tatur and applicant Level Contracting, LLC requested a Variance to reduce the township Right-of-Way setback in the Rural Residential I (RRI) District / Shoreland Management District for property located at 46350 Beach Road (PID 03.01181.00) in order to demolish the existing 840 sf dwelling and to construct a new 1,478 sf year-round dwelling with a 760 sf attached garage.

Coordinator Gervais presented background information on the Tatur/Level Contracting, LLC application stating that the subject site was .39± acres in size and was currently developed with an 840 sf dwelling partially located within the required township Right-of-Way setback, a 124 sf shed located within the required Ordinary High Water Level setback, and an 87 sf shed located within the required township Right-of-Way setback. All of the existing structures were considered non-conforming due to setback encroachments. Additionally, the existing dwelling was considered non-conforming as it was less than the current required dwelling size of 960 sf. Gervais also noted that the existing amount of impervious surface coverage was reported to be 7.6%.

Gervais reviewed the application materials stating that the property owner and applicant wanted to remove the existing dwelling and redevelop the property with a new dwelling and attached garage. The proposed dwelling was shown to meet all required setbacks except for the required 40' township Right-of-Way setback. The existing dwelling was located 17.3' from township Right-of-Way and the proposed dwelling would further encroach with a proposed 15' setback, equating to a proposed 25' setback Variance. Gervais highlighted that the proposed amount of impervious surface coverage was shown to be 20.5% which was below the maximum allowable amount of 25%. However, Gervais further noted that the survey included notations that the proposed retaining wall was not included in the calculation and the driveways were shown for graphic purposes only. Because the property owner and applicant had not included a request to exceed the maximum allowable amount of impervious surface coverage in their Variance request, Gervais noted that they would be required to keep the amount at or below 25%.

Gervais stated that the written narrative explained that the Variance was necessary to ensure proper grading/drainage, a new well location, and utilize the existing compliant septic system. Gervais noted that, aside from this statement, the applicant had not provided any detail to explain grading / drainage concerns or the proposed location of the new well or detail on how the Variance request satisfied the State mandated practical difficulty standard.

The Technical Review Committee met on July 10, 2024 and did not identify any immediate concerns. The Fish Lake Town Board considered the request on July 8, 2024 and recommended approval with no comments or conditions. The State mandated 60-day review period was scheduled to expire on September 1, 2024.

Gervais shared staff concerns related to the State mandated practical difficulty standard, explaining that staff believed the subject site was unique in that it constituted pre-existing development and that the proposed dwelling would not alter the essential character of the neighborhood; however, staff questioned the reasonableness of the request and was concerned with the proposed exacerbation of the township Right-of-Way setback encroachment. Gervais added that staff believed it would be reasonable and possible to slightly reduce the size of the dwelling or redesign the layout of the dwelling in an effort to maintain or even improve the existing township Right-of-Way setback encroachment. Despite these concerns, Gervais concluded by offering a recommendation of approval, based on consistency with past Variance approvals, with conditions and reviewed options available to the board.

Chair Strand invited the property owner and/or applicant to address the Board. Property owner Beth

Tatur and applicant Monty Jensen with Level Contracting, LLC were present and approached the Board. There was discussion between the Board and applicant Jensen in regard to the setbacks of the existing structure, the proposed location of the new well, and the proposed 15' township Right-of-Way setback and whether there was ability to adjust the location of the dwelling to increase the setback. There was also discussion about the cited drainage concerns with the existing structure. Jensen stated that the north side of the property was at a higher elevation and then sloped down toward the south side of the property, and that the proposed dwelling would need to be raised up in order to bring it to proper drainage specification. Lastly, there was discussion about the amount of impervious surface coverage. Jensen noted that the east shed, located adjacent to the township Right-of-Way, would be removed and the sand point well located within the shed would be capped. Jensen added that, if they needed to, they would utilize materials that would be pervious to stay at or below 25% impervious surface coverage.

Chair Strand asked Tatur and Jensen if they would like to add anything else. Jensen addressed the practical difficulty standard and possible reduction of the dwelling by noting that the dwelling was intended to be a long-term retirement property and the size of the dwelling was comparable to other homes in the general area. Jensen concluded by stating that the location of the proposed dwelling, in relation to the township Right-of-Way, was in line with other nearby properties.

Chair Strand opened the public hearing and sought public comment.

Joe Tatur of 50095 Arbor Avenue W., Nessel Township stated that he had attended the Fish Lake Town Board meeting and the Town Board noted that the proposed setback encroachment would not impede snow removal.

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

Motion by Sutcliffe to adopt Resolution No. BOAA2024-0701, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance allowing a reduced township Right-of-Way setback on property located at 46350 Beach Road in Fish Lake Township, as presented; second by Carlson. The **motion passed** and carried unanimously.

Approved Conditions:

1. This approval grants a 25' Variance to the township Right-of-Way setback requirement allowing the proposed dwelling with attached garage to be located no closer than 15' from the Right-of-Way boundary. The dwelling with attached garage shall comply with all other required setbacks.
2. The overall amount of impervious surface coverage shall not exceed 25%.
3. The permit holder shall obtain a building permit prior to construction and, further, the proposed dwelling with attached garage shall comply with all applicable codes and regulations.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUISNESS

None

NEW BUISNESS

None

MISCELLANEOUS

None

ADJOURN MEETING – **Motion** by Carlson to adjourn; second by Yeager. The **motion passed** and carried unanimously. The meeting was adjourned at 7:27 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 Exceed Maximum Allowable Amount of Accessory Storage Space
 52469 Belle Isle Drive, Nessel Township
 DATE: August 29, 2024

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing a total of 2,364 square feet of accessory storage space in the Rural Residential II (RRII) District where the maximum allowable amount is 2,000 square feet.

SITE & APPLICATION INFORMATION

Property Owner(s): Duane & Sandra McCall
 Applicant(s): Duane & Sandra McCall
 Property Address: 52469 Belle Isle Drive
 Nessel Township
 General Location: Section 11, Township 37, Range 22
 PID: 06.00236.01
 Property Area: 5.01± Acres
 Current Zoning: Rural Residential II (RRII) District /
 Shoreland Management District
 Adjacent Zoning:
 North: Rural Residential II (RRII) District /
 Shoreland Management District
 South: East Rush Lake
 East: Rural Residential II (RRII) District /
 Shoreland Management District
 West: Rural Residential II (RRII) District /
 Shoreland Management District
 Date Application Received: July 31, 2024
 Date Application Complete: July 31, 2024
 60-Day Review Period: September 29, 2024

BACKGROUND

Property owners Duane & Sandra McCall wish to construct a 1,468 sf detached accessory structure on property located at 52469 Belle Isle Drive in Nessel Township. In addition to the proposed detached accessory structure, the subject site has been



developed with a dwelling and 896 sf attached garage. In total, the property owners wish to have 2,364 sf of accessory storage space.

The attached written narrative indicates that the proposed structure will be 1,404 sf in size whereas the impervious surface calculations worksheet indicates that the proposed structure will be 1,468 sf in size. Because the building permit application and building plans submitted by the McCalls in advance of the Variance application indicate that the proposed structure is 1,468 sf, staff will utilize the larger square footage of 1,468 sf for purposes of staff report development.

Section 4.08.2 of the Chisago County Zoning Ordinance limits properties within the Rural Residential Districts to a maximum of two detached accessory structures and, based on the size of the subject site, a maximum total ground area of accessory structures of 2,000 sf. Section 3 of the Zoning Ordinance defines Accessory Storage as “the cumulative storage space footprint of all accessory storage structures on a given lot, *including attached* and detached garages”. The Department of Environmental Services has historically interpreted the Zoning Ordinance to mean that properties within the Rural Residential Districts are limited to a maximum of 2,000 sf of accessory storage space, including the attached garage.

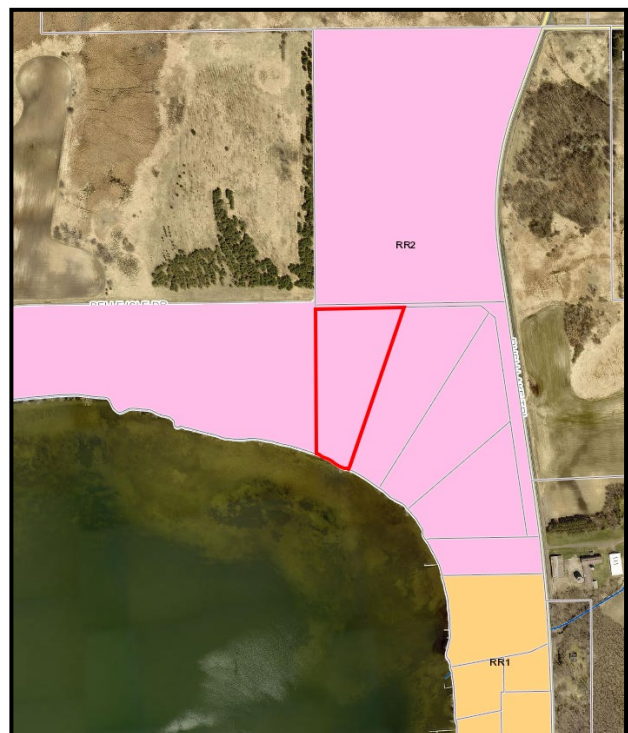
SITE & HISTORICAL ANALYSIS

The 5.01± acre subject site is generally located approximately 500’ west of Rush Lake Trail / CSAH 1 on the south side of Belle Isle Drive and on the north shore of East Rush Lake. The site is currently developed with a 2,847 sf dwelling and 896 sf attached three-stall garage. The dwelling, having been constructed in 2021 and subject to current ordinance requirements, meets all current setback requirements and is deemed a conforming structure. There does not appear to be any existing detached accessory structures on the site.

Topography of the subject site includes elevations ranging from 917’ near the shore of East Rush Lake to 940’ at the north property boundary adjacent to the township Right-of-Way. While the southerly 10’ – 25’ of the site are located within a FEMA flood zone, the existing dwelling and proposed detached accessory structure are located well outside of the flood zone.

Based on the submitted impervious surface calculations worksheet, the existing amount of impervious surface coverage is reported by the applicants to be approximately 4.9%, where the maximum allowable amount is 25%.

The subject site is located within the County’s RRII District / Shoreland Management District as



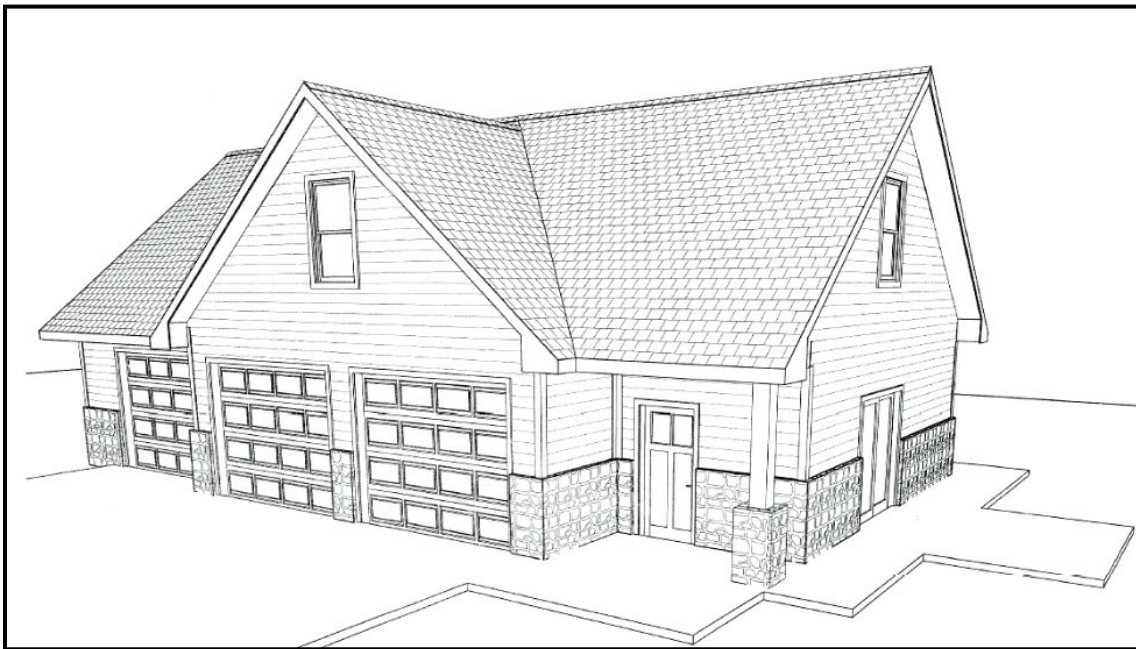
are other lakeshore properties to the west, east, and directly north; and, properties to the northwest and on the east side of Rush Lake Trail / CSAH 1 are located within the County's Agricultural (AG) District / Shoreland Management District. The adjacent image illustrates current zoning with the pink and yellow highlighting representing the RRII and RRI Districts. The non-highlighted areas are either East Rush Lake or the AG District.

