

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

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, August 29, 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 Yeager. The **motion passed** and carried unanimously.

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

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

PUBLIC HEARINGS – NEW APPLICATIONS

Duane & Sandra McCall – Coordinator Gervais stated that property owners Duane & Sandra McCall had requested a Variance to exceed the maximum allowable amount of accessory storage space in the Rural Residential II (RRII) District / Shoreland Management District on property located at 52469 Belle Isle Drive (PID 06.00236.01) in order to construct a 1,468 sf detached accessory structure in addition to their 896 sf attached garage.

Gervais presented background information on the McCall application stating that the subject site was 5.01± acres in size and was currently developed with a dwelling and an attached three-stall garage. Gervais noted that the dwelling was constructed in 2021 and, having been subject to current ordinance requirements, met all setback requirements and was deemed a conforming structure. The existing amount of impervious surface coverage was reported by the applicants to be approximately 4.9% where the maximum allowable amount was 25%.

Gervais noted that the applicants' written narrative expressed concern that the lot was zoned Agricultural (AG) District when they applied for a building permit for their home in 2021 and that the

property had been Rezoned to Rural Residential II (RRII) District without their knowledge and that, if it had remained AG District, there would be no limit on the amount of accessory storage space. Gervais addressed the applicants' concern by stating that the subject site was platted, by the applicants, in 2019 and the Preliminary Plat drawing indicated that the site was zoned RRII District at that time. Gervais further noted that the subject site had been zoned RRII District since at least 1987 and staff had found no record of the subject site being Rezoned from AG District to RRII District. Gervais suggested that it was possible that the applicants were referring to the property tax classification changing from agriculture to residential and clarified that property tax classifications and zoning classifications were different and that property tax classifications had no bearing on zoning.

Gervais reviewed the application materials sharing that the property owners wished to construct a 1,468 sf detached accessory structure and that the proposed structure would meet all required setbacks. Gervais noted, with the existing 896 sf attached garage and the proposed 1,468 sf detached accessory structure, that the total proposed amount of accessory storage space was 2,364 sf where the maximum allowable amount was 2,000 sf, thus resulting in a request for a 364 sf Variance. Gervais continued by highlighting the applicants' statements of practical difficulty, including the ambiguity of the Chisago County Zoning Ordinance, that the lot was originally zoned AG District, that nearby properties of similar character had accessory structures and the inability to construct the proposed structure would be a difficulty likely to be detrimental to the future market value and marketability of the property, and that the property was subject to covenants which restricted outside storage. Gervais provided responses to each of the stated practical difficulties.

Gervais provided the Board with a brief historical analysis of similar Variances granted by the Board since 2022, suggesting that the McCall's request was considerably less than what had been requested by others in the sampling and that the request was consistent with recent past approvals.

The Technical Review Committee met with Duane McCall on August 14, 2024 where staff noted a discrepancy of the proposed structure size between various application materials, indicating that staff would utilize the 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. Staff attempted to clarify these regulations and that the property had not been Rezoned from AG District to RRII District as reported by the applicants. The Committee did not identify any other immediate concerns. The Nessel Town Board met on August 14, 2024 and recommended approval with no comments or conditions. The State mandated 60-day review period was scheduled to expire on September 29, 2024.

Gervais concluded by offering a recommendation of denial with draft Findings of Fact, however, she also acknowledged that the request was consistent with past approvals granted by the Board and that the Board had 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. Gervais reviewed options available to the Board, noting that she had prepared draft Findings of Fact and recommended conditions of approval, if the Board opted to approve the request.

Chair Strand invited the applicants to address the Board. Property owner Duane McCall was present and approached the Board. McCall had nothing to add to Gervais' presentation. Carlson sought clarification from McCall on the dimensions of the proposed structure. McCall explained that the difference (1,468 sf vs. 1,404 sf) was due to "cutouts" on corners of the structure. McCall further explained that, on the building permit application (which showed a size of 1,468 sf), he had not accounted for the cutouts, whereas the Variance application (which showed a size of 1,404 sf) did account for the cutouts. Carlson also sought clarification on the location of the bathroom within the proposed accessory structure. McCall stated that the bathroom would be on the lower level.

Chair Strand opened the public hearing and sought public comment.

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

Chair Strand opened discussion to the Board. Carlson asked McCall if he had considered making the structure smaller. McCall stated that he would reduce the size, if required to do so, but preferred not to. McCall added that he had read the Zoning Ordinance prior to submitting a building permit application for the proposed structure and reiterated how confusing he believed the ordinance to be and that he believed the proposed structure was in compliance with the ordinance.

