

Tour Date and Time: Wednesday, September 25, 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. August 29, 2024

5. Receive all Materials and Submittals into Record

Previously Distributed Materials:

- a. Complete meeting packet including staff report(s) with attachments for agenda item(s) 6a, 6b, and 6c.

6. Public Hearings – New Applications

- a. **Timothy & Barbara Jansen and Bigfork Valley Log Cabins, LLC** – Property owners Timothy & Barbara Jansen and applicant Bigfork Valley Log Cabins, LLC are requesting a Variance allowing for a reduced setback from the Ordinary High Water Level of Rush Lake for the purpose of redeveloping the property with a new dwelling. The .30± acre subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 52045 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00983.00).
- b. **Jeffrey J. Stoks and Peggy A. Stoks Trust and Bigfork Valley Log Cabins, LLC** – Property owner Jeffrey J. Stoks and Peggy A. Stoks Trust and applicant Bigfork Valley Log Cabins, LLC are requesting a Variance in order to intensify a non-conforming structure, by replacing an existing deck with a three-season porch of the same size, located closer to the Ordinary High Water Level of Rush Lake than allowed and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District. The .32± acre subject site is located at 52205 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00972.00).
- c. **MVMC, LLC and Mike O'Malley** – Property owner MVMC, LLC and applicant Mike O'Malley are requesting a Variance allowing for the expansion of a non-conforming structure (dwelling) located closer to the Ordinary High Water Level of North Center Lake and westerly property boundary than allowed in the Rural Residential I (RRI) District / Shoreland Management District. The property owner is proposing to expand the dwelling by adding an attached garage and second story. The .44± acre subject site is located at 32860 Nueman Trail in Chisago Lake Township, S22, T34, R20 (PID 02.01688.00).

7. Public Hearings – Continued Hearings

None

8. Old Business

9. New Business

10. Miscellaneous

11. Adjourn Meeting

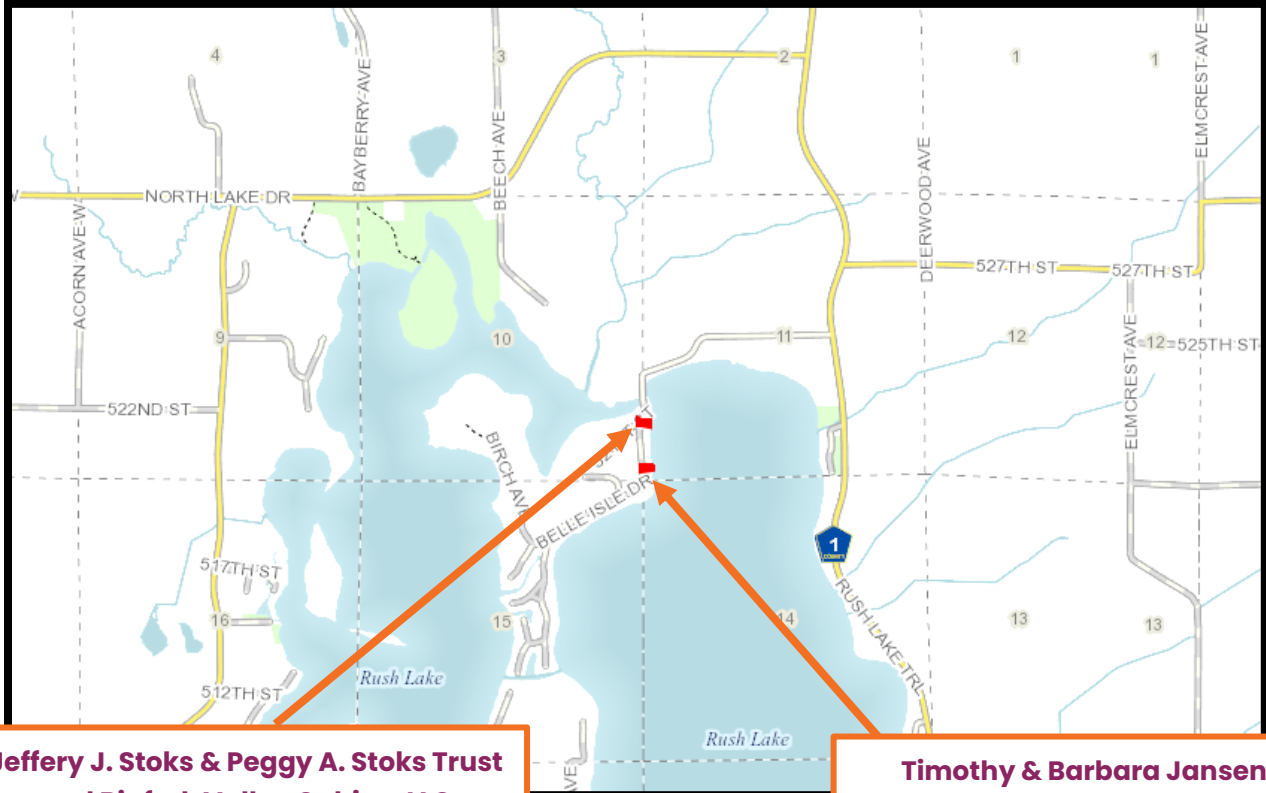
The next meeting is scheduled for Thursday, October 31, 2024 at 7:00 pm.

Board of Adjustment and Appeals

Tour Date and Time:

Wednesday, September 25, 2024 at 8:15 am

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

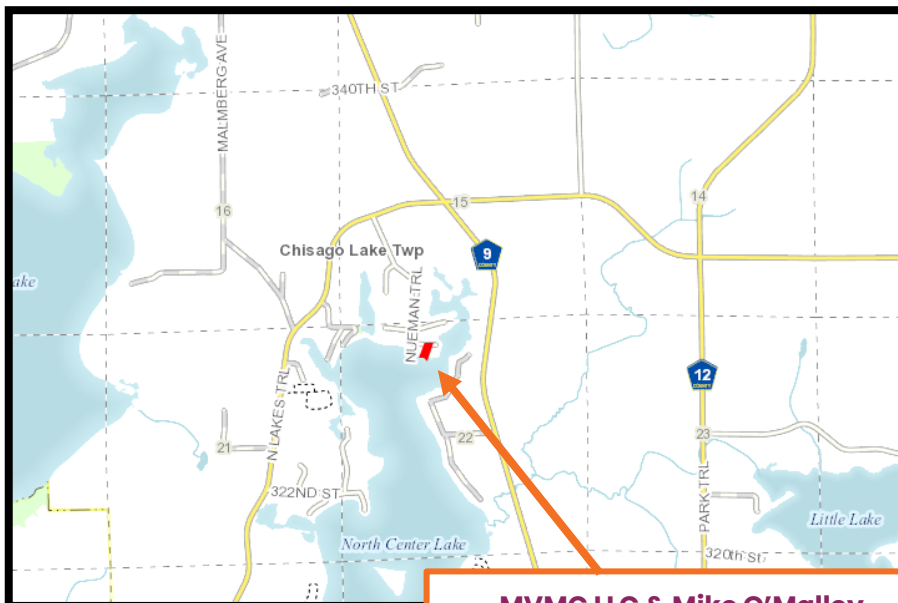


**Jeffery J. Stoks & Peggy A. Stoks Trust
and Bigfork Valley Cabins, LLC**

52205 Belle Isle Drive
Nessel Township
PID 06.00972.00

**Timothy & Barbara Jansen
and Bigfork Vally Log Cabins, LLC**

52045 Belle Isle Drive
Nessel Township
PID 06.00983.00



MVMC LLC & Mike O'Malley

32860 Nueman Trail
Chisago Lake Township
PID 02.01688.00



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 BUISNESS

None

NEW BUISNESS

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



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Encroach on Required Ordinary High Water Level Setback
 52045 Belle Isle Drive, Nessel Township
 DATE: September 26, 2024

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing for a reduced setback from the Ordinary High Water Level (OHWL) of Rush Lake for the purpose of redeveloping the property with a new dwelling.

SITE & APPLICATION INFORMATION

Property Owner(s): Timothy & Barbara Jansen
 Applicant(s): Bigfork Valley Log Cabins, LLC
 Property Address: 52045 Belle Isle Drive
 Nessel Township
 General Location: Section 15, Township 37, Range 22
 PID: 06.00983.00
 Property Area: .30± Acres
 Current Zoning: Rural Residential I (RRI) District / Shoreland Management District
 Adjacent Zoning:
 North: Rural Residential I (RRI) District / Shoreland Management District
 South: Rural Residential I (RRI) District / Shoreland Management District
 East: Rural Residential I (RRI) District / Shoreland Management District
 West: Rural Residential II (RRII) District / Shoreland Management District
 Date Application Received: August 29, 2024
 Date Application Complete: September 3, 2024
 60-Day Review Period: November 2, 2024

BACKGROUND

Property owners Timothy & Barbara Jansen, along with applicant Bigfork Valley Log Cabins, LLC, are proposing to redevelop their lakeshore property by demolishing the existing dwelling and detached garage and constructing a new dwelling with



attached garage. The subject site is located at 52045 Belle Isle Drive in Nessel Township.

Historical records show that the Board granted a Variance to the subject site in 2011 for the installation of septic system closer to a property boundary than required. Unfortunately, records don't provide detail about the requested or approved setback(s); however, the attached survey shows that the system is approximately 5'-6' from Township Right-of-Way and approximately 8' from the north property boundary (side yard) where the required setbacks are 10'. Staff is not aware of any other Variances granted to this property.

SITE ANALYSIS

The subject site is generally located approximately one mile westerly of the intersection of Rush Lake Trail / CSAH 1 and Belle Isle Drive between Belle Isle Drive and East Rush Lake. The top adjacent image shows the existing dwelling and detached garage in October 1982, whereas the bottom adjacent image shows the existing structures in June 2011. The structures appear largely unchanged between 1982 and 2011. Staff is unaware of the exact year of original construction.

The attached survey shows that the .30± acre subject site is approximately 75' wide and approximately 171.5' deep (average of north and south property boundaries). The property, having been platted as Lot 16, LaBelle Isle in 1959, is deemed legal non-conforming due to the fact that the lot area and lot width do not meet current standards.

The application materials do not provide setbacks for the existing dwelling and detached garage; however, based on aerial imagery, it appears that the dwelling meets all required setbacks. If there are any encroachments, it's likely that it would be encroaching on the required OHWL setback by a few feet. It appears that the existing detached garage meets all required setbacks. If there are any encroachments, it's likely that



it would be encroaching on the required north side yard setback by 1'-2'. Staff cautions that the County's GIS Viewer is not 100% accurate and staff's findings are only estimates.

Topography of the subject site includes fairly level elevations ranging from 915' near the shoreline of Rush Lake to 920' in the extreme southwesterly corner adjacent to the Township Right-of-Way. While the easterly 1' – 6' of the site are located within a FEMA flood zone, none of the existing or proposed structures are located in the flood zone.

The existing amount of impervious surface coverage is reported by the property owners and applicant to be 28.67%, which exceeds the maximum allowable amount of 25%. Rather than requesting a Variance to exceed the maximum allowable amount of impervious surface coverage, the property owners and applicant are proposing to reduce the amount of impervious surface to be at or below 25%. The application materials suggest that pervious materials, such as pervious pavers, will be used for surfaces like the driveway and patio.

A septic compliance inspection was completed on September 9, 2024 and the system was found to be compliant and sized appropriately for the proposed two-bedroom dwelling.

The subject site is located within the County's Rural Residential I (RRI) District / Shoreland Management District as are other lakeshore properties to the north and south; and, properties to the west are located within the Rural Residential II (RRII) District / Shoreland Management District. Surrounding lakeshore properties appear to be similarly sized, whereas properties to the west are significantly larger. All surrounding properties have been developed for residential purposes.

PROPOSAL ANALYSIS

The attached application materials indicate that the property owners would like to demolish the existing dwelling and detached garage and redevelop the property by constructing a new dwelling with attached garage. The existing dwelling and detached garage are reported to be 1,321 sf and 650 sf respectively; whereas, the proposed dwelling and attached garage are reported to be 1,689 sf and 945 sf respectively. The application materials show and describe that the property owners are seeking a Variance allowing for a reduced setback from OHWL. The required setback is 75' and the property owners are seeking approval for a 49' setback / 26' Variance.

The original application materials, submitted on August 29, 2024, suggested that the proposed structure would be 59' from OHWL; however, it was later discovered that, with this proposed setback, the proposed structure would be 10' from the existing compliant septic system where the required setback is 20'. Options were discussed during the September 11, 2024 Technical Review Committee meeting, and the property owners ultimately opted to shift the location of the structure 10' closer to the OHWL and submitted updated application materials (survey / site plan and written narrative) on September 13, 2024.

The property owners have provided a written narrative to explain what they're hoping to accomplish through the Variance process. The narrative also addresses the State mandated practical difficulty standard by suggesting that the request is **reasonable** in that the size of the lot and the required setback from the septic system limit the size of the proposed dwelling and the property owners have made effort to keep the proposed footprint as small as possible; the **uniqueness** of the property is that the subject site and surrounding lakeshore properties on Belle Isle Drive are small (another way of describing "pre-existing development"); and, the design of the proposed dwelling will fit the architecture or **essential character** of the neighborhood and possibly enhance the neighborhood. Further, the property owners have described the current state of the neighborhood by explaining that over 90% of the dwellings on the lake side of Belle Isle Drive encroach on the required OHWL setback and the proposed dwelling will have a somewhat similar setback from OHWL as adjacent dwellings. Staff is not immediately familiar with these other properties and OHWL setback encroachments; however, it's presumed that some encroachments are considered to be legal non-conforming (i.e., properties developed prior to the County's adoption of official land use controls) while others have likely been approved by Variance.