The written narrative states that the "Lot was originally zoned agricultural when application for building permit for dwelling was submitted" and that it is "Not known when or why the zoning of property was changed". The narrative further states that "If property had remained agricultural, the accessory structure limitation (as defined by staff) would not be a concern. Change in zoning was out of control as when or why it occurred and contributes to current difficulty". In response, staff notes that the subject site was platted in its current configuration as Lot 1, Block 1, North Rush Shores in 2019. North Rush Shores was developed by current property owner / applicant Duane McCall. The Preliminary Plat drawing submitted by McCall and the staff report prepared for the proposed plat show that the subject site was zoned Rural Residential II (RRII) District at time of platting and, further, historical zoning maps on file with the Department of Environmental Services show that the subject site has been zoned RRII since at least 1987. Additionally, the building permit issued for the McCall dwelling in 2021 includes notation that the property was zoned RRII District. Staff has found no record of the subject site being Rezoned from Agricultural (AG) District to RRII District as reported by the applicants. Additionally, when the subject site was platted in 2019, the Zoning Ordinance limited the overall amount of accessory storage space to 2,000 sf based on zoning district and property size; this circumstance has not changed since McCall platted the property. It may be possible that the applicants were referring to the property tax classification being agricultural at the time of building permit application; however, property tax classifications and zoning classifications are two separate and different things and property tax classifications have no bearing on zoning. Also, even if the property previously had a property tax classification of agricultural, staff suspects that this classification would have been changed by the Chisago County Assessor's Office when the property was platted and the newly created properties were found to no longer comply with the tillable acreage requirement for the agricultural tax classification.

PROPOSAL ANALYSIS

The attached application materials indicate that the property owners would like to construct a detached accessory structure southeasterly of the dwelling and as close as 18' to the east property boundary. As proposed, the structure will meet all required setbacks. With an 896 sf attached garage and a proposed 1,468 sf detached accessory structure, the proposed amount of accessory storage space is 2,364 sf where the maximum allowable amount is 2,000 sf. The requested amount of accessory storage space equates to a 364 sf Variance.

The building plans submitted with the building permit application show that the structure will have a height of 24' to accommodate two stories. The main level of the garage will feature four over-head garage doors (three on front side and one on back side), a service door, a sliding patio-style door, several windows (on both stories), as well as a bathroom. The second story is shown on the plans to be for storage.



The proposed amount of impervious surface coverage is shown on the impervious surface calculations worksheet to be 7.07% which is well below the maximum allowable amount of 25%.

The existing septic system was installed at the time that the dwelling was constructed. Because the system was installed less than five years ago, the County will not require a septic compliance inspection as part of the current Variance or building permit processes.

The written narrative provides the following summarized “statements of practical difficulty” necessitating the Variance. Staff has provided responses to these statements which are shown in *italics*.

- Difficulty arises because of ambiguity of Chisago County Zoning Ordinance. More specifically, the Ordinance is not clear as to an attached garage being considered a subordinate structure. This confusion has created additional expense and would result in more expense if the original plans had to be changed.

Staff does not consider the attached garage to be a detached accessory / subordinate structure; however, per the definition of Accessory Storage (as detailed in the Background section of this report), the Zoning Ordinance does require that the footprint of the attached garage be factored into the cumulative amount of accessory storage space. This confusion

could have been resolved if the applicants had inquired about applicable zoning regulations prior to preparing plans and applying for a building permit for the proposed structure. The applicants' decision to not inquire about these zoning regulations is not justification for the granting of a Variance.

- The lot was originally zoned agricultural when application for building permit for dwelling was submitted. If property had remained agricultural, the accessory structure limitation would not be a concern. Change in zoning was out of control as when or why it occurred and contributes to current difficulty.

As described in the Site & Historical Analysis section above, the subject site has been zoned RRII District since at least 1987. This zoning designation was provided on the Preliminary Plat drawing submitted by property owner / applicant Duane McCall in 2019 as well as the building permit issued for the dwelling in 2021. The subject site has not been Rezoned from Agricultural (AG) District to Rural Residential II (RRII) District. Further, even if the subject site had a property tax classification of agricultural but was zoned RRII District, it would still be limited to a maximum of 2,000 sf of accessory storage space.

- Nearby properties of similar character have accessory structures of like size as do numerous properties of similar character on East and West Rush Lake. The inability to build planned accessory structure would be a difficulty likely to be detrimental to the future market value and marketability of the property.

Certain nearby properties may have similar detached accessory structures. Without knowing the specific properties in question or details of the structures on these properties (i.e., zoning district, year of construction, size, etc.), staff cannot provide any clarification; however, it's likely that some structures constitute pre-existing development and are deemed legal non-conforming while others may have been allowed through the Variance process. As an example, the property immediately west of the subject site has been developed with a barn which staff roughly estimates to have a footprint of more than 2,600 sf. This barn was reported by property owner Carole Cartwright to have been constructed in the 1940s which means that it pre-dates the County's adoption of official land use controls and is considered a legal non-conforming structure.

- Subject property is subject to covenants which restrict outside storage.

As the developer of North Rush Shores, McCall had control over the covenants established for the subdivision. The County neither requires covenants nor enforces covenants. Further, Variances should not be granted based on private covenants for which the County has no control.

The following table provides a comparison of accessory structure standards for the RRII District and corresponding information for the proposed Variance, with the Variance request shown in red.

	RRII District Allowable Accessory Storage Space	Existing Accessory Storage Space	Proposed Accessory Storage Space	Total Proposed Accessory Storage Space	Maximum Number of Detached Accessory Structures Allowed	Proposed Number of Detached Accessory Structures
McCall Variance Request	1,000 sf or 5% of lot area, whichever is greater, but in no case to exceed 2,000 sf *2,000 sf*	Attached garage = 896 sf	Detached accessory structure = 1,468 sf	2,364 sf	2	1

HISTORICAL ANALYSIS

The Board has reviewed and approved Variance requests for additional accessory storage space in the past. In review of a sampling of requests from 2022, 2023, and 2024 for properties within the RRII District, staff notes that the Board did grant Variance approval allowing the properties to have more than 2,000 sf of accessory storage space; however, the Board did not grant approval for the original requested amount in all cases. In some cases, the Board approved a lesser amount through negotiation (which is no longer an option) and, in the two most recent cases, the property owners amended their original requests downward in order to gain Variance approval. The total amount of accessory storage space proposed by the McCalls is considerably less than what has been requested by others in this sampling and is consistent with what the Board has approved in the recent past.

Applicant(s)	PID	Lot Area	Zoning District	Amount Requested	Amount Allowed by BOAA	Approximate Percentage of Lot Area as Allowed by BOAA
Bodell (2022)	02.00848.40	5.23 ac	RRII	3,048 sf	2,760 sf	1.211%
Rieck (2022)	02.00860.00	4.94 ac	RRII	3,354.5 sf	2,850 sf	1.324%
Clements (2023)	02.00751.20	4.90 ac	RRII	4,680 sf	4,680 sf	2.192%
Mueller (2023)	02.00848.10	7.90 ac	RRII	4,852 sf	3,124 sf	.907%
Halseth (2024)	06.00397.03	7.13 ac	RRII	6,152 sf	4,552 sf	1.465%
McCall	06.00236.01	5.01 ac	RRII	2,364 sf	-----	1.083% as proposed

REVIEW PROCESS

The Technical Review Committee met with Duane McCall on August 14, 2024. Staff noted a discrepancy of proposed structure size between various application materials, indicating that staff would utilize size of 1,468 sf rather than 1,404 sf for purposes of staff report development. McCall disputed the County's regulations related to accessory storage within the RRII District and staff attempted to clarify. Staff also attempted to clarify that the subject site had not been

Rezoned and has historically been zoned RRII District and not AG District. The Committee did not identify any immediate concerns.

The Nessel Town Board considered the request on August 14, 2024 and recommended approval with no comments or conditions.

The State mandated 60-day review period will expire on September 29, 2024.

WRITTEN TESTIMONY

No written testimony was received upon completion of the staff report.

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;

In staff's opinion, the applicants have not cited any exceptional or extraordinary circumstances specific to the subject site. Instead, the applicants have stated that the Chisago County Zoning Ordinance is ambiguous on the topic of accessory structures and accessory storage space; that they believe the subject property was previously located in the AG District and Rezoned to RRII District without their knowledge; that nearby properties of similar character have accessory structures of like size as do numerous properties of similar character on East and West Rush Lake; and, that the subject property is subject to covenants which restrict outside storage. Staff has addressed each of these topics in the Proposal Analysis section above.

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 / subject site of rights commonly enjoyed by other RRII District properties. Properties located in the RRII District have the right to accessory storage in compliance with the Zoning Ordinance. The subject site, based on lot size, is allowed a maximum of 2,000 sf of accessory storage space, which is the largest amount of accessory storage space allowed in the RRII District. The site has been developed with an 896 sf attached garage, leaving 1,104 sf for additional

accessory storage purposes. The property owners have not verbalized or otherwise indicated that they've considered a smaller detached accessory structure; however, staff believes that 1,104 sf would allow a reasonably sized detached accessory structure without the need for a Variance (i.e., 24' x 36' = 864 sf; 28' x 36' = 1,008 sf; 30' x 36' = 1,080 sf). A desire for more than 2,000 sf of accessory storage space is a personal preference and is not justification for the proposed Variance.

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;

In staff's opinion, the applicants have not cited any exceptional or extraordinary circumstances specific to the subject site. Instead, the applicants have stated that the Chisago County Zoning Ordinance is ambiguous on the topic of accessory structures and accessory storage space; that they believe the subject property was previously located in the AG District and Rezoned to RRII District without their knowledge; that nearby properties of similar character have accessory structures of like size as do numerous properties of similar character on East and West Rush Lake; and, that the subject property is subject to covenants which restrict outside storage.

Staff would argue that the applicants had control over circumstance nos. 1, 2 and 4. They could have inquired about applicable zoning regulations prior to preparing building plans and submitting a building permit application for the proposed structure; they could have verified the zoning classification with County staff or reviewed past documentation related to the subject property or reviewed the zoning classification which is available on the County's website via the GIS Viewer; and, the applicants, as developers of the North Rush Shores subdivision, created the covenants which they now cite as a practical difficulty. Staff has previously shown that the final circumstance (Rezoning of AG District to RRII District) is inaccurate.

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

Detached accessory structures are permitted in the RRII District; therefore, the Variance is not considered a use Variance.

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

There has been no written or verbal indication that a smaller structure – thereby requiring a lesser Variance or no Variance at all – has been considered. As noted above, the property owners currently have 1,104 sf available for additional accessory storage space, which would allow a structure such as 24' x 36' (864 sf), 28' x 36' (1,008 sf), or 30' x 36' (1,080 sf) without need for Variance.

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

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance related to the property, and when it will not alter the essential character of the surrounding area. Staff does not believe that the

Variance, if approved, would be detrimental to other properties in the RRII District; however, staff does believe that the Variance would be detrimental to the purposes of the Zoning Ordinance in that the application does not fully or satisfactorily address the State mandated practical difficulties standard, specifically in terms of reasonableness (i.e., staff believes the property owners have other reasonable options for a detached accessory structure which does not require a Variance) and uniqueness (i.e., staff does not believe that there are any unique characteristics related to the property itself which prohibit the property owners from complying with the maximum allowable amount of accessory storage space).

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

The property owners have stated that their confusion of the County's regulations pertaining to accessory structures "has created additional expense and would result in more expense if the original plans and efforts since then were to be changed" as well as stating that "The inability to build planned accessory structure would be a difficulty likely to be detrimental to the future market value and marketability of the property". Staff believes that a reasonable use of the property exists through construction of a dwelling and up to 2,000 sf of accessory storage space, so, if the Board chooses to grant the Variance, it should not be granted based on the cited economic-based circumstances.

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 westerly 10' – 25' of the subject site are located in the flood district, all existing and proposed structures 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 site plan submitted by the property owners with the Variance application indicates that the proposed detached accessory structure will be situated 177' from the west property boundary and 18' from the east property boundary (side yards) where the required setbacks are 5'; bordered by a public roadway along the north property boundary, and bordered by a public body of water along the south property boundary. The County finds that the proposed detached accessory structure will be sufficiently distanced from neighboring properties to the west and east, where there is greatest potential for impact, so as not to impair an adequate supply of light and air to adjacent properties.*
- Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;*
- Finding #2 The proposed detached accessory structure will not have any direct impact on the number of occupants residing in the existing dwelling or on the subject site. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns regarding the impact of the proposed action on Belle Isle Drive following its review of the Variance request on August 14, 2024. Therefore, the County finds that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on Belle Isle Drive or surrounding roadways.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;*
- Finding #3 The property owners will be required to obtain a building permit prior to construction of the proposed detached accessory structure, and it will, therefore, be constructed in compliance with all applicable codes. The County finds that this compliance 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 Chisago County Zoning Ordinance requires that the proposed detached accessory structure be constructed to match the exterior building materials of the existing dwelling and the site plan submitted with the Variance application shows that the proposed structure will meet and exceed all required setbacks. Therefore, based on appearance and distance, the County finds that the proposed action will not cause undue negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;*
- Finding #5 The proposed detached accessory structure will not create additional bedrooms and will not increase the number of occupants in the existing dwelling or the need for additional facilities and services; therefore, the County finds that the*

proposed structure will not have any strain or increased impact upon existing facilities and services.