Carlson referenced page 13 of the staff report, reiterating that the Board had recommended to the Planning Commission that the Zoning Ordinance should not include the attached garage in the calculation and that the Board was also recommending an increase to the maximum allowable amount of accessory storage space in the Rural Residential Districts. Carlson noted that, if these recommendations were adopted, McCall would not need a Variance for the proposed structure. Carlson added that the Board had approved Variances for larger amounts of accessory storage space in the past.

There was brief discussion amongst the Board about the amount of square footage being requested and possibly granted (1,468 sf vs. 1,404 sf). Greene suggested that, if the Board approved the request, the amount should be based on a structure size of 1,404 sf rather than 1,468 sf to prevent the applicants from building a larger structure than what was presented to the Board. McCall assured the Board that he would not deviate from the submitted plan. Gervais responded stating that she understood Greene's concern but that it may be safer to approve it as 1,468 sf as she wasn't sure how the building division would measure the structure (structure walls vs. footings).

Motion by Carlson to adopt 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, as presented; second by Sutcliffe. The **motion passed** 4-1 with Yeager voting against.

Approved 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.

James and Kalee Blood – Coordinator Gervais stated that property owners James & Kalee Blood had requested a Variance in order to expand their legal non-conforming dwelling and install a new drainfield, both with reduced Ordinary High Water Level (OHWL) setbacks, in the Agricultural (AG) District / Shoreland Management District / Sunrise River Overlay (SO) District on property located at 36412 Locke Avenue (PIDs 09.00367.00 & 09.00386.10).

Gervais presented background information, stating that the Bloods had acquired the subject site in April 2024 and were proposing to expand the existing 1,120 sf dwelling by constructing an addition for living space as well as an attached garage. In order to accommodate the addition of two bedrooms within the expanded dwelling, the Bloods would be required to expand the septic system by adding a new drainfield. The existing dwelling, the proposed addition, and the proposed drainfield were all located closer to the OHWLs of the Sunrise River and/or Vibo Creek than allowed by applicable Ordinances.

Gervais noted that 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 to work with a surveyor on preparation of a bluff determination. Having obtained both, the Bloods were now proceeding with a new and modified Variance request.

Gervais provided information about the subject site, sharing that it was 34± acres in size (combination of two parcels) and was bordered by the Sunrise River to the west with Vibo Creek meandering through the southern half of the site. The existing dwelling was constructed and the existing septic system was installed in 1996 and both met all setbacks required at that time. The

minimum required setbacks changed in 1997 as part of a Zoning Ordinance update and, afterwards, the dwelling and septic system were considered legal non-conforming due to setback encroachments.

Gervais reviewed details of the Variance request, noting that the current request included a dwelling addition on the easterly side of the existing dwelling. The exact layout / design of the addition had not yet been finalized, but the addition would not be located any closer to the OHWLs of the Sunrise River and Vibo Creek or Top of Bluff than the existing dwelling. Likewise, the proposed drainfield would not be located any closer to the OHWL of the Sunrise River than the existing septic system.

Gervais continued by reviewing the applicants' stated justifications for the requested Variance, including that the dwelling was constructed in 1996 at a time when the setback requirements were less; as a legal non-conforming structure, it was unreasonable not to allow any modifications to the dwelling; strict compliance with County ordinances would prevent improvement of the property in a manner which was reasonable, customary, and consistent with other properties in the area; the proposed dwelling addition would not be located any closer to the OHWLs of the Sunrise River and Vibo Creek than the existing dwelling and 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 would not be located any closer to the OHWL of the Sunrise River than the existing septic system and there were no other possible locations for the proposed drainfield; and, the dwelling addition would be hidden from the river and would not undermine the purpose and intent of the SO District being that it would not be seen from the river.

The Technical Review Committee met with James & Kalee Blood on August 14, 2024. The applicants 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 had modified their plans accordingly. There was discussion on the fact that State and County Bluff definitions varied, but, per the County's definition, the site qualified as a bluff. J. Blood clarified that the proposed addition and drainfield would not further encroach on the non-conforming OHWL setbacks than the existing dwelling and drainfield. He also stated that the layout / design of the proposed dwelling addition had not been finalized but assured staff it wouldn't be any closer to the Top of Bluff or OHWL than what was requested within the application. 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 was accepting as a DNR-established OHWL. Wills also acknowledged that the County had a different definition of "bluff" than the State and did not take issue with the County utilizing its definition. The Sunrise Town Board met on August 15, 2024 and recommended approval with no conditions or comments. The State mandated 60-day review period was scheduled to expire on September 30, 2024.