The property owners have provided impervious surface calculation worksheets for existing and proposed conditions. While the existing amount of impervious surface coverage is shown to be 28.67%, the property owners and applicant have made effort to reduce the overall proposed amount of impervious surface coverage to 24.3%. This reduction will be achieved by using pervious pavers for the patio and a pervious material for the driveway.

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

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	Structures – 40'	Dwelling – Approximately 46'
Ordinary High Water Level (OHWL) Setback	Structures – 75'	Dwelling – 49'
Side Yard Setback	Dwellings – 10'	Dwelling – Approximately 13' from north property boundary and 10' from south property boundary
Impervious Surface Coverage	25%	24.3%

REVIEW PROCESS

The Technical Review Committee met with Tim Jansen on September 11, 2024. County Sanitarian Davidsavor noted that a passing septic compliance inspection had been completed on September 9, 2024. The Committee identified that the proposed dwelling was located too close to the existing septic system and discussed options (i.e., shifting dwelling

closer to OHWL or amending Variance request to allow for a reduced setback from the septic system). Jansen indicated that the most likely and preferred option would be shifting the proposed dwelling closer to the OHWL. The Committee did not identify any other immediate concerns with the request.

The Nessel Town Board considered the request on September 10, 2024 and recommended approval with no comments or conditions. Staff notes that the Town Board considered the original request (59' setback from OHWL) and not the updated request (49' from OHWL).

The State mandated 60-day review period will expire on November 2, 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 application materials cite lot size as an exceptional or extraordinary circumstance. The subject site was platted in 1959, prior to the County's adoption of official land use controls, and does not meet current dimensional standards. In other words, the subject site is considered to be substandard or legal non-conforming. The County refers to this circumstance as pre-existing development. The property owners had no control over this circumstance.

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

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

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

The circumstance of pre-existing development is not a result of actions of the current property owners or any previous owners under the current Zoning and Shoreland Management Ordinances. The subject site was platted in 1959 which was well before the County adopted official land use controls.

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

Dwellings are a Permitted Use in the RRI District / Shoreland Management District; therefore, the Variance is not considered a use Variance.

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

Being that the subject site is currently developed in a manner which meets – or nearly meets – all required setbacks and the existing dwelling appears to meet or exceed the County's current size requirements, staff believes that the property could be redeveloped with a lesser Variance request. However, the application materials indicate that the property owners have made a conscious effort to keep the dwelling footprint as small as possible and they've described the character of the surrounding area such that the proposed OHWL setback is similar to surrounding dwellings.

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

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance related to the property, and when it will not alter the essential character of the surrounding area. Staff believes that the request is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the property owners have made an effort to comply with the County's required Township Right-of-Way, side yard, and septic system setbacks; that the subject site is unique in that it was platted prior to the County's adoption of official land use controls; and, that the proposed redevelopment will fit the essential character of the subject site and surrounding residential lakeshore neighborhood. Further, staff does not believe that the Variance, if approved, would be detrimental to other properties in the RRI District / Shoreland Management District.

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

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

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

While the east 1' – 6' of the subject site are located within a flood district, the proposed dwelling is located well outside of the flood district.

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

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

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

1. Reasonableness

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

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical

characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the Variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

3. Essential Character

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

FINDINGS OF FACT

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

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 The proposed dwelling will be situated more than 10' from the northerly property boundary and 10' from the southerly property boundary (side yards where the required setback is 10'), bordered by a public roadway along the western property boundary and bordered by a public body of water along the eastern property boundary. The County finds that the proposed dwelling will be sufficiently distanced from neighboring properties 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 use of the property will not change from the existing residential use. Therefore, the County finds no evidence to suggest that the proposed use will increase the amount of traffic generated at the subject site or increase the amount of congestion on Belle Isle Drive. Further, the Nessel Town Board, serving as Road Authority, did not indicate any concern with the impact on Belle Isle Drive after reviewing the request on September 10, 2024.

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

Finding #3 The property owners will be required to obtain a building permit prior to construction of the proposed dwelling, 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 subject site is currently developed with a dwelling and detached garage. The proposed dwelling and attached garage will not change how the property is being used and the proposed structure will meet and/or exceed the required northerly and southerly side yard setbacks where there is greatest potential for impacting surrounding properties. Therefore, the County finds no evidence to suggest that the proposed redevelopment of the subject site will have any negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed 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 County finds no evidence to suggest that the proposed action of redevelopment will have any negative fiscal impact on the County or school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 allows dwellings as a Permitted Use in the RRI District. Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 provide required setbacks applicable to the subject site. While the property owners are seeking approval for a reduced Ordinary High Water Level setback, the Zoning Ordinance and Shoreland Management Ordinance allow for such Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the property owners have made an effort to comply with the County's required Township Right-of-Way, side yard, and septic system setbacks; that the subject site is unique in that it was platted prior to the County's adoption of official land use controls; and, that the proposed redevelopment will fit the essential character of the subject site and surrounding residential lakeshore neighborhood.*

STAFF RECOMMENDATION

While staff does believe that the property owners and applicant have the ability to reduce the size of the dwelling and/or redesign the layout of the dwelling in an effort to lessen the Variance request, staff also recognizes that the requested Variance is consistent with past Variances granted by the Board. Therefore, barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff recommends approval** of the requested Variance with draft Findings of Fact (see above) and recommended conditions (see below) and has prepared a resolution for the Board's consideration.

Recommended conditions:

1. This approval grants a 26' Variance to the Ordinary High Water Level (OHWL) setback requirement, allowing the proposed dwelling with attached garage to be located no closer than 49' to OHWL. The dwelling with attached garage shall comply with all other required structural setbacks. Any deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
2. Through redevelopment of the subject site, the permit holder shall reduce the overall amount of impervious surface coverage from the reported amount of 28.67% to 25% or less.
3. The permit holder shall obtain a building permit prior to construction and, further, the dwelling 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.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended.
2. **Deny** the Variance based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
 - a. The request for Variance, as presented, is not consistent with the Chisago County Zoning Ordinance due to _____.
 - b. The proposed Variance will have a negative impact to surrounding properties due to _____.
 - c. The request for Variance, as presented, does not meet the threshold for "practical difficulty" as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.

3. **Table** action to allow for further review and consideration. The current review period expires on November 2, 2024, allowing the Board to continue its review at the October 31, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-0901, a resolution approving a Variance allowing a reduced Ordinary High Water Level setback on property located at 52045 Belle Isle Drive in Nessel Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narratives
 - i. August 29, 2024
 - ii. August 30, 2024
 - iii. September 13, 2024
 - c. Surveys / site plans
 - i. August 29, 2024
 - ii. September 13, 2024
 - d. Building plans
 - e. Impervious surface calculation worksheets
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-0901



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-1762

Township Nessel Township S/T/R S15-T 37-R 22 PID# 0600983.00

Project Address 52045 Belle Isle drive Rush city MN 55069

Property Owner(s) Timothy + Barbara Jansen

Mailing Address (If Different from Project Address) 15807 Martin St. NW Andover MN 55304

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Bigfork Valley Log Cabins LLC

Mailing Address (If Different from Project Address) 1275 West 4th St. Rush City MN 55069

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) New home see attached plan +

Survey

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

☒ Full Legal Description

☒ Detailed Site Plan

☒ Detailed Written Narrative

☒ Plat Drawings

Tim Jansen
Applicant Signature

8/29/24
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Fees

Base Fee

\$ 600

Recording Fee

\$ 46

Plat Fee - No Road(s) / With Road(s)

\$ _____

Septic Compliance Fee

\$ _____

Wetland Fee

\$ _____

TOTAL FEE

\$ 646

Dates

Application Received

8-29-24

Application Complete

9-3-24

60/ 120 Day Review Period

11-2-24

Extended Review Period



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Nessel SIT/R S15/T 37/R-22 PID# 0600983.00
Project Address 52045 Belle Isle drive Rush City MN 55069
Property Owner(s) Timothy + Barbara Jansen
Mailing Address (if Different from Project Address) 15807 Martin St. NW Andover MN 55304
Phone# [REDACTED] Email [REDACTED]
Applicant(s) Barb + Tim Jansen + Bigfork Valley Log Cabins LLC
Mailing Address (if Different from Project Address) 1275 W 4th St. Rush City MN 55069
Phone# [REDACTED] Email [REDACTED]

Type of Request (Check All That Apply)

- | | |
|---|---|
| ☒ Board of Adjustment & Appeals | ☐ Planning Commission |
| ☒ Variance | ☐ Conditional Use Permit (CUP) |
| ☐ Administrative Appeal | ☐ Interim Use Permit (IUP) |
| | ☐ Amendment to CUP or IUP |
| | ☐ Preliminary Plat |
| | ☐ Rezoning |
| | ☐ Ordinance Amendment |

Description of Request (Attach Separate Sheet if Necessary) Variance for setback see description

x Tim Jansen
Applicant Signature

8/29/24
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Date of County Public Hearing SEPT 26, 2024 Date of Township Presentation SEPT 10, 2024

Township Action Taken (Township Use Only)

- ☒ Recommendation of Approval ☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Signatures of Township Officials or Authorized Personnel

Michelle Meis Brad Munn
Dan Smith Steve Smith

Practical Difficulties

1. Reasonableness: The property owner proposes to demolish the existing home and build a new retirement home on the property. Because of the size of the lot and the setback required from the septic we are limited in size for the new home. The proposed house will have almost identical impervious surface as the existing home and will encroach more on the lake setback than the current structure but will leave more room for septic setbacks and side yard setbacks. The new house has only one bedroom on the main level to create as small of a footprint as possible on the main level. We are also using the area above the garage to get enough space for the family when they visit.
2. Uniqueness: The uniqueness of the property is an issue for all households on the lakeside of Belle Isle drive. The lots are small, and many are being converted to permanent residents. This property was not developed by the homeowner, and they cannot control the size of the lot.
3. Essential Character: The new construction home will fit the character of the existing neighborhood. If anything, it will enhance the character of the neighborhood. The new home will match the setback of the house to the north and sit back about 20' further from the lake than the house to the south.

Variances application guide.

1. Is there another feasible method to alleviate the need for a Variance and, if not, is the Variance requested the minimum Variance which would alleviate the practical difficulty? *We believe that we have designed a house that fits the lot with the current setbacks from the septic and side yard while being able to save the trees. Though we do encroach on the lakeside we are still 20' behind the current setback of the home to the south of us. And we are almost identical to the setback of the house to the north. We have designed the home so that the patio does not encroach any further towards the lake.*
2. How substantial is the requested variation from the requirements of the zoning ordinance. *The current plan would be a 59' setback from the lake to meet the 10' from the setback and 40' from the road. The impervious surface would be 28% within a ½ point of the current impervious coverage of the existing home.*

3. Would Variance approval affect a substantial change in the character of the neighborhood or result in any significant detriment to the neighboring properties? *We believe the variance approval would not effect any substantial change to the character of the neighborhood and would not result in any significant detriment to the neighboring properties. We believe the new home design will fit right in with the current architecture in the area.*
4. Did this landowner or the previous landowner create the need for the Variance? If so, does the need for a Variance arise from an owner's actions under the current regulation? The original developer created the need for the Variance by the placement of the road. The current owner's plan is to build a 1-bedroom home on the main level and there isn't enough room with a 40' setback from the road and a 75' setback from the lake and a 10' setback from the septic to make any other design feasible.
5. Are economic conditions or circumstances cited as reasons for the Variance request? Are economic circumstances the sole reason for seeking a Variance? *No*
6. Do exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zoning district: Examples of exceptional or extraordinary circumstances may include such things as lot size or shape, topography, or other circumstances over which the property owners, since enactment of the relevant ordinance, have had no control. *We believe almost all homes on this road have extraordinary circumstances that have applied since the enactment of the relevant ordinance and the homeowner has no control. Of the 50 houses on this road only 3 meet the setback under the current ordinance from what we have found on the GIS system.*
7. Would literal interpretation of the provisions of the zoning ordinance deprive the applicant of rights commonly enjoyed by other properties in the same district under the strictly applied terms of this ordinance. *We believe yes to this question. Many of the homes in the area encroach much more than the current home we are asking for approval. We believe we are not asking for anything that most homes on this street don't currently enjoy.*
8. Will granting the Variance result in allowing a use otherwise not permitted in the same district? *No*
9. Would Variance approval be materially detrimental to the purposes of the zoning ordinance or to property in the same zoning district? *We believe the answer to be no.*
10. Does reasonable use of the property exist under the terms of the zoning ordinance without Variance approval? If not, define "reasonable use" in the context of the immediate area and properties in the same zoning district. *Again, we believe no,*

many homes in this district have what we are asking for closer than we are to the lake. We believe we are not asking for anything that is out of the ordinary. We would like to build a year round home on our current lot for retirement.