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

Finding #6 *The proposed detached accessory structure will not have any negative fiscal impact on the County or school district. The County finds that the proposed structure will increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*

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

Finding #7 *The Zoning Ordinance has established a maximum number of detached accessory structures and a maximum amount of accessory storage space allowed in the County's Rural Residential Districts, including the Rural Residential II (RRII) District. However, the Zoning Ordinance also allows for Variances, including Variances to exceed the maximum amount of accessory storage space, when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County has reviewed all record materials and finds that the proposed action satisfies the three-factor test of uniqueness, reasonableness and essential character.*

-OR-

Finding #7 *The Zoning Ordinance has established a maximum number of detached accessory structures and a maximum amount of accessory storage space allowed in the County's Rural Residential Districts, including the Rural Residential II (RRII) District. The County finds that the proposed action is contrary to the intent of the Zoning Ordinance and finds that the application fails to fully or satisfactorily address the State mandated practical difficulties standard, specifically in terms of reasonableness and uniqueness. The County further finds that the property owners have other reasonable options for constructing a detached accessory structure which comply with the maximum allowable amount of accessory storage space, and that there are no unique circumstances or characteristics related to the property itself which are preventing the property owners from complying with the maximum amount of accessory storage space.*

STAFF RECOMMENDATION

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff does not support the request for Variance and recommends denial** and has prepared a resolution for the Board's consideration. Staff's recommendation is based on the comments included in the Variance Analysis section along with Finding #7 (shown in *red italics*).

However, acknowledging that the request is consistent with past approvals granted by the Board and that the Board has recommended to the Planning Commission that the maximum amount of accessory storage space be increased and that attached garages no longer be factored into the cumulative amount of accessory storage space (although these recommendations have not been adopted by the County Board), staff has prepared an alternate resolution for approval for the Board's consideration. Should the Board determine that the request for Variance satisfies the State mandated practical difficulties standard and the Board adopts Findings of Fact to support approval of the request for Variance, staff encourages the Board to consider the following conditions of approval:

1. This approval grants a 364 square foot Variance allowing the subject property to have a total of 2,364 square feet of accessory storage space in the Rural Residential II (RRII) District where the maximum allowable amount is 2,000 square feet. In addition to the existing 896 square foot attached garage, this approval allows for the construction of a detached accessory structure with a footprint of up to 1,468 square feet.
2. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received July 31, 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.
3. The detached accessory structure shall meet all required structural setbacks of the Rural Residential II (RRII) District, shall be constructed so that the exterior matches the appearance and color of the dwelling, and shall not exceed the height of the dwelling.
4. The detached accessory structure shall not include living quarters or be used for overnight accommodations until and unless the Chisago County Zoning Ordinance allows such use and said use complies with all minimum requirements of all applicable codes and regulations.
5. 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.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to adopt all draft Findings shown in black italics as presented or amended.*
2. **Deny** the Variance based on the Findings of Fact presented or amended. *Note: this option will require the Board to adopt draft Findings #1 – #6 shown in black italics as presented or amended and draft Finding #7 shown in red italics as presented or amended.*

3. **Table** action to allow for further review and consideration. The current review period expires on September 29, 2024, allowing the Board to continue its review at the September 26, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-0801, a resolution denying a Variance to exceed the maximum allowable amount of accessory storage space on property located at 52469 Belle Isle Drive in Nessel Township, as presented or amended.

If the Board chooses to approve the request for Variance, staff has prepared an alternate resolution which includes Findings of Fact to support approval as well as conditions of approval for the Board's consideration. Staff notes that draft Finding #7 does not provide any specific demonstration of compliance with the State mandated practical difficulties standard and would encourage the Board to further develop this Finding.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plan
 - d. Photo of subject site and immediate area
 - e. Impervious surface calculations worksheet
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-0801 (denial)
5. Draft Resolution No. BOAA2024-0801 (approval)



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 2024-1479
~~2024-0964~~

Township NESSLE S/T/R 11 / 037 / 022 PID# 06.00236.01

Project Address 52469 BOWLE ISLE DRIVE, RUSH CTRY, MN 55069

Property Owner(s) DIANE C. & SANDRA J. McCALL

Mailing Address (If Different from Project Address) PO Box 643, RUSH CTRY, MN 55069-0643

Phone# [REDACTED] Email [REDACTED]

Applicant(s) DIANE C. & SANDRA J. McCALL

Mailing Address (If Different from Project Address) [REDACTED]

Phone# [REDACTED] Email [REDACTED]

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

- ☒ Variance
☐ Administrative Appeal

Planning Commission

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

Description of Request (Attach Separate Sheet if Necessary) SEE ATTACHED

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

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

[Signature] [Signature]
Applicant Signature

July 31, 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		Dates	
Base Fee	\$ <u>600</u>	Application Received	<u>7-31-24</u>
Recording Fee	\$ <u>46</u>	Application Complete	<u>7-31-24</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	60 / 120 Day Review Period	<u>9-29-24</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>646</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township NASSAU S/T/R 11 / 037 / 022 PID# 06.00236.01

Project Address 52469 BELLE ISLE DRIVE, RUSH CTRY, MN 55069

Property Owner(s) DWANE C & SANDRA J. McCALL

Mailing Address (If Different from Project Address) PO BOX 643, RUSH CTRY, MN 55069

Phone# [REDACTED] Email [REDACTED]

Applicant(s) DWANE C & SANDRA J. McCALL

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

Phone# [REDACTED] Email [REDACTED]

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

☒ Variance

☐ Administrative Appeal

Planning Commission

☐ Conditional Use Permit (CUP)

☐ Interim Use Permit (IUP)

☐ Amendment to CUP or IUP

☐ Preliminary Plat

☐ Rezoning

☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary) SEE ATTACHED

[Signature]
Applicant Signature

July 31, 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 AUG 29, 2024

Date of Township Presentation AUG 14, 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

[Signature]
[Signature]

[Signature]

[Signature]

**Chisago County Department of Environmental Services
Planning & Zoning Application**

Variance Request

**Permit #2024-0964
Duane C. & Sandra J. McCall
52469 Belle Isle Drive
Rush City, MN 55069**

Page 1 of 2

Description of Request - Written Narrative

Our home was built in 2021-2022 and occupied in late 2022. The dwelling structure was built with utilities (electric, water, sewer) stubbed out of the primary dwelling structure to be extended to a planned accessory structure to be built at a later date. Architectural plans were prepared for an accessory structure and permit for construction of same were submitted on June 5, 2024.

Planning for accessory structure, architectural plans, and application for building permit were prepared to be in compliance with updated September, 2020 version of Chisago County Zoning Ordinance. After submission, we were informed the proposed accessory structure would exceed the 2,000 square foot limitation for a property in our zone (RRII per Code Enforcement Officer).

Request is for a variance to exceed the 2,000 square foot limitation for accessory structures.

Proposed accessory structure is to be built:

- 1) On 5.01 acre lot which currently contains homesteaded dwelling structure.
- 2) Present and proposed use of land for which Variance is requested is residential.
- 3) Legal description of property:
Block 001 Lot 001 SubdivisionCD 065 10
SubdivisionName North Rush Shores
Section 11 Township 037 Range 022
- 4) Detailed map of property showing location of proposed accessory structure as well as impervious surface calculations attached (as provided with application for building permit).

Adjacent properties are all vacant lots/properties.
- 5) Statements of practical difficulty:
 - a. Difficulty arises because of the ambiguity of Chisago County Zoning Ordinance. The size of our lot is 5.01 acres and as a result the applicable limitation per the Ordinance (4.082 F) is 2,000 square feet for the total ground area of non-agricultural accessory buildings. The size of the proposed accessory structure is 1,404 square feet.

**Chisago County Department of Environmental Services
Planning & Zoning Application**

Variance Request

Permit #2024-0964 = Duane. & Sandra J. McCall

Page 2 of 2

Description of Request – Written Narrative (cont.)

Staff consider square footage (896 square feet) of the present garage which is incorporated into the dwelling structure to be an accessory structure. Ordinance is not clear as to an attached garage being considered a subordinate structure and thus an accessory structure even though a principal dwelling building with a garage incorporated into the building is a standalone structure.

This confusion has created additional expense and would result in more expense if original plans and efforts since then were to be changed.

- a. Lot was originally zoned agricultural when application for building permit for dwelling was submitted and plans included provisions for an accessory structure. The 2,000 square foot limitation does not apply to properties zoned agricultural. Not known when or why the zoning of property was changed. The area remains low density residential with all lots in immediate area approximating five acres and farming activity conducted on other lands in the immediate area.

If property had remained agricultural, the accessory structure limitation (as defined by staff) would not be a concern. Change in zoning was out of control as when or why it occurred and contributes to current difficulty.

- b. Most properties of like character as subject property typically have an accessory structure. Nearby properties of similar character have accessory structures of like size as do numerous properties of similar character on East and West Rush Lake.

The inability to build planned accessory structure would be a difficulty likely to be detrimental to the future market value and marketability of the property.

- c. Subject property to subject to covenants which restrict outside storage. The accessory structure planned at time of construction of dwelling structure intended to allow for inside storage of equipment necessary to maintain property and recreational equipment/property. The planned accessory structure also has provision for a shop area for maintenance and hobby purposes.

The inability to build planned accessory structure would be a difficulty likely to be detrimental to the future market value and marketability of the property and limit the usage of subject property as originally planned.

APPLICATION FOR BUILDING PERMIT

OWNER Quane C. & Sandra J. McCall
Site Address 52469 Belle Lake Drive, Rush City, MN 55069
Mailing Address (if different) P.O. Box 643, Rush City, MN 55069
Email [REDACTED]
Phone [REDACTED]

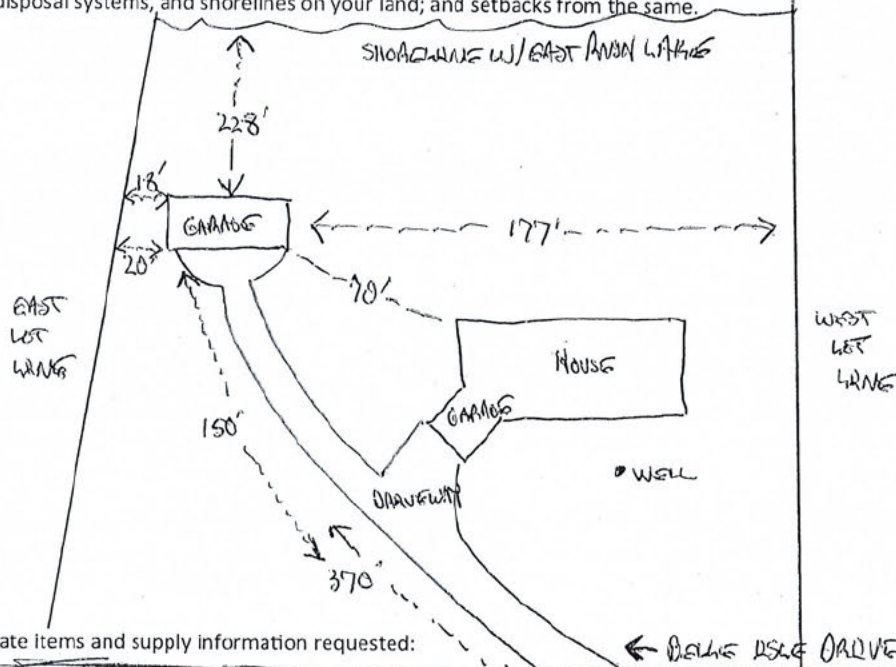
Scope of Work GARAGE Use STORAGE/BERGATION
Building Height 24' Number of Stories 2 Occupancy Class _____
Length 52 Width 30 / 28 Square Feet 1468
Location/Township Nessel Sec. 11 Twp. 037 Range 022
Plat 0650 - NORTH RUSH SHORES Lot 001 Block 001

For Office Use Only
NO _____
Date _____
County _____
State _____
Septic Fee _____
Plan Ck. Fee _____
Driveway _____
911 Address _____
Other _____
Total Permit Fee _____
Valuation _____
Parcel No. _____
Zoning Dist. _____
Site Approval _____
Zoning Approval _____
Date Issued _____

SITE PLAN

CONTRACTOR None - Self Lic. # _____
Mailing Address _____ City/Zip _____
Email _____ Phone _____
Check one: ☒ Mail Permit to: ☒ Homeowner ☐ Contractor OR ☐ Call when ready: Name / # _____

DRAW BELOW a site plan, showing: property boundaries, the location of existing and proposed buildings, roads, and drive ways, wells, sewage disposal systems, and shorelines on your land; and setbacks from the same.



Check appropriate items and supply information requested:

BASEMENT	REQUIRED SETBACKS	SEPTIC	PERC. TEST REQD.	TYPE OF ROOF
_____ Finished	_____ Road	_____ Tank Size	☐ Yes ☐ No	(gable, hip, flat, etc.)
_____ FINISHED ROOMS	_____ Sideyard	_____ Conventional		ROOFING
_____ No. of Bedrooms	_____ Rearyard	_____ Mound	_____ Done by	(Asphalt, Painted Steel, Membrane, etc.)
	_____ Shoreline	_____ Hot Tub	_____ Date	SIDING
	_____ Bluff	_____ Garbage Disposal		(Vinyl Painted Steel, Hard Board, etc.)
	_____ Other			

IMPORTANT: The applicant is hereby placed on notice that he must comply with all provisions of the applicable ordinances of Chisago County, governing Zoning, Shoreline Development, Sewage, Wells, and the Building Code. REFERENCE IS SPECIFICALLY MADE TO THE FACT THAT THE COUNTY HAS ORDINANCES ESTABLISHING: MINIMUM BUILDING SETBACKS FROM ROADS, SHORELINES, AND LOT LINES; MINIMUM LOT SIZES; YARD REQUIREMENTS AND COMPREHENSIVE PRIVATE SEWAGE DISPOSAL REGULATIONS. Minnesota Department of Health has a waterwell construction code. Copies of these ordinances may be purchased from the Zoning Administrator, or are on file for your examination in the office of the County Auditor.
All electrical work is regulated by the State of Minnesota.