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

Chair Strand invited the applicants to address the Board. Property owner James Blood was present and approached the Board. Blood addressed the Board and stated that he would like to make a

correction to the requested setback from the OHWL of the Sunrise River to the proposed addition, explaining that he made an error in the application materials. J. Blood indicated that the requested setback should be approximately 120' rather than 180'. Blood also reiterated that the required setbacks changed after the house was built. Blood referenced a drawing he had prepared, showing the Board where the existing dwelling sat in relation to the SO District boundary and noted that absolutely nothing could be done to the dwelling without a Variance. Blood also expressed his frustration with staff, stating that he had done his due diligence prior to purchasing the property by reaching out to the County and asking questions. He stated that he was told by staff that he would be able to construct an addition and subdivide the land, and he later learned that all of this was inaccurate. Blood stated that he believed his original Variance request to be reasonable in that he was proposing a small dwelling addition and a detached garage and was ultimately told that the detached garage would need to be further away from the home being that he had options which complied with the required setbacks. Blood continued and reiterated that his new proposal would not encroach on the required setbacks any more so than the existing dwelling. Blood shared that he hired a lawyer and they recommended for him to sell the property rather than request a Variance because, if the Variance was not granted, he would have a very difficult time selling the property. Blood added that he had scheduled a meeting with Director Kurt Schneider to discuss the current Variance request and Schneider failed to appear for the meeting or respond to a follow-up email from Blood. Blood questioned how ordinances could be created when they took value away from property.

Yeager shared that he was inclined to vote in favor of the request but wanted to reword recommended condition no. 1.a. and wasn't sure how to word it properly without knowing the exact distance between the Sunrise River OHWL and the proposed dwelling addition. Gervais suggested wording the condition in a way that stated the addition could not be any closer to the OHWL of the Sunrise River than the east wall of the existing dwelling, thus utilizing an existing / permanent marker for reference rather than a specific distance. There was discussion between the Board and Blood in regard to what the landmark would be.

Chair Strand opened the public hearing and sought public comment.

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

Sutcliffe sought clarification on the distance from the east side of the existing dwelling to the OHWL of the Sunrise River. Gervais, after reviewing the site plan, responded that the southeast corner appeared to be roughly 146' from the OHWL but was unsure about the northeast corner given that there were no dimensional references provided and the river "zig-zagged". Board members discussed options for rewording recommended condition no. 1.a. and ultimately reached consensus.

Motion by Sutcliffe to adopt 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, as presented and with condition no. 1.a. being amended to read "An 80' setback Variance allowing

the dwelling addition to be no closer than 120' from the Ordinary High Water Level of the Sunrise River with the addition generally extending easterly from the east wall of the existing dwelling"; second by Yeager. The **motion passed** and carried unanimously.

Approved 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.~~
 - a. An 80' setback Variance allowing the dwelling addition to be no closer than 120' from the Ordinary High Water Level of the Sunrise River with the addition generally extending easterly from the east wall of the existing dwelling.
 - 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.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUSINESS

None

NEW BUSINESS

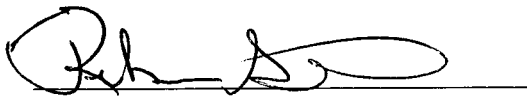
None

MISCELLANEOUS

Chair Strand shared that she had attended a Minnesota Counties Intergovernmental Trust (MCIT) training event on August 29, 2024 and offered highlights from the various sessions, noting that the presenters discussed Conditional Use Permits, Cannabis, the 60-day rule, public hearings, and finished with a question-and-answer session. Coordinator Gervais, also having attended, added that the presenters covered the importance of establishing Findings of Fact and making sure to give specific detail within the Findings of Fact when approving or denying requests.

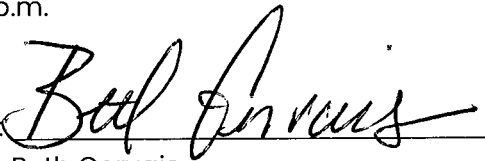
There was also brief discussion amongst the Board related to the amount of accessory storage space allowed within the Rural Residential Districts and recommendations offered by the Board to the Planning Commission for inclusion in the draft Zoning Ordinance update, including an increase in the maximum allowable amount of accessory storage space and eliminating attached garages as part of the formula for determining the amount of accessory storage space. Coordinator Gervais responded that the Board's recommendations had been incorporated into the draft ordinance and, from her experience, it was unusual to count attached garages as accessory storage space, as the current Chisago County Zoning Ordinance did, and that the Board's recommended changes would help larger properties. Gervais added that smaller lakeshore properties may not see as much benefit as they would still need to meet all required setbacks and comply with impervious surface coverage regulations. Gervais concluded by explaining that the proposed changes would still help to protect the lakes while also helping the larger properties have a greater amount of accessory storage space.

ADJOURN MEETING – Motion by Yeager to adjourn; second by Greene. The **motion passed** and carried unanimously. The meeting was adjourned at 8:07p.m.



Rebecca Strand
Chair

ATTEST



Beth Gervais
Land Services Coordinator