11. Would the approval permit a lower degree of flood protection than the regulatory flood protection elevation for this area or permit standards lower those required by state law? *No*
12. Considering all of the above factors, would denying a Variance serve the interests of justice? *We believe no, to recap over 90% of the homes on the lake side of this road encroach on the lake and are well inside the setback. The proposed home will be closer to the lake than the current allowed setback but will be farther than most homes on the street. Our impervious surface coverage will change by less than a point. We believe we have tried to design a home that would fit as close as possible while still meeting the setbacks for the septic, road and lake. Also designing a home that keeps the mature trees as much as possible on the lot and fits in with the design and look of neighboring homes.*

Thank you for considering our application for the variance.

encroach the lake any more than the current deck and will not change impervious surface %.

Thanks for considering our application for a variance.

Homeowner: Tim Jansen

Date: 8/29/24

Homeowner: BARB JANSSEN

Date: 8/29/24

Builder: [Signature]

Date: 8/29/24

Written Narrative
August 30, 2024

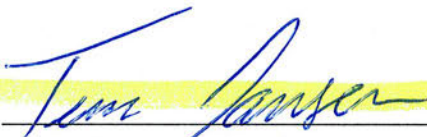
Description for Variance Request 52045 Belle Isle Drive Rush City MN 55069

PID# 0600983.00

We are asking for a Variance for a 59' setback from the lake. We have reduced the blacktop driveway to now being a pervious surface. We have also cut back the garage by 2' to get under the 1000sf garage allowable. The new garage will be 945sf. We have also changed the patio from concrete to a pervious paver on the rear of house to keep us under the 25% impervious surface request. See impervious worksheet calculation.

As far as the 59' setback variance request we have worked extensively with the draftsman to design the house to meet the road, septic, side yard and water setbacks. The house has 1 bedroom on the main. It is difficult to meet the required setback while being able to have a garage and home. We have done our best to be as far from the lake as possible all while meeting all other setbacks and still being able to build our retirement home. As you will read in the rest of our writings, out of the 50 homes on Belle Isle drive only 3 that we can find meet the 75' setback and many of the homes on this road have been built recently. Our proposed setback is behind our neighbor by over 20'. Some homes have patios as close as a few feet from the OHWL

Homeowner:



Date:

8/30/24

Homeowner:



Date:

8/30/24

Tim & Barb Jansen

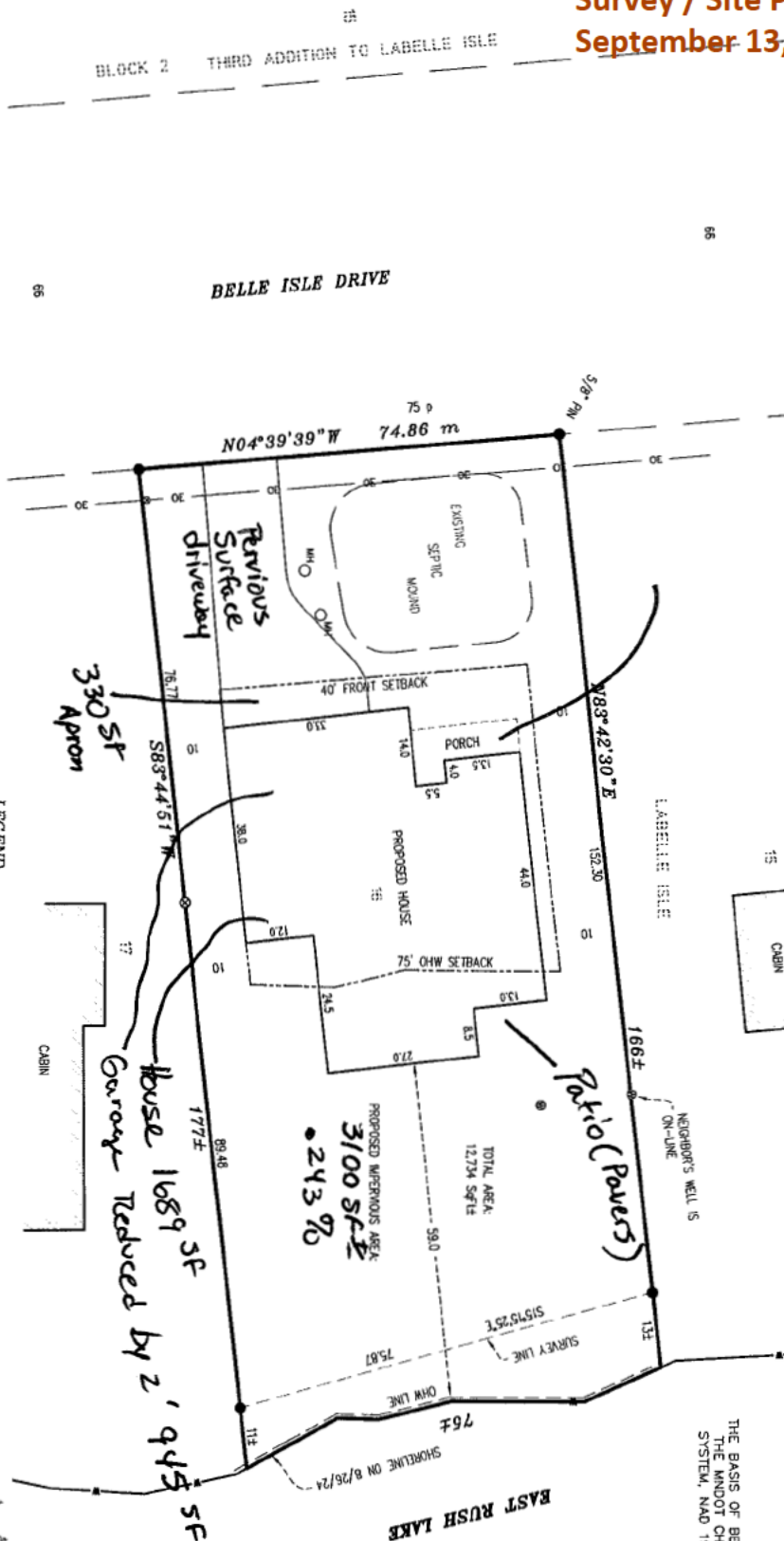
Set Back Variance Amendment (PID 06.00983.00)

The current variance has the structure 10 feet from the inside of block on mound system, to meet the 20 foot set back requirement we would like to submit an amendment to move the structure forward 10 feet. This would change the shoreline set back from 59 feet to 49 feet. This would put the structure approximately 10 feet in front of the neighboring home on the north side and put the structure approximately 14 feet behind the neighboring home on the south side.

Description of Surveyed Property

Notes to Survey:

- THE BASIS OF BEARINGS FOR THIS DRAWING IS
THE MNDOT CHISAGO COUNTY COORDINATE
SYSTEM, NAD 1983, HARN 1996 ADJUSTMENT



Dated this 27th day of August, 2024

By: Tyler J. Kroschel, Land Surveyor
Minnesota License No. 44490

LEGEND

●	DENOTES	1/2" IRON PIPE FOUND, MARKED LS 44655
●	DENOTES	1/2" REBAR SET, MARKED KROSCH 44490
○	DENOTES	SEPTIC MANHOLE
○	DENOTES	OVERHEAD ELECTRIC LINE
○	DENOTES	POWER POLE
○	DENOTES	WELL
○	DENOTES	MEASURED DISTANCE
○	DENOTES	PLATTED DISTANCE

Kroschel Land Surveyors, Inc.

1639 Main Street North, Suite 6, Pine City, MN 55063
Phone: 320-629-3267 tyler@kroschelsurvey.com

CERTIFICATE OF SURVEY FOR

TIM JANSEN

Description of Surveyed Property:

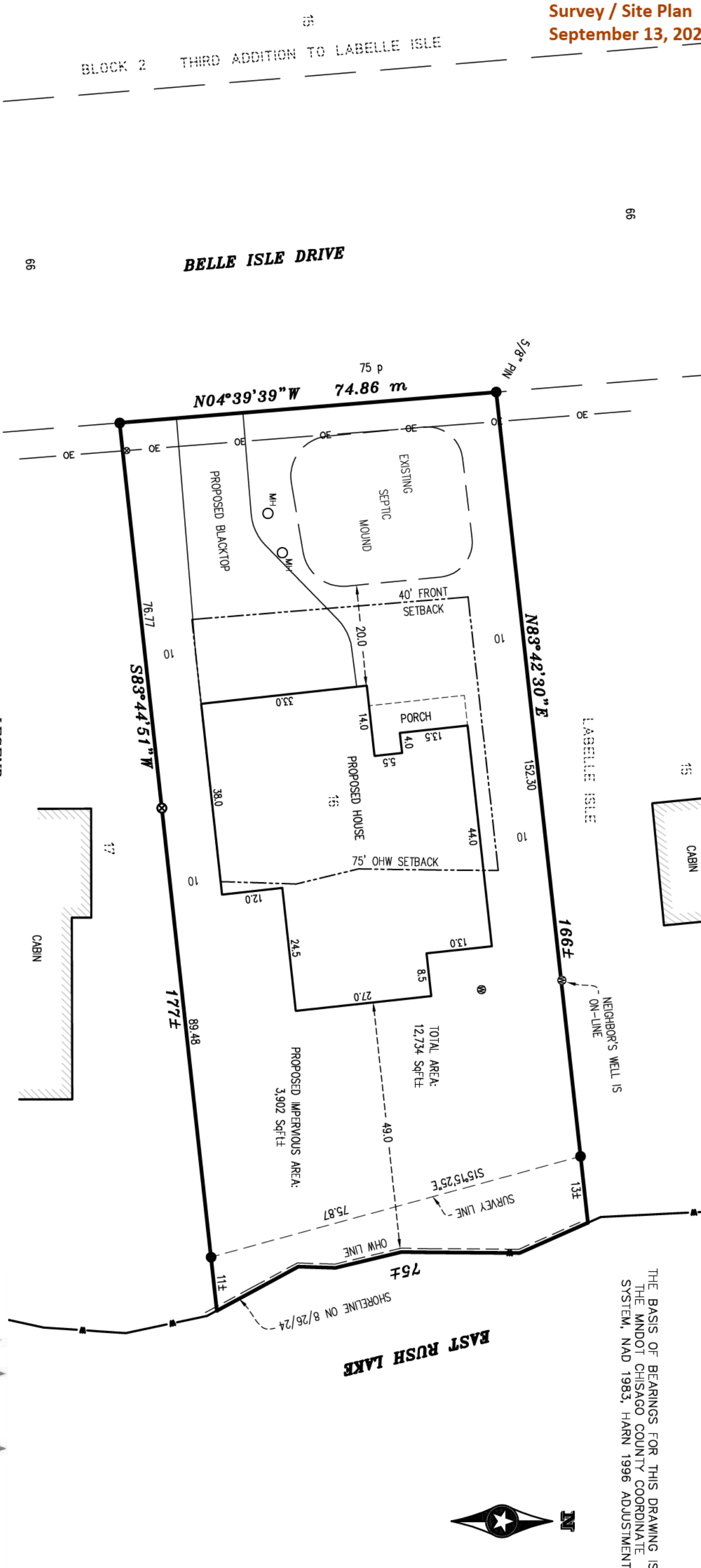
Lot 16, LABELLE ISLE, Chicago County, Minnesota.