The applicant hereby acknowledges that the validity of any permit is contingent upon the compliance of all work done and materials used with the plans and specifications herewith submitted, and with the applicable Ordinances of Chisago County.

X Quane C. McCall Sandra J. McCall
Signature of Applicant (if agent, print principals name and sign as agent).

COPY

Chisago



legend
View



Results



Zoom In



Zoom Out



Pan



Zoom Prev



Zoom Next



Zoom Select



Zoom Extent

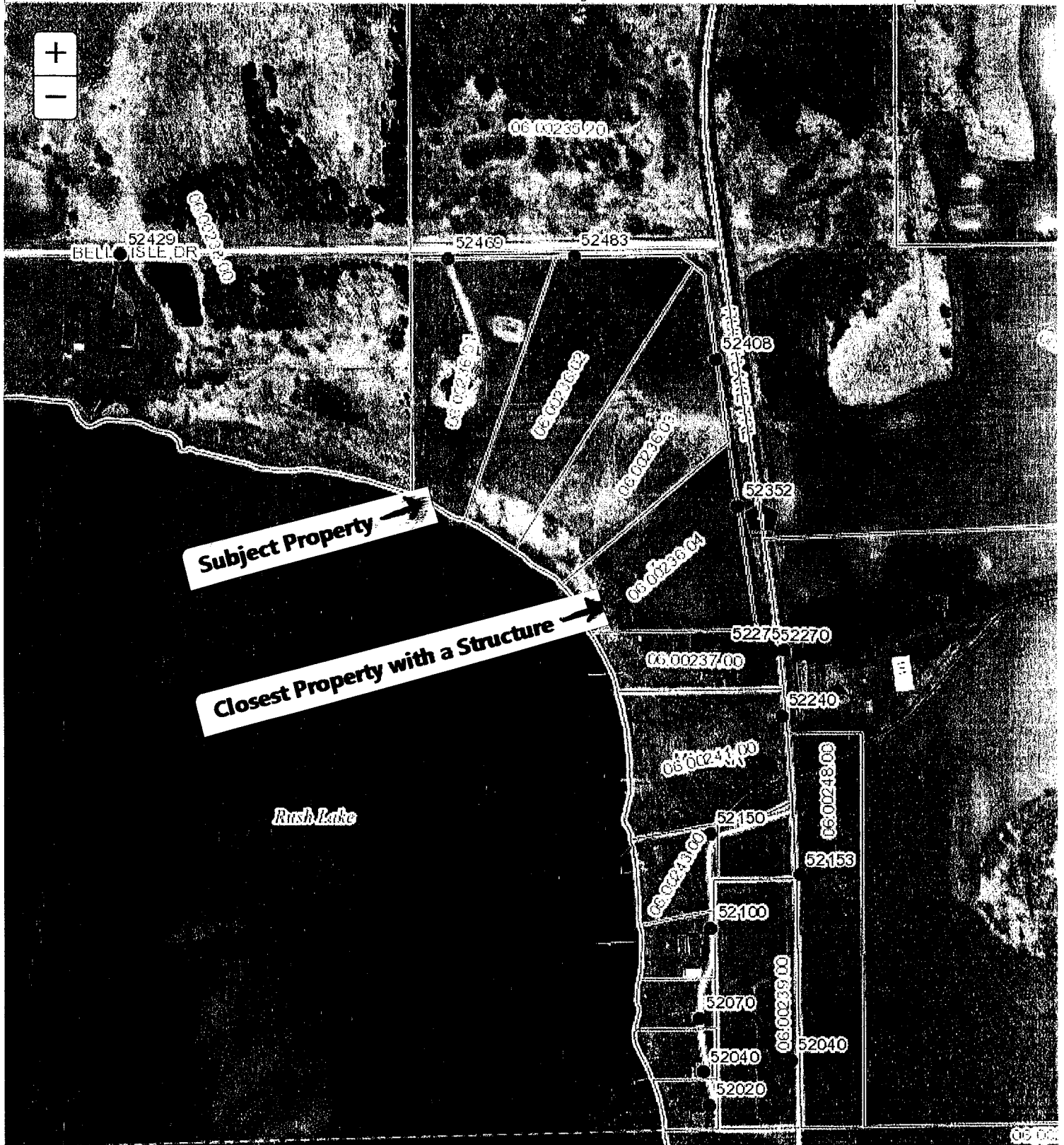


Clear



Search

Navigation



Scale 1: 4800

X: 508426.5445

Y: 250894.2865

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
5.01	x 43,560	= 218,236

OR	Total area of parcel in square feet

Impervious surface coverage of shoreland lots/parcels are limited to 25%. Impervious surface includes, but is not limited to decks, driveways (concrete, asphalt, or gravel), sidewalks (boardwalks, concrete, rock, landscape block, etc.), plastic-lined landscaping and structures. Anything located upon, within or above the ground that would prohibit water from percolating into the soils below and create an increased rate of runoff than the natural landscaping.

IMPERVIOUS SURFACE CALCULATION

Residential structures:	length X width	=	square foot of structure
(example)	(20 x 40)	=	(800)
dwelling		=	2,817
garage		=	376
deck	140 x 15	=	190
patio	12 x 5	=	60
sidewalk		=	
driveway	370 x 14	=	5,180
other; list:		=	
GARAGE APRON	37 x 30	=	1,110
GRASS SIDEWALKS	12 x 6	=	72
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			10,720

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		=	
GARAGE - NEW	52 x 30 / 28	=	1,468
other; list:		=	
APRON - NEW	52 x 30	=	1,560
DRIVEWAY - NEW	120 x 14	=	1,680
TOTAL OTHER ITEMS			4,708

Calculate:

Total from "Residential Structures":	10,720	+
Total from "Agricultural Structures":		+
Total from "Other Items":	4,708	+
Total square footage of coverage:	15,428	=
(divide by total area of parcel, above)	218,236	/
		=
TOTAL IMPERVIOUS SURFACE	7.07	%

signature

date

corresponding permit number

COPY

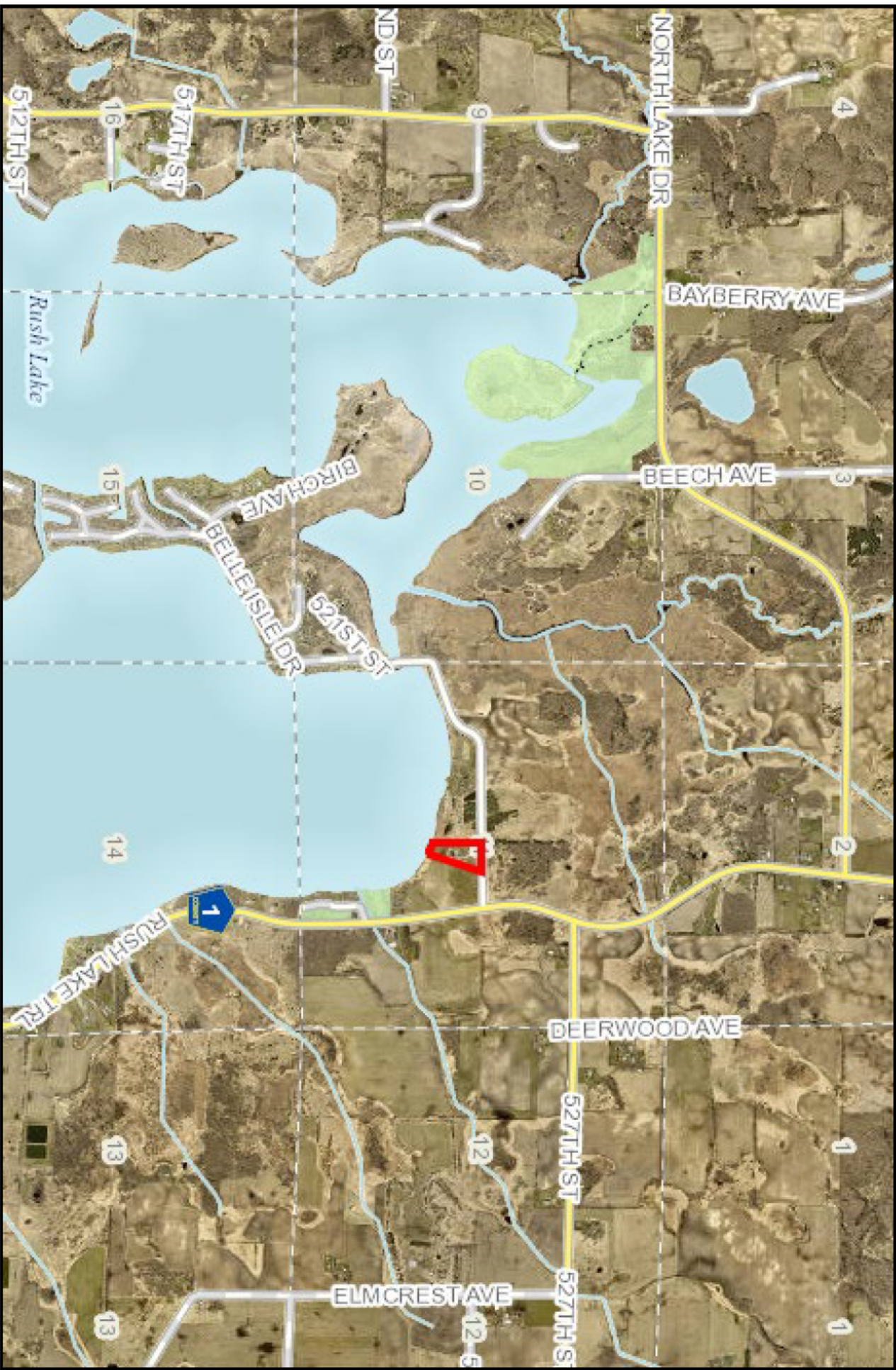
Duane & Sandra McCall – Property owners Duane & Sandra McCall are requesting a Variance in order to exceed the maximum allowable amount of accessory storage space in the Rural Residential II (RRII) District. The 5.01± acre subject site is located at 52469 Belle Isle Drive in Nessel Township, SI1, T37, R22 (PID 06.00236.01).



Chicago ENVIRONMENTAL SERVICES

COUNTY USA

Duane & Sandra McCall – Property owners Duane & Sandra McCall are requesting a Variance in order to exceed the maximum allowable amount of accessory storage space in the Rural Residential II (RRII) District. The 5.01± acre subject site is located at 52469 Belle Isle Drive in Nessel Township, S11, T37, R22 (PID 06.00236.01).



RESOLUTION NO. BOAA2024-0801
A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY,
MINNESOTA, DENYING A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE
AMOUNT OF ACCESSORY STORAGE SPACE ON PROPERTY LOCATED AT
52469 BELLE ISLE DRIVE IN NESSEL TOWNSHIP

WHEREAS, property owners Duane McCall & Sandra McCall submitted an application dated received and considered complete on July 31, 2024 for a Variance to Zoning Ordinance Section 4.08.2 Accessory Structures and Uses in UR, RRI, and RRII Districts; and

WHEREAS, the property owners wish to construct a 1,468 square foot detached accessory structure in addition to the existing 896 square foot attached garage (proposed total of 2,364 square feet of accessory storage space) where the maximum allowable amount of accessory storage space is 2,000 sf; and

WHEREAS, the 5.01± acre subject site is located in the Rural Residential II (RRII) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 06.00236.01
Lot 1, Block 1, North Rush Shores, Chisago County, Minnesota.

WHEREAS, notice was provided and on August 29, 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 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 site plan submitted by the property owners with the Variance application indicates that the proposed detached accessory structure will be situated 177' from the west property boundary and 18' from the east property boundary (side yards) where the required setbacks are 5', bordered by a public roadway along the north property boundary, and bordered by a public body of water along the south property boundary. The County finds that the proposed detached accessory structure will be sufficiently distanced from neighboring properties to the west and east, where there is greatest potential for impact, so as not to impair an adequate supply of light and air to adjacent properties.*

- Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;
- Finding #2 *The proposed detached accessory structure will not have any direct impact on the number of occupants residing in the existing dwelling or on the subject site. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns regarding the impact of the proposed action on Belle Isle Drive following its review of the Variance request on August 14, 2024. Therefore, the County finds that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on Belle Isle Drive or surrounding roadways.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed detached accessory structure, and it will, therefore, be constructed in compliance with all applicable codes. The County finds that this compliance 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 Chisago County Zoning Ordinance requires that the proposed detached accessory structure be constructed to match the exterior building materials of the existing dwelling and the site plan submitted with the Variance application shows that the proposed structure will meet and exceed all required setbacks. Therefore, based on appearance and distance, the County finds that the proposed action will not cause undue negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed detached accessory structure will not create additional bedrooms and will not increase the number of occupants in the existing dwelling or the need for additional facilities and services; therefore, the County finds that the proposed structure will not have any strain or increased impact upon existing facilities and services.*
- Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
- Finding #6 *The proposed detached accessory structure will not have any negative fiscal impact on the County or school district. The County finds that the proposed*

structure will increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.

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

Finding #7 The Zoning Ordinance has established a maximum number of detached accessory structures and a maximum amount of accessory storage space allowed in the County’s Rural Residential Districts, including the Rural Residential II (RRII) District. The County finds that the proposed action is contrary to the intent of the Zoning Ordinance and finds that the application fails to fully or satisfactorily address the State mandated practical difficulties standard, specifically in terms of reasonableness and uniqueness. The County further finds that the property owners have other reasonable options for constructing a detached accessory structure which comply with the maximum allowable amount of accessory storage space, and that there are no unique circumstances or characteristics related to the property itself which are preventing the property owners from complying with the maximum amount of accessory storage space.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA, that the request for Variance is hereby **denied** based on the findings provided herein.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 29th day of August, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST: _____
Beth Gervais
Land Services Coordinator

RESOLUTION NO. BOAA2024-0801
A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY,
MINNESOTA, APPROVING A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE
AMOUNT OF ACCESSORY STORAGE SPACE ON PROPERTY LOCATED AT
52469 BELLE ISLE DRIVE IN NESSEL TOWNSHIP

WHEREAS, property owners Duane McCall & Sandra McCall submitted an application dated received and considered complete on July 31, 2024 for a Variance to Zoning Ordinance Section 4.08.2 Accessory Structures and Uses in UR, RRI, and RRII Districts; and

WHEREAS, the property owners wish to construct a 1,468 square foot detached accessory structure in addition to the existing 896 square foot attached garage (proposed total of 2,364 square feet of accessory storage space) where the maximum allowable amount of accessory storage space is 2,000 sf; and

WHEREAS, the 5.01± acre subject site is located in the Rural Residential II (RRII) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 06.00236.01
Lot 1, Block 1, North Rush Shores, Chisago County, Minnesota.

WHEREAS, notice was provided and on August 29, 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 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 site plan submitted by the property owners with the Variance application indicates that the proposed detached accessory structure will be situated 177' from the west property boundary and 18' from the east property boundary (side yards) where the required setbacks are 5', bordered by a public roadway along the north property boundary, and bordered by a public body of water along the south property boundary. The County finds that the proposed detached accessory structure will be sufficiently distanced from neighboring properties to the west and east, where there is greatest potential for impact, so as not to impair an adequate supply of light and air to adjacent properties.*

- Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;
- Finding #2 *The proposed detached accessory structure will not have any direct impact on the number of occupants residing in the existing dwelling or on the subject site. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns regarding the impact of the proposed action on Belle Isle Drive following its review of the Variance request on August 14, 2024. Therefore, the County finds that the proposed action will not cause an increase in the amount of traffic generated at the subject site and will not increase congestion on Belle Isle Drive or surrounding roadways.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed detached accessory structure, and it will, therefore, be constructed in compliance with all applicable codes. The County finds that this compliance 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 Chisago County Zoning Ordinance requires that the proposed detached accessory structure be constructed to match the exterior building materials of the existing dwelling and the site plan submitted with the Variance application shows that the proposed structure will meet and exceed all required setbacks. Therefore, based on appearance and distance, the County finds that the proposed action will not cause undue negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed detached accessory structure will not create additional bedrooms and will not increase the number of occupants in the existing dwelling or the need for additional facilities and services; therefore, the County finds that the proposed structure will not have any strain or increased impact upon existing facilities and services.*
- Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
- Finding #6 *The proposed detached accessory structure will not have any negative fiscal impact on the County or school district. The County finds that the proposed*

structure will increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.

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

Finding #7 *The Zoning Ordinance has established a maximum number of detached accessory structures and a maximum amount of accessory storage space allowed in the County's Rural Residential Districts, including the Rural Residential II (RRII) District. However, the Zoning Ordinance also allows for Variances, including Variances to exceed the maximum amount of accessory storage space, when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County has reviewed all record materials and finds that the proposed action satisfies the three-factor test of uniqueness, reasonableness and essential character.*

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

1. This approval grants a 364 square foot Variance allowing the subject property to have a total of 2,364 square feet of accessory storage space in the Rural Residential II (RRII) District where the maximum allowable amount is 2,000 square feet. In addition to the existing 896 square foot attached garage, this approval allows for the construction of a detached accessory structure with a footprint of up to 1,468 square feet.
2. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received July 31, 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.
3. The detached accessory structure shall meet all required structural setbacks of the Rural Residential II (RRII) District, shall be constructed so that the exterior matches the appearance and color of the dwelling, and shall not exceed the height of the dwelling.
4. The detached accessory structure shall not include living quarters or be used for overnight accommodations until and unless the Chisago County Zoning Ordinance allows such use and said use complies with all minimum requirements of all applicable codes and regulations.
5. 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.

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 29th day of August, 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 Legal Non-Conforming Structure and Install a Septic System with Reduced Ordinary High Water Level Setbacks
 36412 Locke Avenue, Sunrise Township
 DATE: August 29, 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 legal non-conforming structure (dwelling) and the installation of a new septic system, both with reduced Ordinary High Water Level (OHWL) setbacks, in the Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Applicant(s):	James & Kalee Blood
Property Owner(s):	James & Kalee Blood
Property Address:	36412 Locke Avenue Sunrise Township
General Location:	Sections 31 and 32, Township 35, Range 20
PIDs:	09.00367.00 and 09.00386.10
Property Area:	34± Acres (combined)
Current Zoning:	Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District
Adjacent Zoning:	
North:	Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District
South:	Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District
East:	Agricultural (AG) District / Shoreland Management District
West:	Sunrise River / Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District
Date Application Received:	July 31, 2024
Date Application Complete:	August 1, 2024
60-Day Review Period:	September 30, 2024

BACKGROUND

James & Kalee Blood acquired the subject site in April 2024 and they're now proposing to expand the existing 1,120 sf dwelling by constructing an addition for living space as well as an attached garage. Additionally, to accommodate the addition of two bedrooms within the expanded dwelling, the Bloods will be required to expand the drainfield. The existing structure, the proposed addition, and the proposed drainfield are all located closer to the Ordinary High Water Levels (OHWLs) of the Sunrise River and/or Vibo Creek than allowed by applicable Ordinances.

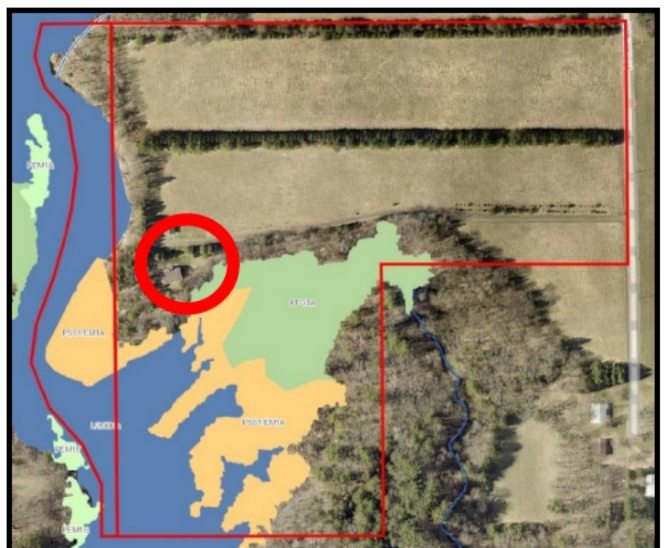


The Bloods had previously requested a Variance and were scheduled for a public hearing in June 2024; however, the Bloods ultimately withdrew their request in order to work with the DNR to establish an OHWL elevation and work with a surveyor on preparation of a bluff determination. Having obtained both items, the Bloods are now proceeding with a modified Variance request.

SITE ANALYSIS

The combined 34± acre subject site is located at 36412 Locke Avenue, slightly less than 1,000' south of Kost Dam Road in Sunrise Township. The subject site is comprised of two parcels which are separated by a Section line. All existing structures and improvements are situated on the east parcel. The site is bordered by the Sunrise River to the west and Vibo Creek meanders through the southern half of the site.

Topography of the subject site includes elevations ranging widely with higher elevations (893') near the east property boundary and lower elevations (846') near the public waterways. Portions of the site appear to be heavily wooded (primarily the areas adjacent to the waterways) and the vast majority of the west parcel and southern half of the east parcel appear to be public waters or wetland areas, as illustrated in the adjacent image.



The existing dwelling was constructed in 1996 and, based on the proposed setback information / site plan provided by the applicant at time of building permit application, the structure met all required setbacks. In other words, the dwelling was constructed in its current location without need for Variance. Staff notes that the minimum required setbacks changed / increased with the creation of the Sunrise River Overlay (SO) District as part of the 1997 Zoning Ordinance adoption, and the dwelling is now considered legal non-conforming due to setbacks.

The existing septic tanks were installed in August 2023 by the previous property owner and the existing drainfield is part of the original system dating back to 1996. The existing septic system is compliant and adequately sized for the existing two-bedroom dwelling, but the drainfield is not adequately sized for the proposed four-bedroom dwelling. Like the existing dwelling, the original septic system was installed in its current location without need for Variance and the minimum required setbacks later changed / increased with the creation of the Sunrise River Overlay (SO) District as part of the 1997 Zoning Ordinance adoption.

The subject site is located within the Agricultural (AG) District, Sunrise River Overlay (SO) District, and Shoreland Management District. Setbacks for the AG and SO Districts are regulated by the County's Zoning Ordinance, whereas setbacks for Vibo Creek are regulated by the County's Shoreland Management Ordinance. Surrounding properties are similarly zoned, with the exception that the SO District does not extend to properties east of the subject site.

The stated purpose of the SO District is to "protect and preserve the existing natural, scenic and recreational values of the Sunrise River and to provide for development activities which do not detract from these values." The SO District allows, by right or by Conditional / Interim Use Permit approval, all those uses allowed in the underlying zoning district, which, in this case, is the AG District. The primary impacts of the SO District are increased setbacks for structures and septic systems and increased lot widths in an area defined as being 500' on either side of the OHWL of the Sunrise River.

PROPOSAL ANALYSIS

During staff's review of the Blood's original application and preparation of the corresponding June 27, 2024 staff report, staff identified concerns with the lack of DNR-established OHWLs for the Sunrise River and Vibo Creek and the lack of a bluff determination prepared by a qualified individual. Without this crucial information, staff speculated that the property owners were unable to accurately determine their proposed setbacks and the County could not fully understand the impact of the requested Variance or accurately approve / deny specific setback Variances. In response to these concerns, the Bloods withdrew their request in order to work with the DNR to establish an OHWL elevation and work with a surveyor on preparation of a bluff determination.

Having obtained a DNR-established OHWL elevation and a bluff determination, the Bloods have submitted a new and modified Variance request for the Board's consideration. The modified request shows that the Bloods are proposing a dwelling addition, including an attached garage rather than a detached garage, and a septic system expansion. The proposed dwelling addition will be located on the easterly side of the existing dwelling and will feature two additional bedrooms for a total of four bedrooms. The application materials suggest that the addition of living space will provide space for a main-level bedroom for easy accessibility and the attached garage will provide storage space as well as a bonus room or fourth bedroom. The Bloods have not yet finalized the exact size or layout of the proposed addition, but they have indicated to staff that it will not be located any closer to the OHWLs of the Sunrise River or Vibo Creek or the Top of Bluff than what's proposed within the application materials. Additionally, the property owners are requesting a Variance allowing a reduced setback from the Sunrise River OHWL allowing for the installation of a new / expanded septic system to support the increased number of bedrooms within the dwelling.

The attached survey shows that a bluff exists south of the existing dwelling. Upon review of the survey, it appears that the existing dwelling is situated 33.3' from Top of Bluff where the required setback is 30'. This means that the proposed dwelling addition, being located easterly of the existing dwelling, will also meet the required 30' Top of Bluff setback. The survey also shows that the proposed dwelling / attached garage addition will not exacerbate the existing non-conforming OHWL setbacks (Sunrise River and Vibo Creek). Likewise, the proposed drainfield will not exacerbate the existing non-conforming OHWL setback (Sunrise River).

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

	AG District / SO District / Shoreland Management District Standards	Proposed
Road Setback	40' to township Right-of-Way	Not applicable
Sunrise River Ordinary High Water Level Setback	200' for structures and septic systems	180' for dwelling addition / attached garage; and, 120' for septic system
Vibo Creek Ordinary High Water Level Setback	100' for structures and 75' for septic systems	70' for dwelling addition / attached garage
Top of Bluff	30' from Top of Bluff	33.3'+ for dwelling addition / attached garage

Side Yard Setback	20' for dwellings, attached garages, and detached non-ag accessory structures	Not applicable
Rear Yard Setback	50'	Not applicable

To explain and provide justification for the requested Variance, the property owners have prepared a written narrative providing the following statements as paraphrased by staff:

- The dwelling was constructed in 1996 at a time when the setback requirements were less. As a legal non-conforming structure, it's unreasonable not to allow any modifications to the dwelling.
- Strict compliance with County ordinances would prevent improvement of the property in a manner which is reasonable, customary, and consistent with other properties in the area.
- The proposed dwelling addition will not be located any closer to the OHWLs of the Sunrise River and Vibo Creek than the existing dwelling. Other locations for the proposed dwelling addition were explored; however, there were no other locations that would meet all required setbacks and that would not interfere with the septic system.
- The proposed drainfield will not be located any closer to the OHWL of the Sunrise River than the existing septic system. There are no other possible locations for the proposed drainfield.
- The dwelling addition will be hidden from the river and will not undermine the purpose and intent of the SO District being that it will not be seen from the river.