Notes to Survey:

1. For the purposes of this survey, existing easements of record were not researched.

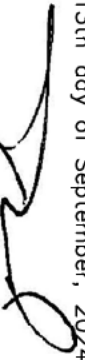
THE BASIS OF BEARINGS FOR THIS DRAWING IS THE MNDOT CHICAGO COUNTY COORDINATE SYSTEM, NAD 1983, HARN 1996 ADJUSTMENT

Survey / Site Plan
September 13, 2024



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Dated this 13th day of September, 2024

By: 
Tyler J. Kroschel, Land Surveyor
Minnesota License No. 44490

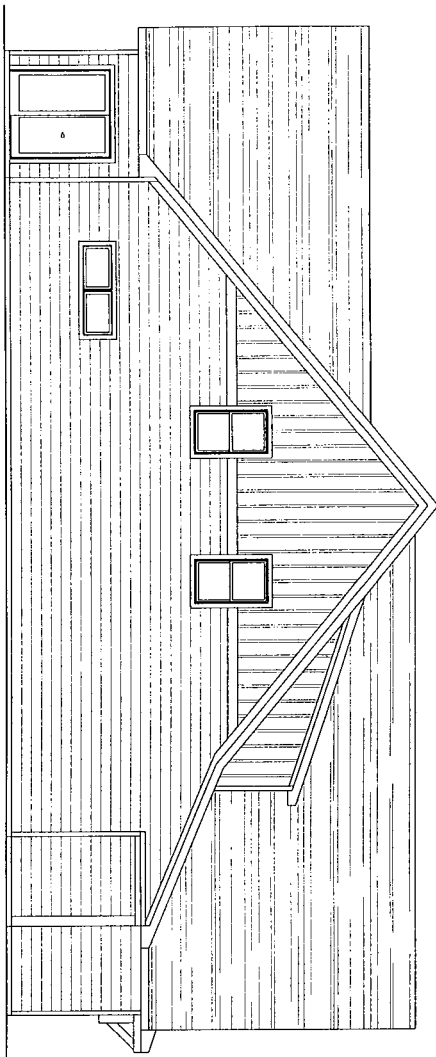
LEGEND

- DENOTES 1/2" IRON PIPE FOUND, MARKED LS 44655
- ⊗ DENOTES 1/2" REBAR SET, MARKED KROSCHER 44490
- DENOTES SEPTIC MANHOLE
- DENOTES OVERHEAD ELECTRIC LINE
- ⊕ DENOTES POWER POLE
- ⊕ DENOTES WELL
- DENOTES MEASURED DISTANCE
- "m" DENOTES PLATTED DISTANCE
- "p" DENOTES

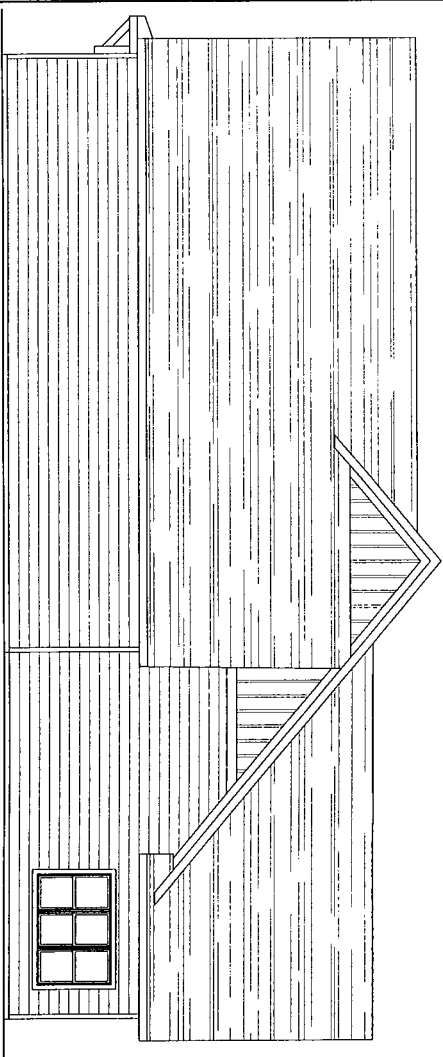


Kroschel Land Surveyors, Inc.

1639 Main Street North, Suite 6, Pine City, MN 55063
Phone: 320-629-3267 tyler@kroschelsurvey.com



LEFT ELEVATION
SCALE 1/4" = 1' (1/2" SCALE ON ROOF)



RIGHT ELEVATION
SCALE 1/4" = 1' (1/2" SCALE ON ROOF)

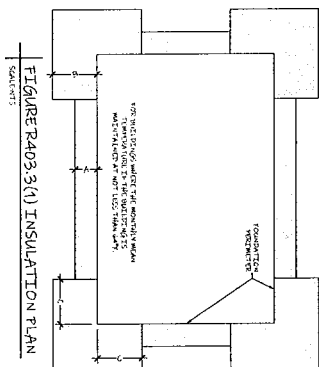


FIGURE RA03.3(1) INSULATION PLAN
SCALE 1/4" = 1'

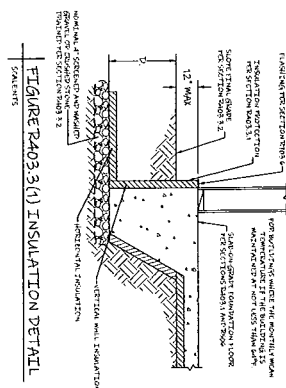
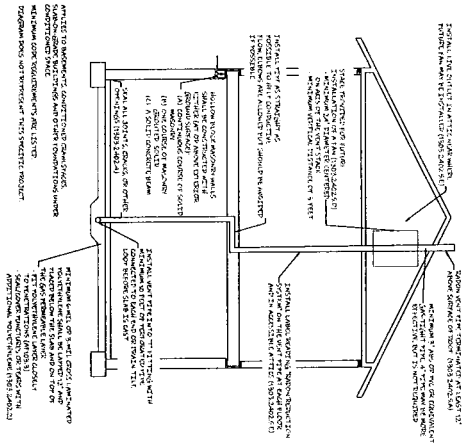


FIGURE RA03.3(1) INSULATION DETAIL
SCALE 1/4" = 1'

INSULATION PLACEMENT LIST (SEE "NOTES" FOR DETAILS) (SEE "NOTES" FOR DETAILS)									
AREA	INSULATION TYPE	THICKNESS	NOTES	AREA	INSULATION TYPE	THICKNESS	NOTES	AREA	INSULATION TYPE
1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
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1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
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1000	1000	1000	1000	1000	1000	1000	1000	1000	1000

NOTES:
1. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
2. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
3. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
4. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
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6. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
7. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
8. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
9. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.
10. ALL INSULATION SHALL BE TYPE "XPS" POLYSTYRENE.

TABLE RA03.3(1)
SCALE 1/4" = 1'



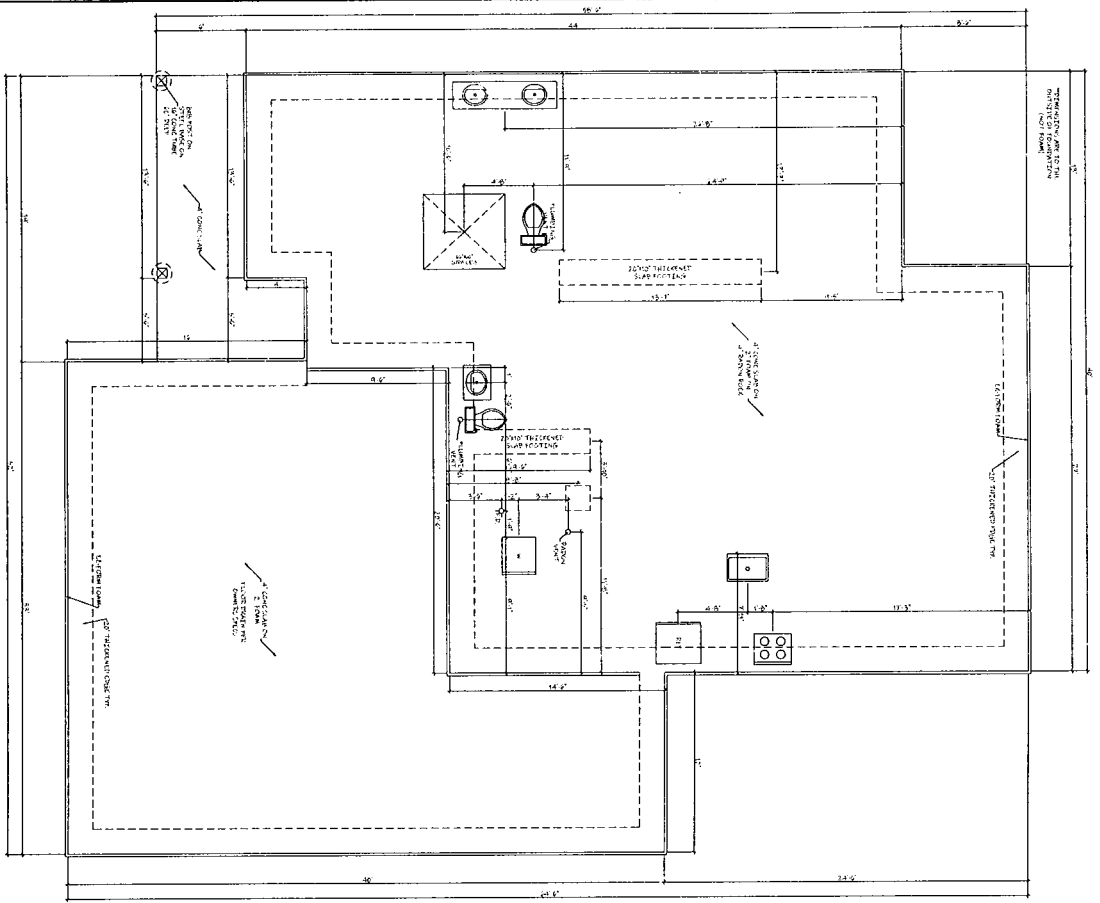
PASSIVE RADON SYSTEM
SCALE 1/4" = 1'

DISCLAIMER
THESE DRAWINGS ARE THE PROPERTY OF E.M.E. DRAFTING. NO PART OF THESE DRAWINGS SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM E.M.E. DRAFTING.

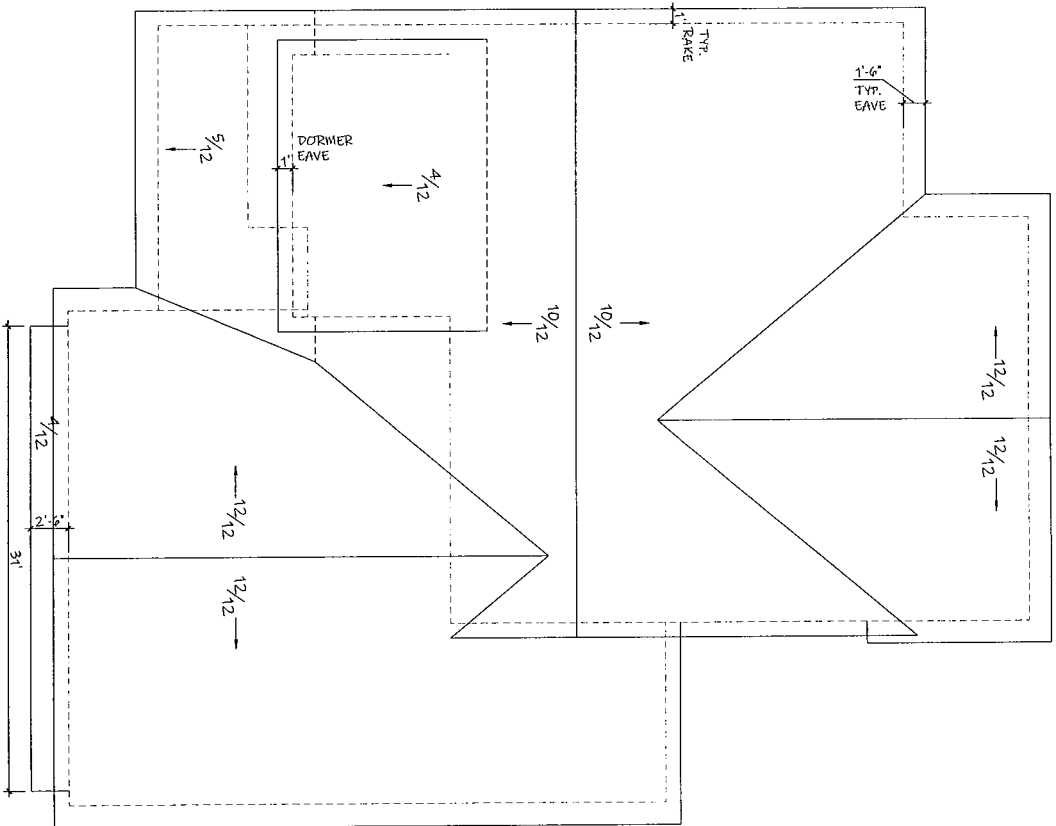
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E.M.E. DRAFTING

JANSEN
52045 BELLE ISLE DR
RUSH CITY, MN 55069

DATE: 5/6/24
BY: JANS
CHECKED: JANS
APPROVED: JANS
SCALE: 1/4" = 1'
ELEVATIONS: 2
A2



FOUNDATION PLAN
SCALE 1/4" = 1' (1/2 SCALE ON T117)



ROOF PLAN
SCALE 1/4" = 1' (1/2 SCALE ON T117)

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

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

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	1321	=	
garage	650	=	
deck	8	=	
patio	550	=	
sidewalk		=	
driveway	1130	=	
other; list:		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3651

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

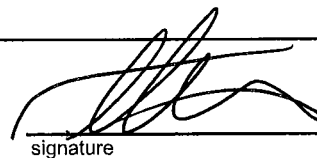
Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:		=	
		=	
TOTAL OTHER ITEMS			

Existing Home
Per GIS

Calculate:

Total from "Residential Structures":	_____	+
Total from "Agricultural Structures":	_____	+
Total from "Other Items":	_____	+
Total square footage of coverage:	3651	=
(divide by total area of parcel, above)	12734	/

TOTAL IMPERVIOUS SURFACE **0.2867 28.67** %


signature

8/28/24
date

corresponding permit number

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

	square feet		Total area of
acres:	per acre:		parcel in square
			feet
	x 43,560	=	12,734

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	1689	=	1689
garage	1011	=	1011
Porch deck	136	=	136
patio	110	=	110
sidewalk	47	=	47
driveway	580	=	58
other; list:		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3573

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

*Proposed
See Attached
Survey*

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:		=	
		=	
TOTAL OTHER ITEMS			

Calculate:

Total from "Residential Structures": _____ +
 Total from "Agricultural Structures": _____ +
 Total from "Other Items": _____ +
Total square footage of coverage: 3573 =
 (divide by total area of parcel, above) 12,734 /

TOTAL IMPERVIOUS SURFACE .28 (28) %

[Signature]
signature

8/29/24
date

corresponding permit number

Timothy & Barbara Jansen and Bigfork Valley Log Cabins, LLC –
Property owners Timothy & Barbara Jansen and applicant Bigfork Valley Log Cabins, LLC are requesting a Variance allowing for a reduced setback from the Ordinary High Water Level of Rush Lake for the purpose of redeveloping the property with a new dwelling. The .30± acre subject site is zoned Rural Residential I (RR) District / Shoreland Management District and located at 52045 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00983.00).