REVIEW PROCESS

The Technical Review Committee met with property owners James & Kalee Blood on August 14, 2024. The property owners reviewed Variance related activity since their original submittal, explaining that they obtained a survey with a bluff determination and an OHWL determination from the DNR and modified their plans for expansion. The group discussed the fact that the State and County bluff definitions vary, but, per the County's definition, the site qualifies as a bluff. J. Blood clarified that the proposed addition and drainfield will not encroach on the non-conforming OHWL setbacks any more so than the existing dwelling and drainfield. J. Blood also explained that the layout / design of the proposed expansion has not yet been finalized and may vary from the application materials, but it won't be located any closer to the Top of Bluff or OHWL than what has been requested.

DNR Area Hydrologist Craig Wills stated in an email dated July 25, 2024 that he would not dispute the OHWL elevation of 848' as provided / suggested by the applicants, which staff is accepting as a DNR-established OHWL. Wills also acknowledged that the County has a different definition of bluff than the State and he did not take issue with the County utilizing its definition. Wills did not provide any further or specific comment on the current request.

The Sunrise Town Board considered the request on August 15, 2024 and recommended approval with no conditions or comments.

The State mandated 60-day review period will expire on September 30, 2024.

WRITTEN TESTIMONY

No written testimony was received upon completion of the staff report.

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 existing dwelling and septic system were constructed in 1996 prior to the County's establishment of the Sunrise River Overlay (SO) District. The dwelling and septic system were deemed to meet all required setbacks in 1996. Neither the current nor previous property owners had any control over the County's establishment of the SO District in 1997 or the implementation of increased setback requirements.

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 Ordinances would not deprive the property owners of rights commonly enjoyed by other AG District / SO District / Shoreland Management District properties. Properties located in the AG District / SO District / Shoreland Management District have the right to be developed in compliance with the Zoning and Shoreland Management Ordinances, and the subject site has been developed with a dwelling and a septic system which is adequately sized for the existing 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 existing dwelling and septic system were constructed in 1996 under a previous Zoning Ordinance; therefore, the dwelling and septic system are considered to be pre-existing development. Neither the current nor previous property owners (previous property owners having been the parties to develop the subject site) had control over this circumstance.

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

Dwellings and septic systems are classified as permitted uses within the AG District / SO 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;

Being that pre-existing development is the unique circumstance / hardship related to the subject site, the applicants have no ability to adjust their request in a manner which would eliminate or alleviate this circumstance. However, the applicants have demonstrated that their request is reasonable in that they are not proposing to construct the dwelling / attached garage addition any closer to the OHWLs of the Sunrise River or Vibo Creek or Top of Bluff than the existing non-conforming dwelling.

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

Staff does not believe that the Variance would be detrimental to the purposes or intent of the Zoning or Shoreland Management Ordinances or to other properties in the AG District / SO District / Shoreland Management District. The Zoning Ordinance allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property and when it will not alter the essential character of the surrounding area. Staff believes that the request is reasonable in that dwellings, attached garages, and septic systems are allowable and reasonable uses in these districts and the applicants are not proposing to construct the addition or install the drainfield any closer to the OHWLs or Top of Bluff than the existing dwelling or septic system; that there is a unique circumstance in that the subject site was developed in 1996 prior to the County's establishment of the Sunrise River Overlay (SO) District, at a time when the dwelling and septic system were deemed to meet all required setbacks; and, that the proposed dwelling addition and drainfield fit the essential character of the general area and are not out of scope with surrounding properties. Further, staff does not believe that the Variance, if approved, would be detrimental to other properties in the AG District / SO 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 application materials do not cite economic conditions as a practical difficulty.

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

While a significant portion of the subject property is located within a flood zone, the proposed locations of the dwelling addition and new drainfield appear to be located outside of the flood zone.

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

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

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

1. Reasonableness

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

2. Uniqueness

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

3. Essential Character

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

FINDINGS OF FACT

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

Criteria #1	The proposed action will not impair an adequate supply of light and air to adjacent property;
Finding #1	<i>Given that the subject site is 34± acres in size and the location of existing and proposed structures is 400'+ from the closest adjacent property, the County finds that the proposed action will not have any impact on the supply of light and air to adjacent properties. The County further finds that the proposed drainfield, being installed below ground level, will have no impact on the supply of light and air to adjacent properties.</i>
Criteria #2	The proposed action will not unreasonably increase the congestion in the public right-of-way;
Finding #2	<i>The proposed use of the property will not change from the existing residential use; therefore, the County finds that the proposed action will not increase the amount of traffic generated at the subject site or increase the amount of congestion on Locke Avenue or surrounding roadways. Further, the Sunrise Town Board / Road Authority, having considered the request at its August 15, 2024 meeting, did not express any concern related to the impact on Locke Avenue or surrounding roadways.</i>
Criteria #3	The proposed action will not increase the danger of fire or endanger the public safety;
Finding #3	<i>The property owners will be required to obtain a building permit prior to construction of the proposed addition, and it will therefore be constructed in</i>

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. Therefore, the County finds that the proposed action will have no impact on the danger of fire or public endangerment. The County further finds that the proposed drainfield will have no impact on the danger of fire or to the endangerment of 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 the proposed action will not change the residential use of the property. Additionally, County staff estimates the location of the easternmost wall of the proposed dwelling addition, which is the wall closest to a shared property boundary, to be 400'+ from said property boundary with significant vegetation / forestation between the proposed addition and the closest shared property boundary. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties. The County further finds that the proposed drainfield will have no impact to surrounding properties being that it will be installed below ground level.*

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

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

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

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

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

Finding #7 *The subject site is zoned Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District and the Zoning Ordinance allows dwellings and septic systems as Permitted Uses in these districts when in compliance with all applicable ordinances, including all required setbacks. However, the Zoning Ordinance also allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request*

is reasonable in that dwellings, attached garages, and septic systems are allowable and reasonable uses in these districts and the applicants are not proposing to construct the addition or install the drainfield any closer to the OHWLs or Top of Bluff than the existing dwelling or septic system; that there is a unique circumstance in that the subject site was developed in 1996 prior to the County's establishment of the Sunrise River Overlay (SO) District, at a time when the dwelling and septic system were deemed to meet all required setbacks; and, that the proposed dwelling addition and drainfield fit the essential character of the general area and are not out of scope with surrounding properties.

STAFF RECOMMENDATION

Barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff recommends approval** of the requested Variance with recommended Findings of Fact (see above) and conditions (see below) and has prepared a resolution for the Board's consideration.

Recommended conditions:

1. This approval allows for the expansion of a legal non-conforming dwelling which is located closer to the Ordinary High Water Levels of the Sunrise River and Vibo Creek by granting the following Variances:
 - a. A 20' setback Variance allowing the dwelling addition to be no closer than 180' from the Ordinary High Water Level of the Sunrise River.
 - b. A 30' setback Variance allowing the dwelling addition to be no closer than 70' from the Ordinary High Water Level of Vibo Creek.
2. This approval allows for the expansion of a legal non-conforming septic system (drainfield) which is located closer to the Ordinary High Water Level of the Sunrise River by granting the following Variance:
 - a. An 80' setback Variance allowing the new drainfield to be no closer than 120' from the Ordinary High Water Level of the Sunrise River.
3. The dwelling addition and new drainfield shall meet all other setback requirements established by the Zoning Ordinance and Shoreland Management Ordinance, including the setback to Top of Bluff.
4. Except as specifically required herein, the dwelling addition shall be constructed and the new drainfield shall be installed in general conformance with the application materials dated received July 31, 2024. Any significant deviation, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense. The County acknowledges that the permit holders have not yet finalized the layout / design of the proposed dwelling addition and it may vary from the application materials, but, when finalized, it shall not be located any closer to the OHWLs of the Sunrise River or Vibo Creek than allowed herein

(refer to condition nos. 1 and 2) and it shall not be located any closer than 30' to Top of Bluff.

5. The permit holder shall obtain building and septic permits prior to construction and, further, all structures and improvements shall comply with all applicable codes and regulations.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on Findings of Fact and conditions presented or amended.
2. **Deny** the Variance based on amended Findings of Fact or other contributing factors deemed appropriate.
3. **Table** action to allow for further review and consideration. The current review period expires on September 30, 2024, allowing the Board to further review and consider the request at its September 26, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-0802, a resolution approving a Variance allowing the expansion of a legal non-conforming dwelling and septic system closer to the Ordinary High Water Levels of the Sunrise River and Vibo Creek than required on property located at 36412 Locke Avenue in Sunrise Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative with site photos
 - c. Survey
 - d. Site plans (2)
 - e. Reference material – floor plan and July 25, 2024 email correspondence from DNR Area Hydrologist Craig Wills
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-0802



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-1482

Township SUNRISE S/T/R 31/35/20 32/25/20 PID# 090036700
090038610

Project Address 36412 LOCKE AVE

Property Owner(s) JIM & KAREE BLOOD

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) JIM & KAREE BLOOD

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) _____

SEE ATTACHED

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

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

[Signature]
Applicant Signature

7/31/2024
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		Dates	
Base Fee	\$ <u>300</u>	Application Received	<u>7-31-24</u>
Recording Fee	\$ <u>NA</u>	Application Complete	<u>8-1-24</u>
Plat Fee – No Road(s) / With Road(s)	\$ _____	60/ 120 Day Review Period	<u>9-30-24</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>300</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Sunrise S/T/R 31/35/20 PID# 090036700
32/25/20 090038610

Project Address 36412 Locke Ave

Property Owner(s) Jim + Kaley Blood

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Applicant(s) _____

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) See Attached

[Signature]
Applicant Signature

8/1/2024
7/31/2024
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 AUG. 29, 2024 Date of Township Presentation AUG. 15, 2024

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Accept as Presented

Signatures of Township Officials or Authorized Personnel

[Signature] [Signature] [Signature] 8/15/2024

Legal Description

The Northwest Quarter of the Southwest Quarter, Section 32, Township 35, Range 20, Chisago County, Minnesota, EXCEPT the South 694.26 feet of the East 627.50 feet thereof, AND That part of the Northeast Quarter of the Southeast Quarter of Section 31, Township 35, Range 20, Chisago County, Minnesota, lying Easterly of the Centerline of the Sunrise River.

Request

A variance for a home addition w/garage and drain field replacement.

The purpose of the Sunrise River Overlay District is to “protect and preserve the existing natural, scenic and recreational values of the Sunrise River and to provide for development activities which do not detract from these values.”

The current home, in its entirety, violates the 200’ setback requirement of the Sunrise Overlay imposed after the home was built. 2/3 of the home violates the 100’ setback requirement of the Shoreland Management Ordinance of a tributary, Vibo Creek. This also was enacted after the home was built. This would mean absolutely no modifications of the home, in any way, would be allowed. This is unreasonable. Strict compliance with the ordinance will totally prevent improvement of the property in a manner which is reasonable, customary, and consistent with other properties in the area.

Proposed Variance:

An addition which will not increase the non-conformity of the current dwelling or drain field.

Addition w/garage: 70’ from Vibo Creek OHW (same setback as the current home)
~180’ from Sunrise River OHW

Drain field: 120’ from Sunrise River OHW (same setback as the current drain field)

OHWL

The OHWL is set at 848’ per the email from Craig Wills of the DNR. (see attached email).

Narrative

Home Addition

We would like to add a main floor bedroom and attached garage with bonus room/bedroom. The current house is a 2 bedroom, placed in the corner of the property, well hidden by trees and barely seen from the water. The house does not have a garage. (The garage burned down, and the previous trustees failed to rebuild in the allotted time.) We did our due diligence before we recently purchased the property. We talked to the county and so did our realtor. We were told the setback was 75’ and 200’ for the septic. We were told we could subdivide the land. We were told there “would be no problem” adding onto the home. This information was wrong.

We have a large family. 5 kids and many grandchildren. 4 of us live in the home and we will be adding a fifth, aging parent with limited mobility (walker). We plan to add 2 bedrooms with the main goal to add an

additional main floor bedroom for easy accessibility. The attached garage has an additional bonus room / bedroom. The exact floor plan is being developed. We want to confirm that we can add on to the current home prior to completing the plans.

The purpose of the (SO) Sunrise River Overlay District is to “protect and preserve the existing natural, scenic and recreational values of the Sunrise River and to provide for development activities which do not detract from these values.”

The proposed application & plan is in harmony with the ordinance.

The current home conformed to the original setback prior to the adoption of the of the Sunrise River Overlay District. The original setback was 75'. The proposed addition which will not increase the non-conformity of the current dwelling. The planned addition is angled to fit within the 30' top of bluff requirement of Chisago County Shoreland Ordinance. Since the addition is within the 30' bluff requirement, no variance for the bluff is required. The addition is behind the home and will be well hidden from the river. Its location and size and will not undermine the purpose and intent of the SO ordinance because it will not be seen from the river.