Timothy & Barbara Jansen and Bigfork Valley Log Cabins, LLC –
Property owners Timothy & Barbara Jansen and applicant Bigfork Valley Log Cabins, LLC are requesting a Variance allowing for a reduced setback from the Ordinary High Water Level of Rush Lake for the purpose of redeveloping the property with a new dwelling. The .30 ± acre subject site is zoned Rural Residential I (RR) District / Shoreland Management District and located at 52045 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00983.00).



RESOLUTION NO. BOAA2024-0901

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY,
MINNESOTA, APPROVING A VARIANCE ALLOWING A REDUCED ORDINARY HIGH WATER LEVEL
SETBACK ON PROPERTY LOCATED AT 52045 BELLE ISLE DRIVE IN NESSEL TOWNSHIP**

WHEREAS, property owners Timothy Jansen & Barbara Jansen and applicant Bigfork Valley Log Cabins, LLC submitted an application dated received August 29, 2024 and considered complete on September 3, 2024 for a Variance to Chisago County Shoreland Management Ordinance Section 5.21; and

WHEREAS, the property owners and applicant wish to demolish or otherwise remove the existing dwelling and detached garage and construct a new dwelling with attached garage closer to the Ordinary High Water Level than allowed by the Shoreland Management Ordinance; and

WHEREAS, the .30-acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 06.00983.00

Lot Sixteen (16), LaBelle Isle, according to the plat thereof on file and of record in the office of the Registrar of Titles in and for Chisago County, Minnesota. Subject to covenants and restrictions set forth in that certain restrictive covenant dated June 30, 1960 and filed in Book R of Miscellaneous, Pages 191 & 192, in the office of the Register of Deeds in and for said County.

WHEREAS, notice was provided and on September 26, 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/or applicant, and invited members of the public to comment; and

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

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 *The proposed dwelling will be situated more than 10' from the northerly property boundary and 10' from the southerly property boundary (side yards where the required setback is 10'), bordered by a public roadway along the western property boundary and bordered by a public body of water along the eastern property boundary. The County finds that the proposed dwelling will be sufficiently distanced from neighboring properties 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 use of the property will not change from the existing residential use. Therefore, the County finds no evidence to suggest that the proposed use will increase the amount of traffic generated at the subject site or increase the amount of congestion on Belle Isle Drive. Further, the Nessel Town Board, serving as Road Authority, did not indicate any concern with the impact on Belle Isle Drive after reviewing the request on September 10, 2024.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed dwelling, 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 subject site is currently developed with a dwelling and detached garage. The proposed dwelling and attached garage will not change how the property is being used and the proposed structure will meet and/or exceed the required northerly and southerly side yard setbacks where there is greatest potential for impacting surrounding properties. Therefore, the County finds no evidence to suggest that the proposed redevelopment of the subject site will have any negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed 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 County finds no evidence to suggest that the proposed action of redevelopment will have any negative fiscal impact on the County or school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and Zoning Ordinance Section 5.08 allows dwellings as a Permitted Use in the RRI District. Zoning Ordinance Section 5.15 and Shoreland*

Management Ordinance Section 5.21 provide required setbacks applicable to the subject site. While the property owners are seeking approval for a reduced Ordinary High Water Level setback, the Zoning Ordinance and Shoreland Management Ordinance allow for such Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the property owners have made an effort to comply with the County's required Township Right-of-Way, side yard, and septic system setbacks; that the subject site is unique in that it was platted prior to the County's adoption of official land use controls; and, that the proposed redevelopment will fit the essential character of the subject site and surrounding residential lakeshore neighborhood.

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

- 1. This approval grants a 26' Variance to the Ordinary High Water Level (OHWL) setback requirement, allowing the proposed dwelling with attached garage to be located no closer than 49' to OHWL. The dwelling with attached garage shall comply with all other required structural setbacks. Any deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
- 2. Through redevelopment of the subject site, the permit holder shall reduce the overall amount of impervious surface coverage from the reported amount of 28.67% to 25% or less.
- 3. The permit holder shall obtain a building permit prior to construction and, further, the dwelling 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.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 26th day of September, 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 Intensify a Non-Conforming Structure and Exceed the Maximum Allowable Amount of Impervious Surface Coverage
 52205 Belle Isle Drive, Nessel Township
 DATE: September 26, 2024

ACTION TO CONSIDER

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

SITE & APPLICATION INFORMATION

Property Owner(s): Jeffrey J. Stoks and Peggy A. Stoks Trust
 Applicant(s): Bigfork Valley Log Cabins, LLC
 Property Address: 52205 Belle Isle Drive
 Nessel Township
 General Location: Section 15, Township 32, Range 22
 PID: 06.00972.00
 Property Area: .32± Acres
 Current Zoning: Rural Residential I (RRI) District / Shoreland Management District
 Adjacent Zoning:
 North: Rural Residential I (RRI) District / Shoreland Management District
 South: Rural Residential I (RRI) District / Shoreland Management District
 East: East Rush Lake
 West: Rural Residential II (RRII) District / Shoreland Management District
 Date Application Received: August 29, 2024
 Date Application Complete: September 4, 2024
 60-Day Review Period: November 3, 2024

BACKGROUND

Property owner Jeffrey J. Stoks and Peggy A. Stoks Trust and applicant Bigfork Valley Log Cabins, LLC wish to remove an existing 12' x 24' deck and replace it with a 12' x 24' three-season porch in the same location as the deck. Additionally, because the property

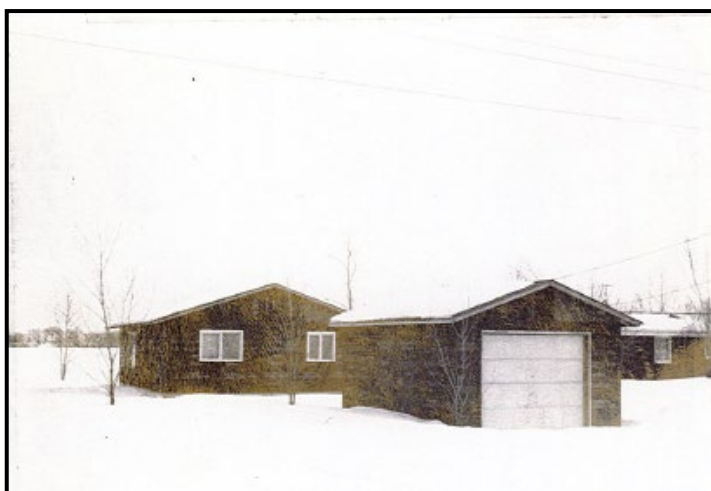


currently exceeds the maximum allowable amount of impervious surface coverage, the property owner and applicant have also requested Variance approval for the existing amount of 29.5%.

SITE ANALYSIS

The .32± acre subject site is generally located east of the intersection of Belle Isle Drive and 521st Street and immediately west of East Rush Lake in Nessel Township. The attached survey (labeled “New Survey”) shows that the subject site is 75’ wide and approximately 197.5’ deep (average of north and south property boundaries). The property, having been platted as Lot 5, LaBelle Isle in 1959, is deemed legal non-conforming due to the fact that the lot area and lot width do not meet current standards.

The top adjacent image shows how the subject site was developed in March 1975 and the bottom adjacent image shows how the subject site was developed in February 2014 after having been granted a Variance in May 2013 to redevelop the subject site with a dwelling closer to the Ordinary High Water Level (OHWL) than required by ordinance (60’ rather than the required 75’). The 2013 Variance approval also specifically allowed for a deck to be 48’ from OHWL. The amount of proposed impervious surface coverage in 2013 was 24.86%, which was just slightly less than the maximum allowable amount of 25%. Staff notes that the attached survey, labeled “New Survey” shows the existing deck to be as close as 41.8’ from OHWL rather than the approved setback of 48’. Staff is not aware of the reason(s) for the existing dwelling and deck being closer to OHWL than allowed by the 2013 Variance; however, with the current Variance request, the proposed three-season porch will be located no closer to the OHWL than the existing deck.



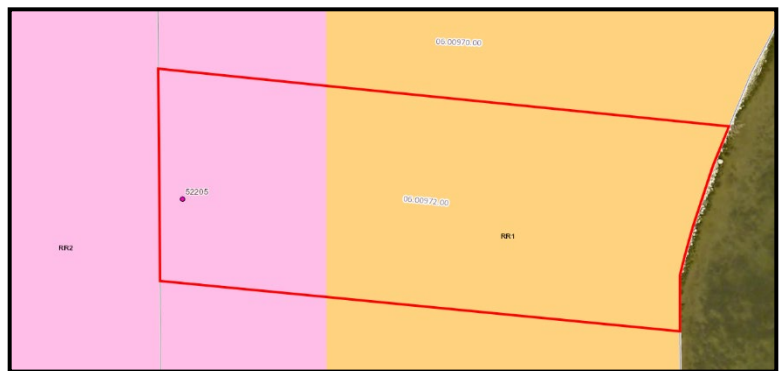
The existing amount of impervious surface coverage is reported by the property owner and applicant to be 29.5%, which is 4.5% greater than the maximum allowable amount of 25%. Rather than opting to eliminate some of the existing impervious surface in order to bring the subject site into compliance, the property owner has requested Variance approval to maintain the existing amount.

Topography of the subject site includes fairly level elevations ranging from 915' near the shoreline of Rush Lake to 919' along the west property boundary adjacent to the Township Right-of-Way. While the easterly 3' – 8' of the subject site are located within a FEMA flood zone, the existing dwelling and proposed three-season room are located entirely outside of the flood zone.

A septic compliance inspection was completed on September 9, 2024 and the system was found to be compliant and sized appropriately for the existing dwelling.

The subject site is located within the County's Rural Residential I (RRI) District / Shoreland Management District as are other lakeshore properties to the north and south; and, properties to the west are located within the Rural Residential II (RRII) District / Shoreland Management District. Staff notes that the subject site technically has a split zoning classification of RRI District (shown in yellow in the adjacent image) and Rural Residential II (RRII) District (shown in pink in the adjacent image); however, the dwelling and proposed three-season porch appear to be entirely located within the RRI portion of the property.

Further, the OHWL setback and impervious surface coverage requirements are the same for both portions of the subject site. Surrounding lakeshore properties appear to be similarly sized, whereas properties to the west are significantly larger. All surrounding properties have been developed for residential purposes.



PROPOSAL ANALYSIS

The attached application materials explain and show that the property owner would like to replace the existing 12' x 24' (288 sf) deck with a three-season porch. The three-season porch will be the same size as the existing deck and will be constructed in the same location as the existing deck. The three-season porch is shown on the attached survey / site plan to be situated 41.8' from OHWL where the required setback is 75'. Because the existing deck is 41.8' from OHWL, the proposed intensification / three-season porch will not exacerbate this legal non-conforming setback encroachment. The survey / site plan shows that the three-season porch will meet and exceed all other setback requirements.

The property owner and applicant initially submitted an impervious surface calculations worksheet on August 29, 2024 (dated August 28, 2024) showing the existing / proposed amount of impervious surface to be 29.5%. Because the worksheet provided no detail, the property owner and applicant were advised by staff to provide a detailed worksheet. The updated worksheet (also dated August 28, 2024) provided the requested detail but showed a revised impervious surface coverage amount of 27.9%. Staff didn't realize at the time and

didn't realize until preparation of the staff report that the updated worksheet utilized a different lot area than the initial worksheet. If utilizing the same lot area, the revised amount would have been 28.7%. Staff is not sure why there was a difference between the initial worksheet and the updated worksheet (29.5% vs. 28.7%). However, staff noted that the initial and updated worksheets didn't include the 112 sf shed; therefore, the property owner provided a second updated worksheet on September 11, 2024 showing that the existing / proposed amount of impervious surface is 29.5%. Based on the initial worksheet and second updated worksheet both showing 29.5%, staff is comfortable proceeding with this amount.

As previously mentioned, the amount of impervious surface proposed in 2013 was slightly less than the maximum allowable amount of 25%. The updated written narrative explains that the property owner recently expanded the driveway in order to address problems caused by construction vehicles using the driveway as a turn-around. Staff also suspects that the addition of a 112 sf shed contributed to the non-complaint amount of impervious surface coverage.

The property owner has provided a written narrative to explain what they're hoping to accomplish through this Variance request. The narrative also addresses the State mandated practical difficulty standard by suggesting the request is **reasonable** in that the proposed intensification will not encroach on the OHWL any more than the existing deck and that the proposed intensification will not change the existing non-conforming amount of impervious surface coverage; the **uniqueness** of the property is that the subject site and surrounding lakeshore properties on Belle Isle Drive are small (another way of describing "pre-existing development"); and, the proposed intensification will not affect the character of the property or the **essential character** of the neighborhood. Staff notes that the written narrative does not fully or specifically address the practical difficulty standard in relation to the impervious surface coverage.