Other locations for an addition were explored. Any addition off the North side of the home will interfere with current septic tanks. The current septic tanks are new (replaced in '23) and conform to current regulations. There are no available locations to move the septic tanks too. The inability to find a location for the new septic tank is a practical difficulty and would incur additional hardship.

So, we request a variance for an addition off the east side of the home, angled as to not increase the non-conformity, with a setback of 70' from Vibo Creek.

Drain Field

The current septic tanks are conforming. However, the drain field is 25 years old and only sized for a 2-bedroom home. The addition of a bedroom requires a new drain field. The proposed location of the drain field meets current DNR regulation for upgrading current systems which allows for similar setback to current systems (grandfathered). The proposed location will not increase the non-conformity of the drain field.

So, we request a variance for a new drain field with a 120' setback from Sunrise River OHW (same as the current drain field setback).

Images

Attached are photos of the home from the river. Images are from the northwest and the southwest. The addition and garage will not be any closer to the river than the existing structure. They will not be visible from the river. We are intentionally not trying to make a large looking mansion like other properties on the river. We enjoy the small, quaint size of the home. This request is reasonable because it does not detract from the intent of the Ordinance.

View of the Home from Sunrise River (west side of house):



View of the back of home (south side of the house):

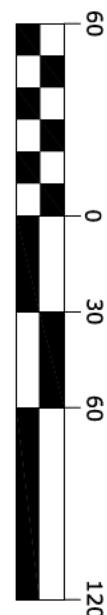


~for JIM BLOOD
~of 36412 LOCKE AVE
NORTH BRANCH, MN

OHW STRUCTURE SETBACK = 200 FEET
OHW SEPTIC SETBACK = 200 FEET
OHW TRIBUTARY SETBACK = 100 FEET
SIDE YARD SETBACK = 20 FEET
TOWNSHIP ROAD (EASEMENT RIGHT OF WAY) = 40 FEET
BLUFF SETBACK = 30 FEET



GRAPHIC SCALE



1 INCH = 60 FEET

1. Bearings shown hereon are based on the Chicago County Coordinate System.
2. Field survey was completed by E.G. Ridd and Sons, Inc. on 07/17/2024.
3. Surveyed premises shown on this survey map is in Flood Zone X (Areas determined to be outside the 0.2% annual chance floodplain), and Zone A (Special hazard areas with a 1% annual chance flood hazard). The Flood Insurance Rate Map (FIRM) (determined) according to Flood Insurance Rate Map Community No. 270682 Panel No. 0260 & 0300 Suffix D by the Federal Emergency Management Agency, effective date April 17, 2012.

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES IRON MONUMENT SET, MARKED RLS# 521
- ▲ DENOTES FOUND LARGE IRON SPIKE
- ▼ DENOTES CHISAGO COUNTY CAST IRON MONUMENT
- ◻ DENOTES AIR CONDITIONING UNIT
- ◻ DENOTES ELECTRICAL BOX
- ◻ DENOTES MAILBOX
- ◻ DENOTES GUY WIRE
- ⚡ DENOTES POWER POLE
- ⚡ DENOTES SIGN
- ⊕ DENOTES WELL
- ⊖ DENOTES FENCE
- DENOTES RETAINING WALL
- DENOTES LIDAR CONTOURS
- DENOTES OVERHEAD UTILITY
- DENOTES CONCRETE SURFACE
- DENOTES GRAVEL SURFACE

The Northwest Quarter of the Southwest Quarter, Section 32, Township 35, Range 20, Chicago County, Minnesota except the South 694.26 feet of the East 627.50 feet thereof.

That part of the Northeast Quarter of the Southeast Quarter of Section 31, Township 35, Range 20, Chisago County, Minnesota, lying Easterly of the Centerline of Sunrise River.

I hereby certify that this survey, plan or report 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.

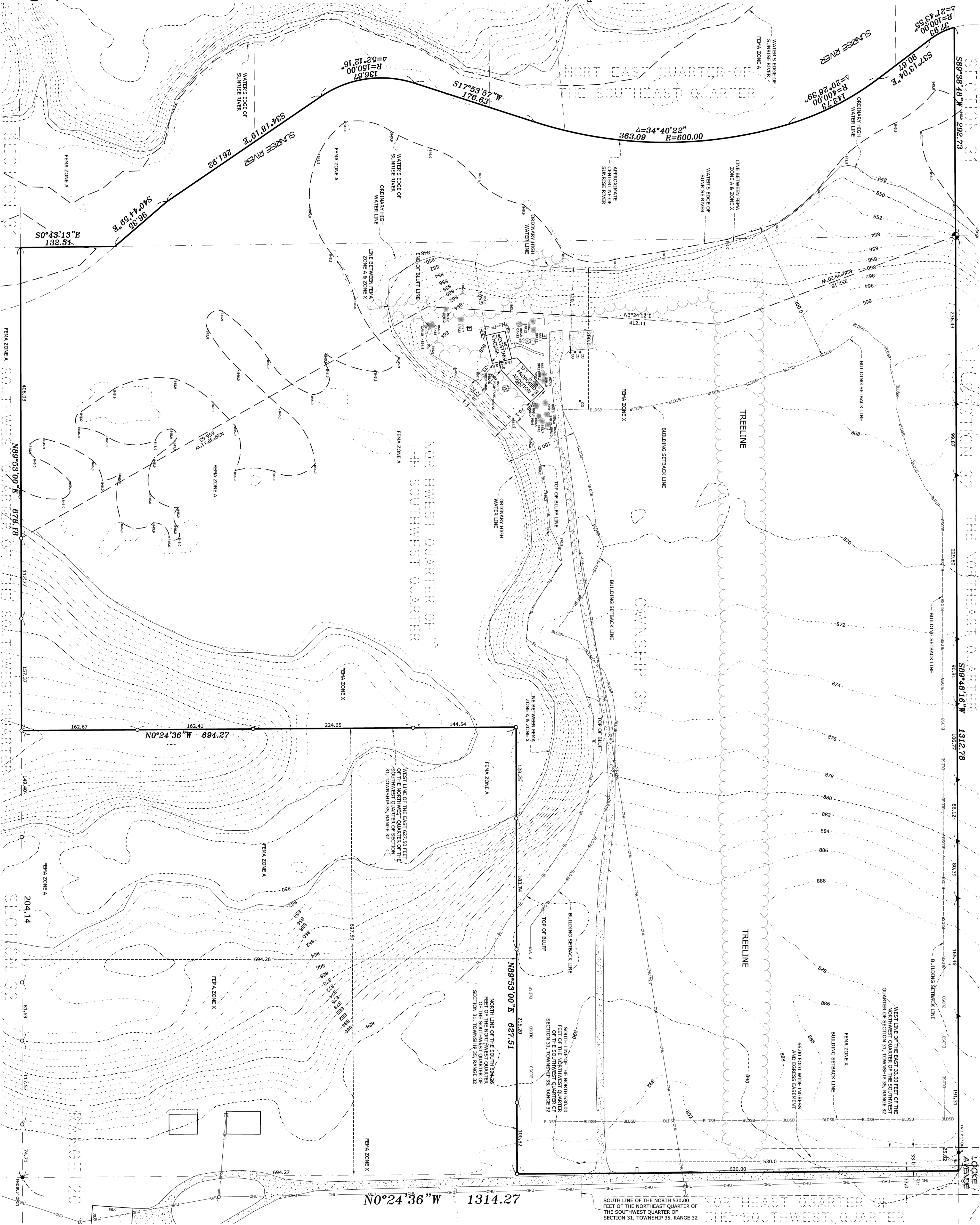
DANIEL S. HANSON

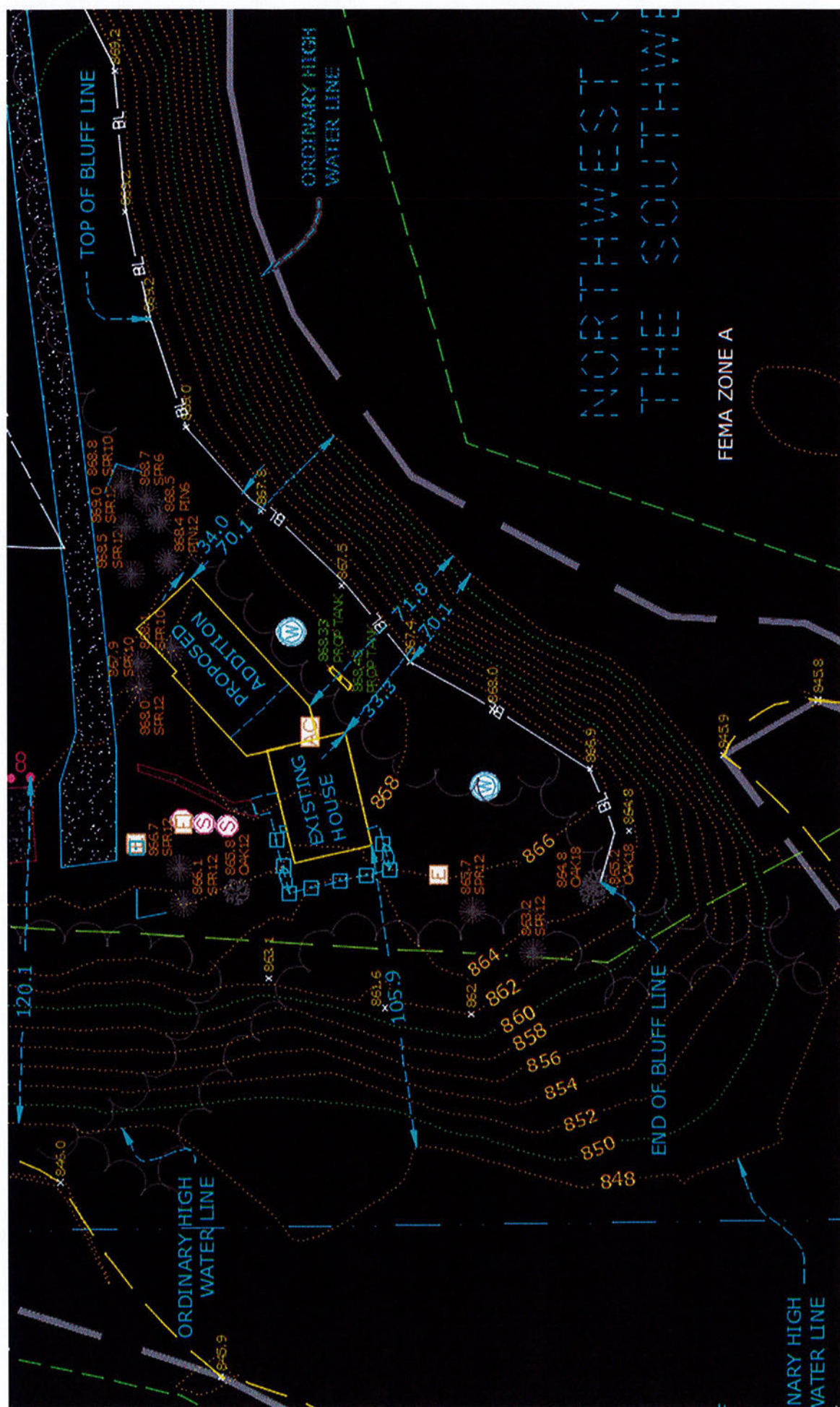
Date: 07/31/2024 License No. 52140

DRAWN BY: RAF		JOB NO: 240755MS		DATE: 07/31/2024	
CHECK BY: DSH		FIELD CREW: RW/MR			
1					
2					
3					
NO.	DATE	DESCRIPTION			BY