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

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	40' to township Right-of-Way	Approximately 43'-44'
Ordinary High Water Level (OHWL) Setback	75' for structures; 50' for septic systems	41.8' from OHWL (existing and proposed)
Side Yard Setback	10' for dwelling and attached garage; 5' for detached accessory structures	Dwelling – Approximately 25' from south and approximately 16' from north property boundaries; Shed –

		approximately 5' from south and approximately 60' from north property boundaries
Impervious Surface Coverage	25%	29.5% per September 11, 2024 worksheet

REVIEW PROCESS

The Technical Review Committee met with property owner representatives Jeff & Peggy Stoks on September 11, 2024. County Sanitarian Davidsavor confirmed that a passing septic compliance inspection had been completed on September 9, 2024. Land Services Coordinator Gervais noted concerns with the impervious surface calculations worksheet, commenting that it didn't include the existing 112 sf shed. Rather than reducing or eliminating some amount of impervious surface, the property owner opted to complete and submit an updated worksheet indicating that the proposed amount of impervious surface coverage increased from 27.9% to 29.5%. The Committee did not identify any other immediate concerns.

The Nessel Town Board considered the request on September 10, 2024 and recommended approval with no comments or conditions. Staff notes that the Town Board considered the original request (27.9% impervious surface coverage) and not the updated request (29.5% impervious surface coverage).

The State mandated 60-day review period will expire on November 3, 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 application materials cite lot size as an exceptional or extraordinary circumstance. The subject site was platted in 1959, prior to the County's adoption of official land use

controls, and does not meet current dimensional standards. In other words, the subject site is considered to be substandard or legal non-conforming. The County refers to this circumstance as pre-existing development. The property owners had no control over this circumstance.

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

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

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

The circumstance of pre-existing development is not a result of actions of the current property owners or any previous owners under the current Zoning and Shoreland Management Ordinances. The subject site was platted in 1959 which was well before the County adopted official land use controls.

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

Dwellings, accessory structures, and impervious surfaces are Permitted Uses in the RRI District / Shoreland Management District; therefore, the Variance is not considered a use Variance.

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

Being that pre-existing development is the unique circumstance / hardship related to the subject site, the property owner and applicant have no ability to adjust the request as it relates to intensification of the existing deck to alleviate the hardship. However, the property owner and applicant have demonstrated that the request is reasonable in that they are not proposing to construct the proposed three-season porch any closer to the OHWL than the existing deck, and the Board granted Variance approval for a reduced setback in 2013. Staff notes that the existing deck is located closer to the OHWL than what was granted by the Board in 2013; however, the proposed three-season porch will not exacerbate this existing setback.

In regard to the requested amount of impervious surface coverage, staff does not feel that the property owner and applicant have requested the minimum Variance necessary. While the subject site is considered to be pre-existing development, historical records show that the property was granted Variance approval in 2013 with a compliant amount of impervious surface coverage. Since 2013, the property owner placed a 112 sf

shed on the property and expanded the driveway without Variance approval thereby making the total amount of impervious surface coverage non-compliant. Staff believes that the property owner has the ability to bring the amount of impervious surface coverage back to a compliant amount of at least closer to compliance.

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

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

Staff believes that the request to intensify the existing deck by constructing a three-season porch is reasonable in that three-season porches are a reasonable use within the RRI District / Shoreland Management District and the property owner and applicant are not constructing the proposed structure any closer to the OHWL than the existing structure; that there is a unique circumstance in that the legal non-conforming lot was platted well before the County adopted official land use controls; and, that the proposed structure fits the essential character of the residential lakeshore neighborhood. Further, staff does not believe that the Variance, if granted, would be detrimental to other properties in the RRI District / Shoreland Management District.

However, staff does not believe that the request to exceed the maximum allowable amount of impervious surface coverage adequately satisfies the State mandated practical difficulty standard. The same property owner demonstrated a compliant amount of impervious surface coverage in 2013 and later chose to add a 112 sf shed and expand the driveway without Variance approval to exceed the maximum allowable amount of impervious surface coverage. While the property owner has explained the reason for expanding the driveway, they've provided no compelling reason why the driveway can't instead feature pervious materials or justification for the shed. Additionally, the property owner's updated written narrative includes a statement that the shed can be removed if needed. For reference, if the shed were removed, it would bring the total amount of impervious surface coverage to 28.7%.

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

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

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

While the easterly 3' – 8' of the subject site are located in the flood district, the existing dwelling and proposed three-season porch are located entirely 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 | <i>The County finds that the proposed three-season porch will be situated in a manner that complies with and exceeds the required side yard setbacks so as not to impair an adequate supply of light and air to adjacent dwellings. The westerly property boundary is adjacent to a public Right-of-Way and the easterly property boundary is adjacent to a public body of water, where there is no impact on the supply of light and air to other dwellings / properties. Further, the County finds that the request to exceed the maximum allowable amount of impervious surface coverage will have no impact on the supply of light and air to adjacent properties as it relates specifically to ground conditions.</i> |
| Criteria #2 | The proposed action will not unreasonably increase the congestion in the public right-of-way; |
| Finding #2 | <i>The proposed action will not change the primary use of the subject site or directly cause an increase in the number of residents; therefore, the County finds that the proposed structural intensification (deck to three-season porch) and proposed amount of impervious surface coverage will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns related to impacts on Belle Isle Drive or surrounding Township roads.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| Finding #3 | <i>The property owner will be required to obtain a building permit prior to construction of the proposed three-season porch and it will, therefore, be</i> |

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. Further, the County finds that the proposed action of exceeding the maximum allowable amount of impervious surface coverage will have no impact on the danger of fire or public safety as it relates specifically to ground conditions.

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 attached deck. The proposed structural intensification (deck to three-season porch) will neither change how the property is being used nor allow for the structure to be located closer to the northerly or southerly property boundaries where there is greatest potential for impacting surrounding dwellings / properties. Therefore, the County finds no evidence to suggest that the proposed structural intensification will have any negative impact to surrounding dwellings / properties.*

The County further finds, based on lack of evidence or direct testimony from surrounding property owners, that the existing / proposed amount of impervious surface coverage will not create any negative impacts to surrounding properties.

-OR-

Finding #4 *The subject site is currently developed with a dwelling and attached deck. The proposed structural intensification (deck to three-season porch) will neither change how the property is being used nor allow for the structure to be located closer to the northerly or southerly property boundaries where there is greatest potential for impacting surrounding properties. Therefore, the County finds no evidence to suggest that the proposed structural intensification will have any negative impact to surrounding properties.*

However, the County further finds that a significant amount of impervious surface was installed since 2013, moving the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage, without Variance approval. The County believes that the existing / proposed amount of impervious surface coverage (29.5%) has the ability to negatively impact surrounding properties by diverting drainage from the subject site to adjacent properties and the adjacent public body of water (Rush Lake). Therefore, the County finds that the property owner must return the subject site to a compliant amount of impervious surface coverage.

- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed structural intensification (deck to three-season porch) 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 action will not create any strain or increased impact upon existing facilities and services.*
- Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and
- Finding #6 *There is no evidence to suggest that the proposed action will have any negative fiscal impact on the County or school district. The County finds that the proposed structural intensification (deck to three-season porch) may increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*
- Criteria #7 The proposed action will not be contrary in any way to the spirit and intent of applicable land use controls.
- Finding #7 *The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.21 is to regulate the setback of structures and sewage treatment systems from the Ordinary High Water Level (OHWL), and the intent of Shoreland Management Ordinance Section 5.52 is intended to regulate lot coverage for properties within the Shoreland Management District.*
- While the proposed three-season porch is non-conforming in that it will encroach on the required OHWL setback by 33.2', the County finds that it will not exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances, including setback Variances, when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request to intensify a non-conforming structure is reasonable in that three-season porches are a reasonable use in the Rural Residential I (RRI) District / Shoreland Management District and the property owner and applicant are not constructing the proposed structure any closer to the OHWL than the existing structure; that there is a unique circumstance in that the non-conforming property was platted well before the County adopted official land use controls; and, that the proposed structure fits the essential character of the residential lakeshore neighborhood.*
- The County also finds that the existing / proposed amount of impervious surface coverage (29.5%) is reasonable in that the subject driveway is often*

used as a turn-around for local traffic and the existing driveway width helps protect the property from negative traffic impacts and it's reasonable for properties, including lakeshore properties, to have at least one detached accessory structure; that there is a unique circumstance in that the non-conforming property was platted well before the County adopted official land use controls; and, that the proposed amount of impervious surface coverage fits the essential character of the residential lakeshore neighborhood.

-OR-

Finding #7 The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.21 is to regulate the setback of structures and sewage treatment systems from the Ordinary High Water Level (OHWL), and the intent of Shoreland Management Ordinance Section 5.52 is intended to regulate lot coverage for properties within the Shoreland Management District.

While the proposed three-season porch is non-conforming in that it will encroach on the required OHWL setback by 33.2', the County finds that it will not exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances, including setback Variances, when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request to intensify a non-conforming structure is reasonable in that three-season porches are a reasonable use in the Rural Residential I (RRI) District / Shoreland Management District and the property owner and applicant are not constructing the proposed structure any closer to the OHWL than the existing structure; that there is a unique circumstance in that the non-conforming property was platted and developed well before the County adopted official land use controls; and, that the proposed structure fits the essential character of the residential lakeshore neighborhood.

However, the County further finds that the request to exceed the maximum allowable amount of impervious surface coverage fails to satisfactorily address the State mandated practical difficulty standard. The County recognizes that the property owner is not proposing to increase the amount of impervious surface coverage as part of the current Variance request and that they're only seeking Variance approval for the existing amount of 29.5%; however, the County has historical information, related to a 2013 Variance request, demonstrating that the existing / proposed amount of impervious surface was created by the same property owner since 2013 (which does not constitute pre-existing development) and moved the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage without Variance approval. Without sufficient demonstration of compliance with the practical difficulty standard

and without prior Variance approval, the County has determined that the property owner must reduce the overall amount of impervious surface coverage to no more than 25%.

STAFF RECOMMENDATION

Staff generally supports the request to intensify the existing non-conforming deck; however, staff does believe that the property owner created the situation of having more impervious surface coverage than allowed by adding a shed after 2013 and expanding the driveway in 2024 without prior Variance approval to exceed the maximum allowable amount of impervious surface coverage. Staff also believes that the property owner and applicant have the ability to reduce the existing / proposed amount of impervious surface coverage to be compliant with the Shoreland Management Ordinance. Therefore, barring any new or unknown evidence of compliance discovered after the completion of this report or during the course of the public hearing, **staff recommends approval** of the requested Variance to intensify a legal non-conforming structure and **recommends denial** of the requested Variance to exceed the maximum allowable amount of impervious surface coverage with draft Findings of Fact (see above) and recommended conditions (see below), and has prepared a resolution for the Board's consideration. If the Board were to deny the request to exceed the maximum allowable amount of impervious surface coverage, it would likely require that the property owner remove the 112 sf shed and / or return the driveway to its pre-2024 condition or replace some amount of impervious material with pervious material.

Recommended conditions:

1. **The Variance request to intensify a legal non-conforming deck which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance is APPROVED, allowing for the deck to be removed and a three-season porch to be constructed in its place.** The three-season porch may not be any larger than 12' x 24' (same dimensions as the existing / former deck) and, upon completion, it shall not be located any closer than 41.8' from the OHWL. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
2. **The Variance request to exceed the maximum allowable amount of impervious surface coverage by 4.5%± is DENIED,** requiring that the property owner reduce the total amount of impervious surface to an amount no greater than 25% through elimination of existing impervious surfaces and/or replacement of existing impervious materials with new pervious materials. Further, reduction of impervious surface coverage to an amount no greater than 25% shall be complete within one year from the date of this resolution and the property owner shall provide the Chisago County Department of Environmental Services with documentation demonstrating how this condition was satisfied and, if applicable, specifications for the pervious materials used.

3. The permit holder shall obtain a building permit prior to construction and, further, the three-season porch shall comply with all applicable codes and regulations except as permitted by this Variance.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Alternatively, if the Board supports both aspects of the request and finds that they both satisfy the State mandated practical difficulty standard, staff has prepared draft Findings of Fact addressing both the request to intensify a legal non-conforming structure and exceed the maximum allowable amount of impervious surface coverage and encourages the Board to consider the following recommended conditions of approval.

Recommended conditions:

1. This approval grants the following Variances:
 - a. A Variance allowing the intensification of a legal non-conforming deck which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance, allowing for the existing deck to be removed and a three-season porch to be constructed in its place. The three-season porch may not be any larger than 12' x 24' (same dimensions as the existing / former deck) and, upon completion, it shall not be located any closer than 41.8' from the OHWL. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
 - a. A 4.5% Variance to the impervious surface coverage requirement established by the Chisago County Shoreland Management Ordinance, allowing a total existing / proposed amount of impervious surface coverage of 29.5%. No additional impervious surface shall be added as part of this request and no additional impervious surface shall be added to the subject site without prior Variance approval.
2. The permit holder shall obtain a building permit prior to construction and, further, the three-season porch shall comply with all applicable codes and regulations except as permitted by this Variance.
3. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve the Variance as requested** and based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to adopt all draft findings shown in black.*

2. **Approve / Deny the Variance as recommended by staff** and based on the Findings of Fact and conditions as presented or amended. *Note: this option will require the Board to adopt draft Findings #1 - #3 and #5 - #6 shown in black and draft Findings #4 and #7 shown in red.*
3. **Deny the Variance** based on amended Findings of Fact or other contributing factors deemed appropriate.
4. **Table** action to allow for further review and consideration. The current review period expires on November 3, 2024, allowing the Board to continue its review at the October 31, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-0902, a resolution approving a Variance allowing the intensification of a legal non-conforming structure and denying a Variance allowing more impervious surface coverage than permitted on property located at 52205 Belle Isle Drive in Nessel Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narratives
 - i. August 28, 2024 (1 / original)
 - ii. August 28, 2024 (2 / updated)
 - c. Surveys / site plans
 - i. "Original Survey"
 - ii. "New Survey"
 - d. Impervious surface calculation worksheets
 - i. August 28, 2024 (1 / original)
 - ii. August 28, 2024 (2 / updated)
 - iii. September 11, 2024 (2nd updated)
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-0902 (approval / denial)
5. Draft Resolution No. BOAA2024-0902 (approval)



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-1763

Township Nessel Township S/T/R S15, T32, R 22 PID# 06.00972.00

Project Address 52205 Belle Isle drive Rush City MN 55069

Property Owner(s) Jeffrey Stokes & Peggy Stokes

Mailing Address (If Different from Project Address) _____

Phone# [REDACTED] Email [REDACTED]

Applicant(s) BigFork Valley Log Cabins LLC

Mailing Address (If Different from Project Address) 1275 West 4th St. Rush City MN 55069

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) Remove existing 12x24 deck on lakeside and build a 12x24 3-season room in the exact same spot. we will not make any more impervious + we will not encroach on the lake anymore. INCREASE IN IMPERVIOUS %.

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

☐ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☐ Plat Drawings

[Signature]
Applicant Signature

8/27/24
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Fees

Base Fee

\$ 600-

Recording Fee

\$ 46-

Plat Fee - No Road(s) / With Road(s)

\$ _____

Septic Compliance Fee

\$ _____

Wetland Fee

\$ _____

TOTAL FEE

\$ 646-

Dates

Application Received

8-29-24

Application Complete

9-4-24

60 / 120 Day Review Period

11-3-24

Extended Review Period



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Neosho Township S/T/R S15 T37 R22 PID# 06.00972.00

Project Address 52205 Belle Isle drive Rush City MN 55069

Property Owner(s) Jeff & Peggy Stokes

Mailing Address (if Different from Project Address) _____

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Bigfork Valley Log Cabins LLC

Mailing Address (if Different from Project Address) 1275 W 4th St. Rush City MN 55069

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

3-Season Porch that replaces the exact size of existing deck or increase in impervious

x Jeff Stokes
Applicant Signature

8/29/24
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Date of County Public Hearing SEPT 26, 2024 Date of Township Presentation SEPT 10, 2024

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Signatures of Township Officials or Authorized Personnel

Michelle Meier Brenda May
Dawn Smith Steve Lake

Practical difficulties

1. Reasonableness: The property owner proposes to use the property in a reasonable manner. Currently the Stoks residence has a 12x24 deck on the lakeside of the house. This deck is inside the setback. The proposal is to remove the deck and replace the exact same size 12x24 3-season room. The proposed project will not encroach any closer to the water and will not change the impervious surface of the property. They would like to be able to enjoy the lake at their home for a longer season than the summer.
2. Uniqueness: The uniqueness of the property is an issue for all households on the lakeside of Belle Isle drive. The lots are small, and many are being converted to permanent residents. This property was not developed by the homeowner, and they cannot control the size of the lot.
3. Essential Character: This small alteration to the existing property would not affect the character of the property or the character of the neighborhood. If anything, it will enhance the character. It will not be any closer to a lot line or setback than the current deck.

Variances application guide.

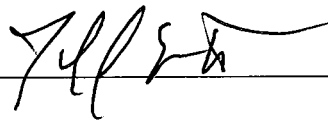
1. Is there another feasible method to alleviate the need for a Variance and, if not, is the Variance requested the minimum Variance which would alleviate the practical difficulty? *We believe that by building the exact size of the existing deck and by not encroaching or changing the impervious surface on the lot that we are requesting the minimum variance would alleviate the practical difficulty.*
2. How substantial is the requested variation from the requirements of the zoning ordinance? *The current ordinance is 75' the existing deck is within the 75', the proposed 3-season will not change from the existing deck on the property. It will be adding walls, windows and a roof.*
3. Would Variance approval affect a substantial change in the character of the neighborhood or result in any significant detriment to neighboring properties? *We believe the variance approval would not effect any substantial change to the character of the neighborhood and would not result in any significant detriment to the neighboring properties.*
4. Did this landowner or a previous owner create the need for the Variance? If so, does the need for a Variance arise from an owner's actions under the current regulation?

The current owner did not develop the property. The lots in this area are very short from road to lake.

5. Are economic conditions or circumstances cited as reasons for the Variance request? Are economic circumstances the sole reason for seeking a Variance? *No*
6. Do exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zoning district: Examples of exceptional or extraordinary circumstances may include such things as lot size or shape, topography, or other circumstances over which the property owners, since enactment of the relevant ordinance, have had not control. *We believe almost all homes on this road have extraordinary circumstances that apply since the enactment of the relevant ordinance and the homeowners have no control. Of the 50 some houses on this road only 3 meet the setback under the current ordinance from what we have found on the GIS system.*
7. Would literal interpretation of the provisions of the zoning ordinance deprive the applicant of rights commonly enjoyed by other properties in the same district under the strictly applied terms of this ordinance. *We believe yes to this question. Many of the homes in the area have 3-season porches even closer than we are to the lake. We believe we are not asking for anything that multiple homes on this street currently enjoy.*
8. Will granting the Variance result in allowing a use otherwise not permitted in the same district? *No*
9. Would Variance approval be materially detrimental to the purposes of the zoning ordinance or to property in the same zoning district? *We believe the answer to be no.*
10. Does a reasonable use of the property exist under the terms of the zoning ordinance without Variance approval? If not, define “reasonable use” in the context of the immediate area and properties in the same zoning district. Again, we believe no, many homes in this district have what we are asking for closer than we are to the lake. We believe we are not asking for anything that is out of the ordinary. We would like to have reasonable use of a 3-season porch to enjoy the lake for a longer season.
11. Would the approval permit a lower degree of flood protection than the regulatory flood protection elevation for this area or permit standards lower those required by state law? *No*
12. In light of all of the above factors, would denying a Variance serve the interests of justice? *We believe no, to recap over 90% of the homes on the lake side of this road encroach on the lake and are well inside the setback. The 3-season porch will not*

encroach the lake any more than the current deck and will not change impervious surface %.

Thanks for considering our application for a variance.

Homeowner: 

Date: 8/28/24

Homeowner: 

Date: 8/28/24

Builder: 

Date: 8/28/24

Updated

Jeff and Peggy Stokes Residence

PID#06.00972.00

52205 Belle Isle Drive Rush City, MN 55069

Variance Request

1. We are asking to remove the current 12x24 deck and rebuild the exact same size (12x24) 3-season porch in its place.
2. The construction project does not increase the current impervious surface, but it came to our attention that the driveway correction we made earlier this year did affect our impervious surface. With all the construction going on around our home the last place for trucks to turn around for a ½ mile is on 521st street directly across from our driveway. Since we built our home, this has been the case. With the exceptionally wet spring this year this was the worst it has been with rutting from construction vehicles. Because our yard was destroyed and has been every year for 10 years and because this year was the worst it has been we had the driveway widened by the road to keep the trucks from turning around in our yard. I never even thought to get approval from the county for this as we never thought that we would need one. So, our variance request is two-fold now. One for the construction alteration and forgiveness for adding to the driveway without permission to keep all the construction traffic from ruining our yard. The current impervious coverage overage is completely because of the driveway. No other alterations have been made since moving into our home over 10 years ago. The small shed (14x8) (112sf) that is on the updated survey is not a permanent building. It is a free-standing shed from Home depot. That 112' though figured on the updated survey would not count toward the impervious surface. Attached is an updated impervious surface calculation.

Updated survey shows 4060sf of lot coverage

Original Survey shows 3528 sf of lot coverage

Total difference of 532sf

Subtract shed 112sf (not a permanent structure) *can remove if needed*

This would leave 420sf of added impervious surface by squaring off the drive

Homeowner: _____

Jeff Stokes

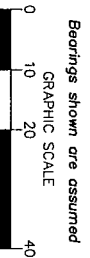
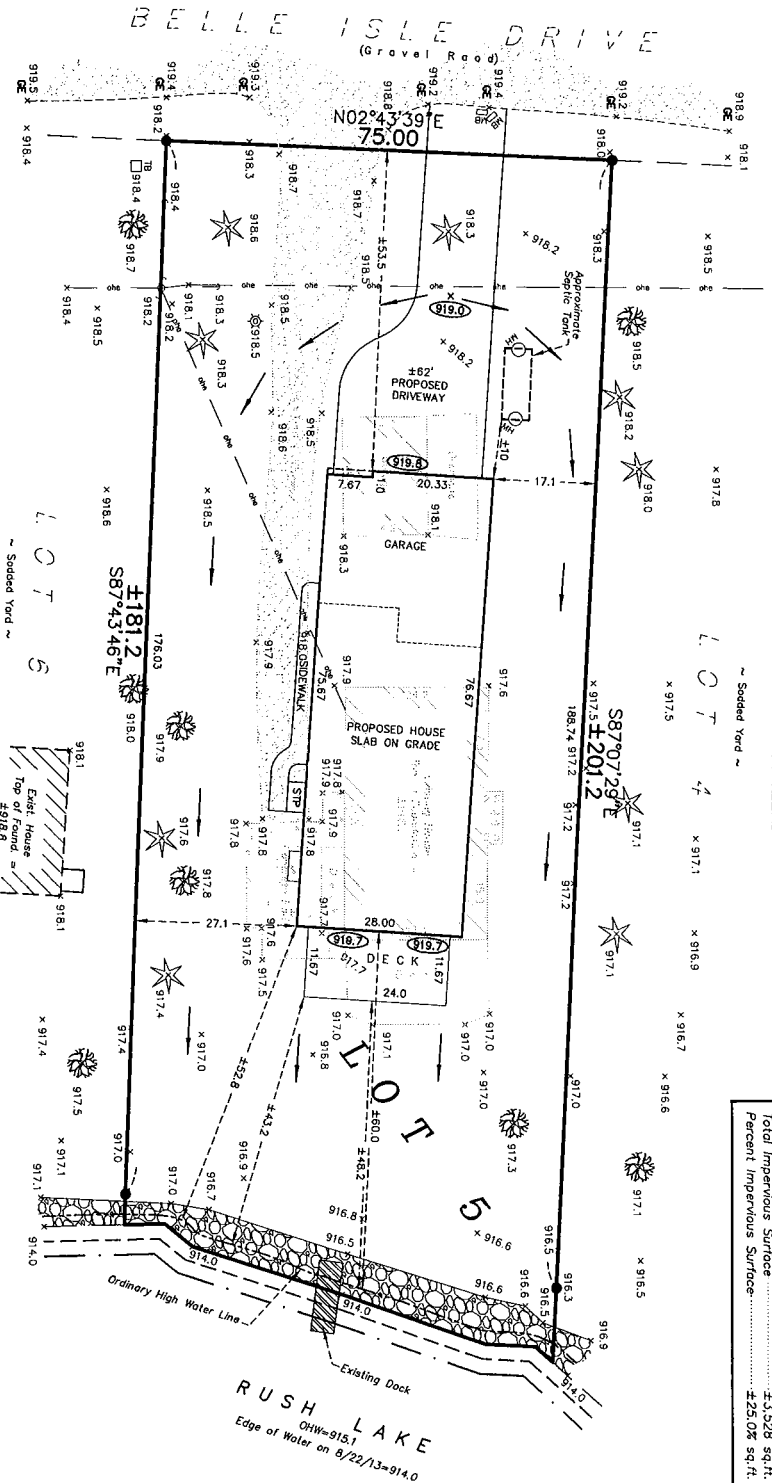
Date: 8/28/24

Original Survey

Certificate of Survey for: SEMLER HOMES, INC

House Address:
52205 Belle Isle Drive, Rush City, MN

Total Lot Area	±14,134 sq. ft.
House and Stoop Area	±2,154 sq. ft.
Sidewalk Area	±120 sq. ft.
Deck Area	±260 sq. ft.
Driveway Area	±974 sq. ft.
Total Impervious Surface	±3,528 sq. ft.
Percent Impervious Surface	±25.0% sq. ft.



PROPOSED BUILDING ELEVATIONS

Top of Foundation Elevation: 920.2
Garage Sdb Elevation (at door): 919.8

LEGAL DESCRIPTION:

Lot 5, LABELLE ISLE,
Chisago County, Minnesota

- Denotes Existing Elevation
- Denotes Proposed Elevation
- Denotes Direction of Drainage
- Denotes Drainage & Utility Easement (per recorded plat)
- Denotes Iron Monument
- Denotes Existing Tree

- NOTES:
- Contractor must verify all house dimensions and sewer depth.
 - Driveways shown are for graphic purposes only. Final driveway design and location to be determined by owner/builder.
 - Ordinary High Water Line, as shown hereon, is approved by Chisago County.
 - House placement set by owner.