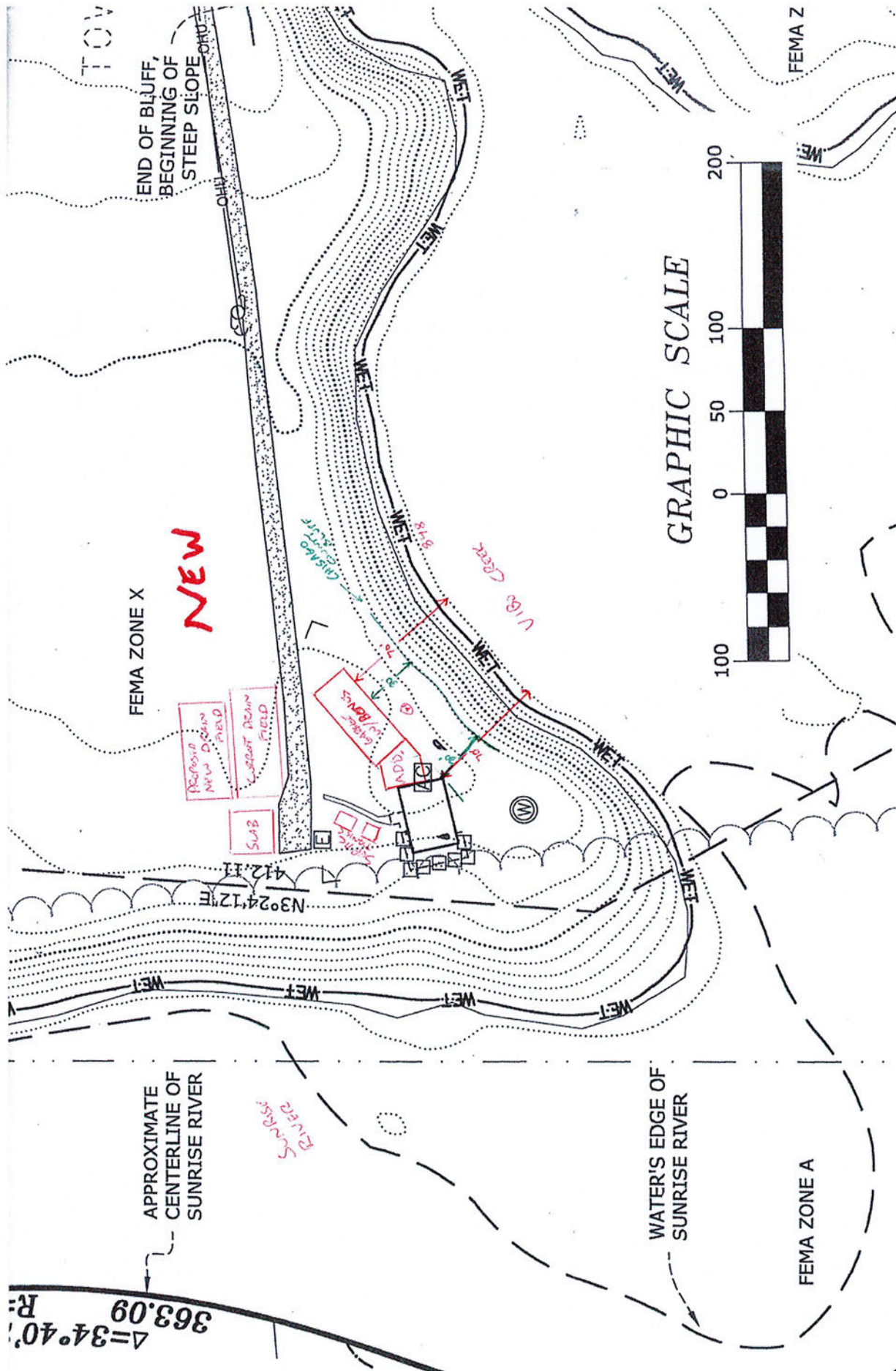


 **E.G. RUD & SONS, INC.**
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701



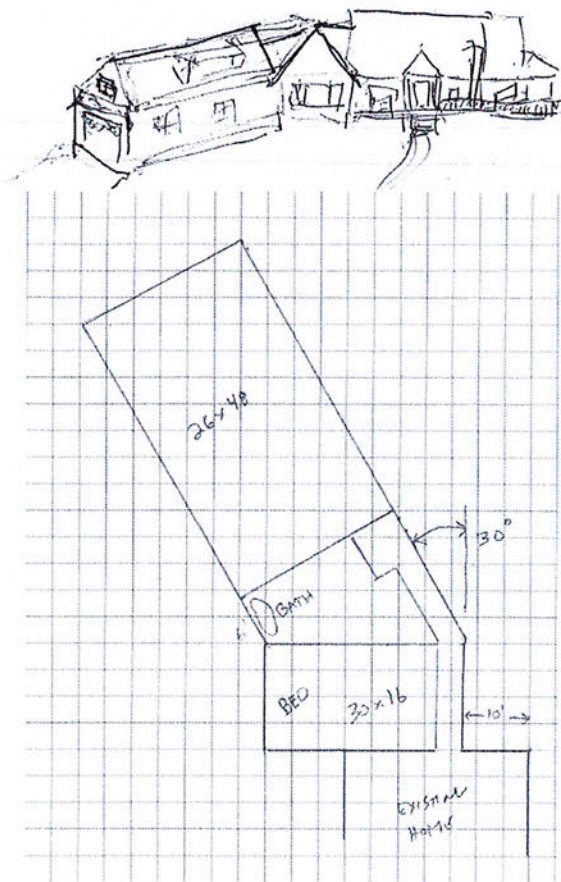


Survey Image

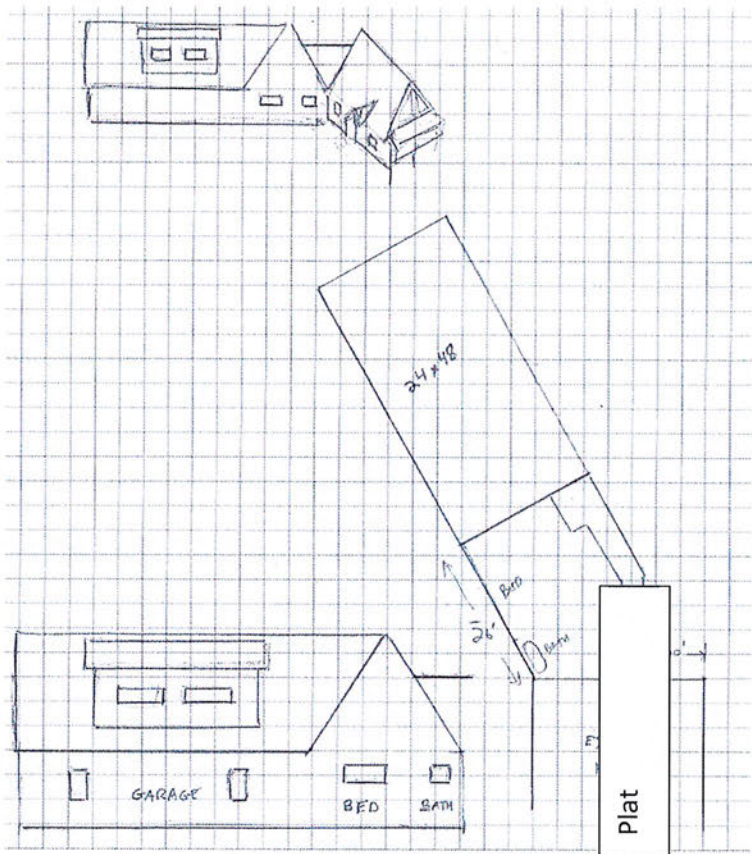


Reference Material (cont.)

Floor plans: The exact size and shape of the addition is still in development



Option1



Option2

Email from Craig Wills:

RE: Jim Blood Variance request



Wills, Craig (DNR) <craig.wills@sta>
To: Beth M. Gervais; Jeff A. Fertig
Cc: Jim & Kalee Blood



Blood - Tech Review Packet.pdf
5 MB

Reply

Reply All

Forward

...

Thu 7/25/2024 3:54 PM

Beth, this email must have been buried..

In this particular instance, I will not dispute the OHW marked up in the review packet and noted as 848' contour.
As for the bluff, you can utilize your definition of a bluff in your current ordinance and the support info DNR provides-[Identifying Bluffs in Shoreland \(state.mn.us\)](https://www.dnr.state.mn.us/land/landuse/bluffs/identifying-bluffs-in-shoreland.pdf)

CW

James & Kalee Blood – Property owners James & Kalee Blood are requesting a Variance in order to expand a non-conforming structure (dwelling) and install a new septic system, both with reduced Ordinary High Water Level (OHWL) setbacks, in the Agricultural (AG) District / Shoreland Management District / Sunrise River Overlay (SO) District. The proposed dwelling addition will be located closer to the OHWLs of the Sunrise River and Vibro Creek than required and the proposed septic system will be located closer to the OHWL of the Sunrise River than required. The combined 34± acre subject site is located at 36412 Locke Avenue in Sunrise Township, S31 and 32, T35, R20 (PIDs 09.00386.10 and 09.00367.00).



James & Kalee Blood – Property owners James & Kalee Blood are requesting a Variance in order to expand a non-conforming structure (dwelling) and install a new septic system, both with reduced Ordinary High Water Level (OHWL) setbacks, in the Agricultural (AG) District / Shoreland Management District / Sunrise River Overlay (SO) District. The proposed dwelling addition will be located closer to the OHWLs of the Sunrise River and Vibo Creek than required and the proposed septic system will be located closer to the OHWL of the Sunrise River than required. The combined 34± acre subject site is located at 36412 Locke Avenue in Sunrise Township, S31 and 32, T35, R20 (PIDs 09.00386.10 and 09.00367.00).



RESOLUTION NO. BOAA2024-0802
A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY,
MINNESOTA, APPROVING A VARIANCE ALLOWING THE EXPANSION OF A LEGAL NON-
CONFORMING DWELLING AND SEPTIC SYSTEM CLOSER TO THE ORDINARY HIGH WATER LEVELS
OF THE SUNRISE RIVER AND VIBO CREEK THAN REQUIRED ON PROPERTY LOCATED AT
36412 LOCKE AVENUE IN SUNRISE TOWNSHIP

WHEREAS, property owners James Blood & Kalee Blood submitted an application for Variance dated received July 31, 2024 and considered complete on August 1, 2024; and

WHEREAS, the property owners wish to expand their legal non-conforming dwelling and install a new / expanded septic system (drainfield), all of which are closer to the Sunrise River Ordinary High Water Level and /or the Vibo Creek Ordinary High Water Level; and

WHEREAS, the 34± acre subject site is located in the Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PIDs 09.00367.00 and 09.00386.10

The Northwest Quarter of the Southwest Quarter, Section 32, Township 35, Range 20, Chisago County, Minnesota, EXCEPT the South 694.26 feet of the East 627.50 feet thereof, AND That part of the Northeast Quarter of the Southeast Quarter of Section 31, Township 35, Range 20, Chisago County, Minnesota, lying Easterly of the Centerline of Sunrise River.

WHEREAS, notice was provided and on August 29, 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 *Given that the subject site is 34± acres in size and the location of existing and proposed structures is 400'+ from the closest adjacent property, the County finds that the proposed action will not have any impact on the supply of light and air to adjacent properties. The County further finds that the proposed drainfield, being installed below ground level, will have no impact on the supply of light and air to adjacent properties.*

- Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;
- Finding #2 *The proposed use of the property will not change from the existing residential use; therefore, the County finds that the proposed action will not increase the amount of traffic generated at the subject site or increase the amount of congestion on Locke Avenue or surrounding roadways. Further, the Sunrise Town Board / Road Authority, having considered the request at its August 15, 2024 meeting, did not express any concern related to the impact on Locke Avenue or surrounding roadways.*
-
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed addition, 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. Therefore, the County finds that the proposed action will have no impact on the danger of fire or public endangerment. The County further finds that the proposed drainfield will have no impact on the danger of fire or to the endangerment of 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 the proposed action will not change the residential use of the property. Additionally, County staff estimates the location of the easternmost wall of the proposed dwelling addition, which is the wall closest to a shared property boundary, to be 400'+ from said property boundary with significant vegetation / forestation between the proposed addition and the closest shared property boundary. Therefore, the County finds no evidence to suggest that there will be any negative impact to surrounding properties. The County further finds that the proposed drainfield will have no impact to surrounding properties being that it will be installed below ground level.*
-
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed action will not change the use of the subject site; therefore, the County finds that the proposed action will not have any strain or increased impact upon existing facilities and services.*
-
- Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and

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

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

Finding #7 The subject site is zoned Agricultural (AG) District / Sunrise River Overlay (SO) District / Shoreland Management District and the Zoning Ordinance allows dwellings and septic systems as Permitted Uses in these districts when in compliance with all applicable ordinances, including all required setbacks. However, the Zoning Ordinance also allows for Variances from setback requirements when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings, attached garages, and septic systems are allowable and reasonable uses in these districts and the applicants are not proposing to construct the addition or install the drainfield any closer to the OHWLs or Top of Bluff than the existing dwelling or septic system; that there is a unique circumstance in that the subject site was developed in 1996 prior to the County's establishment of the Sunrise River Overlay (SO) District, at a time when the dwelling and septic system were deemed to meet all required setbacks; and, that the proposed dwelling addition and drainfield fit the essential character of the general area and are not out of scope with surrounding properties.

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 allows for the expansion of a legal non-conforming dwelling which is located closer to the Ordinary High Water Levels of the Sunrise River and Vibo Creek by granting the following Variances:
 - a. A 20' setback Variance allowing the dwelling addition to be no closer than 180' from the Ordinary High Water Level of the Sunrise River.
 - b. A 30' setback Variance allowing the dwelling addition to be no closer than 70' from the Ordinary High Water Level of Vibo Creek.
2. This approval allows for the expansion of a legal non-conforming septic system (drainfield) which is located closer to the Ordinary High Water Level of the Sunrise River by granting the following Variance:
 - a. An 80' setback Variance allowing the new drainfield to be no closer than 120' from the Ordinary High Water Level of the Sunrise River.

3. The dwelling addition and new drainfield shall meet all other setback requirements established by the Zoning Ordinance and Shoreland Management Ordinance, including the setback to Top of Bluff.
4. Except as specifically required herein, the dwelling addition shall be constructed and the new drainfield shall be installed in general conformance with the application materials dated received July 31, 2024. Any significant deviation, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense. The County acknowledges that the permit holders have not yet finalized the layout / design of the proposed dwelling addition and it may vary from the application materials, but, when finalized, it shall not be located any closer to the OHWLs of the Sunrise River or Vibo Creek than allowed herein (refer to condition nos. 1 and 2) and it shall not be located any closer than 30' to Top of Bluff.
5. The permit holder shall obtain building and septic permits prior to construction and, further, all structures and improvements shall comply with all applicable codes and regulations.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 29th day of August, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST:

Beth Gervais
Land Services Coordinator