I hereby certify to Semler Homes, Inc. that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly licensed land surveyor under the laws of the State of Minnesota. Dated this 3rd day of September, 2013.

Signed: Carlson McCain, Inc.
By: Thomas R. Boluff, L.S. Reg. No. 40361

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

	square feet	Total area of
acres:	per acre:	parcel in square
		feet
x	43,560	= 13,753

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		=	
garage		=	
deck		=	
patio		=	
sidewalk		=	
driveway		=	
other; list:		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:		=	
		=	
TOTAL OTHER ITEMS			

*See survey
Proposed & existing
the same*

Calculate:

Total from "Residential Structures":		+
Total from "Agricultural Structures":		+
Total from "Other Items":		+
Total square footage of coverage:	4060	=
(divide by total area of parcel, above)	13,753	/
		=

[Signature]
signature

8/28/24
date

corresponding permit number

TOTAL IMPERVIOUS SURFACE 29.5 %

No change from current

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

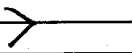
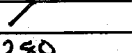
AREA OF PARCEL

	square feet	Total area of
acres:	per acre:	parcel in square
		feet
x	43,560	= 13,753

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		=	2154
garage		=	
deck	280	=	280
patio		=	
sidewalk	120	=	120
driveway		=	1394
other; list:		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3948

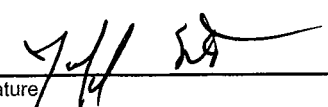
Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:		=	
		=	
TOTAL OTHER ITEMS			

PROPOSED

Calculate:

Total from "Residential Structures":	3948	+
Total from "Agricultural Structures":		+
Total from "Other Items":		+
Total square footage of coverage:	3948	=
(divide by total area of parcel, above)	14134	/
TOTAL IMPERVIOUS SURFACE	27.9	%

signature 

date 8/28/24

corresponding permit number

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

acres:	square feet per acre:	Total area of parcel in square feet
x	43,560	= 13,753

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		=	2154
garage		=	
deck		=	280
patio		=	
sidewalk		=	120
driveway		=	1394
other; list:		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3948

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
shed		=	112
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			112

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:		=	
		=	
TOTAL OTHER ITEMS			

RECEIVED

SEP 11 2024

Chisago County
Dept. of Environmental Services

86

Calculate:

Total from "Residential Structures"	3948	+
Total from "Agricultural Structures"	112	+
Total from "Other Items"		+
Total square footage of coverage:	4060	=
(divide by total area of parcel, above)		/
		=
TOTAL IMPERVIOUS SURFACE	29.5	%

signature

9/11/2024

date

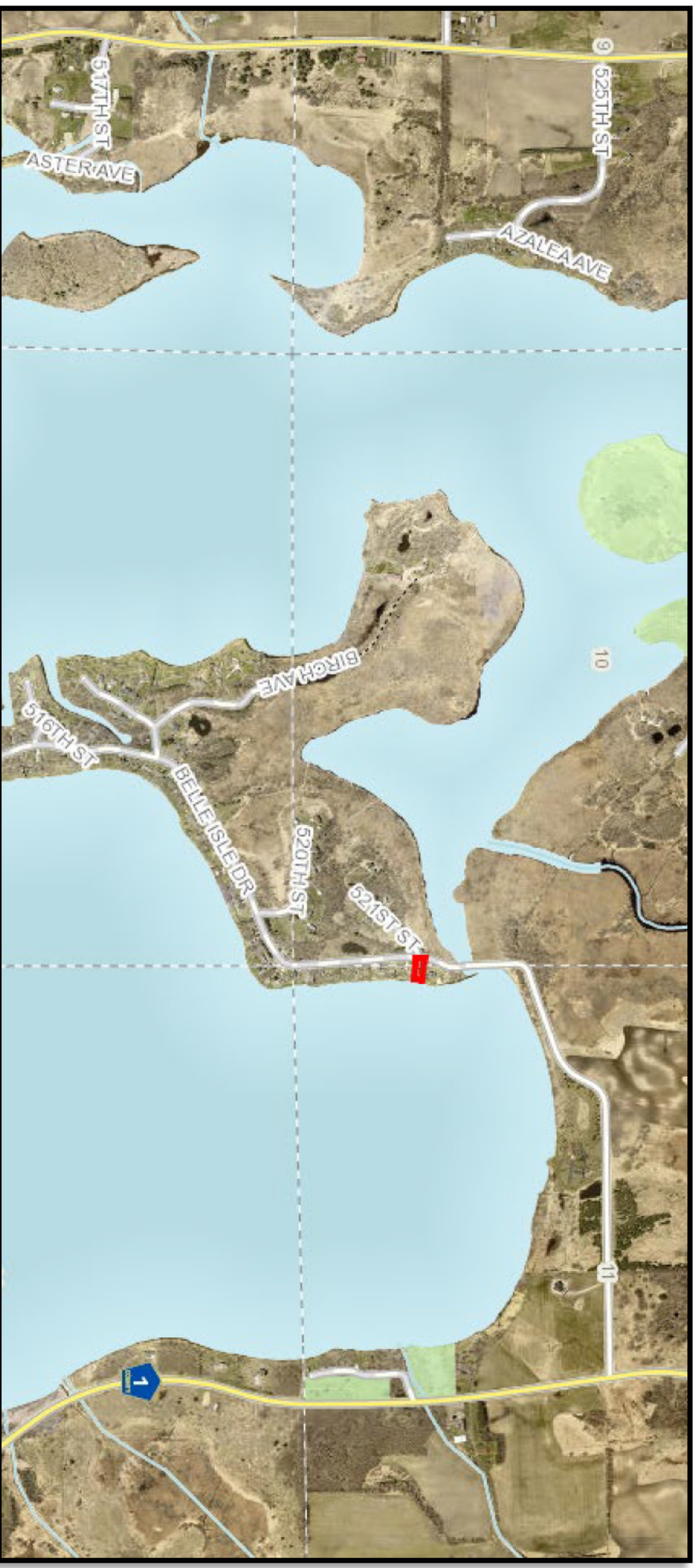
corresponding permit number

Jeffrey J. Stoks and Peggy A. Stoks Trust and Bigfork Valley Log Cabins, LLC – Property owner Jeffrey J. Stoks and Peggy A. Stoks Trust and applicant Bigfork Valley Log Cabins, LLC are requesting a Variance in order to intensify a non-conforming structure, by replacing an existing deck with a three-season porch of the same size, located closer to the Ordinary High Water Level of Rush Lake than allowed and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RR) District / Shoreland Management District. The .32± acre subject site is located at 52205 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00972.00).



Jeffrey J. Stokes and Peggy A. Stokes Trust and Bigfork Valley Log

Cabins, LLC – Property owner Jeffrey J. Stokes and Peggy A. Stokes Trust and applicant Bigfork Valley Log Cabins, LLC are requesting a Variance in order to intensify a non-conforming structure, by replacing an existing deck with a three-season porch of the same size, located closer to the Ordinary High Water Level of Rush Lake than allowed and to exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RR) District / Shoreland Management District. The .32± acre subject site is located at 52205 Belle Isle Drive in Nessel Township, S15, T37, R22 (PID 06.00972.00).



RESOLUTION NO. BOAA2024-0902

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE ALLOWING THE INTENSIFICATION OF A LEGAL NON-CONFORMING
STRUCTURE AND DENYING A VARIANCE ALLOWING MORE IMPERVIOUS SURFACE COVERAGE THAN
PERMITTED ON PROPERTY LOCATED AT 52205 BELLE ISLE DRIVE IN NESSEL TOWNSHIP**

WHEREAS, property owner Jeffrey J. Stoks and Peggy A. Stoks Trust and applicant Bigfork Valley Log Cabins, LLC submitted an application dated received August 29, 2024 and considered complete on September 4, 2024 for a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52; and

WHEREAS, the property owner is seeking Variance approval allowing the intensification of a legal non-conforming structure by replacing a deck with a three-season porch and to exceed the maximum allowable amount of impervious surface coverage by 4.5% (existing / proposed coverage is reported to be 29.5%); and

WHEREAS, the .32 acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 06.00972.00

Lot Five (5) of LaBelle Isle, according to the plat thereof on file and of record in the Office of the Registrar of Titles in and for Chisago County, Minnesota.

WHEREAS, notice was provided and on September 26, 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 and/or applicant, and invited members of the public to comment; and

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

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 *The County finds that the proposed three-season porch will be situated in a manner that complies with and exceeds the required side yard setbacks so as not to impair an adequate supply of light and air to adjacent dwellings. The westerly property boundary is adjacent to a public Right-of-Way and the easterly property boundary is adjacent to a public body of water, where there is no impact on the supply of light and air to other dwellings / properties. Further, the County finds that the request to exceed the maximum allowable amount of impervious surface coverage will have no impact on the supply of light and air to adjacent properties as it relates specifically to ground conditions.*

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

- Finding #2 The proposed action will not change the primary use of the subject site or directly cause an increase in the number of residents; therefore, the County finds that the proposed structural intensification (deck to three-season porch) and proposed amount of impervious surface coverage will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns related to impacts on Belle Isle Drive or surrounding Township roads.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;*
- Finding #3 The property owner will be required to obtain a building permit prior to construction of the proposed three-season porch 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. Further, the County finds that the proposed action of exceeding the maximum allowable amount of impervious surface coverage will have no impact on the danger of fire or public safety as it relates specifically to ground conditions.*
- 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 attached deck. The proposed structural intensification (deck to three-season porch) will neither change how the property is being used nor allow for the structure to be located closer to the northerly or southerly property boundaries where there is greatest potential for impacting surrounding properties. Therefore, the County finds no evidence to suggest that the proposed structural intensification will have any negative impact to surrounding properties.*
- However, the County further finds that a significant amount of impervious surface was installed since 2013, moving the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage, without Variance approval. The County believes that the existing / proposed amount of impervious surface coverage (29.5%) has the ability to negatively impact surrounding properties by diverting drainage from the subject site to adjacent properties and the adjacent public body of water (Rush Lake). Therefore, the County finds that the property owner must return the subject site to a compliant amount of impervious surface coverage.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;*
- Finding #5 The proposed structural intensification (deck to three-season porch) 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 action will not create any strain or increased impact upon existing facilities and services.*

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

Finding #6 *There is no evidence to suggest that the proposed action will have any negative fiscal impact on the County or school district. The County finds that the proposed structural intensification (deck to three-season porch) may increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*

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

Finding #7 *The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.21 is to regulate the setback of structures and sewage treatment systems from the Ordinary High Water Level (OHWL), and the intent of Shoreland Management Ordinance Section 5.52 is intended to regulate lot coverage for properties within the Shoreland Management District.*

While the proposed three-season porch is non-conforming in that it will encroach on the required OHWL setback by 33.2', the County finds that it will not exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances, including setback Variances, when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request to intensify a non-conforming structure is reasonable in that three-season porches are a reasonable use in the Rural Residential I (RRI) District / Shoreland Management District and the property owner and applicant are not constructing the proposed structure any closer to the OHWL than the existing structure; that there is a unique circumstance in that the non-conforming property was platted and developed well before the County adopted official land use controls; and, that the proposed structure fits the essential character of the residential lakeshore neighborhood.

However, the County further finds that the request to exceed the maximum allowable amount of impervious surface coverage fails to satisfactorily address the State mandated practical difficulty standard. The County recognizes that the property owner is not proposing to increase the amount of impervious surface coverage as part of the current Variance request and that they're only seeking Variance approval for the existing amount of 29.5%; however, the County has historical information, related to a 2013 Variance request, demonstrating that the existing / proposed amount of impervious surface was created by the same property owner since 2013 (which does not constitute pre-existing development) and moved the subject site from a compliant amount of impervious surface coverage to a non-compliant amount of impervious surface coverage without Variance approval. Without sufficient demonstration of compliance with the practical difficulty standard and without prior Variance approval, the County has determined that the property owner must reduce the overall amount of impervious surface coverage to no more than 25%.

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

1. **The Variance request to intensify a legal non-conforming deck which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance is APPROVED, allowing for the deck to be removed and a three-season porch to be constructed in its place.** The three-season porch may not be any larger than 12' x 24' (same dimensions as the existing / former deck) and, upon completion, it shall not be located any closer than 41.8' from the OHWL. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
2. **The Variance request to exceed the maximum allowable amount of impervious surface coverage by 4.5% is DENIED**, requiring that the property owner reduce the total amount of impervious surface to an amount no greater than 25% through elimination of existing impervious surfaces and/or replacement of existing impervious materials with new pervious materials. Further, reduction of impervious surface coverage to an amount no greater than 25% shall be complete within one year from the date of this resolution and the property owner shall provide the Chisago County Department of Environmental Services with documentation demonstrating how this condition was satisfied and, if applicable, specifications for the pervious materials used.
3. The permit holder shall obtain a building permit prior to construction and, further, the three-season porch shall comply with all applicable codes and regulations except as permitted by this Variance.
4. 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 26th day of September, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST:

Beth Gervais
Land Services Coordinator

RESOLUTION NO. BOAA2024-0902

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE ALLOWING THE INTENSIFICATION OF A LEGAL NON-CONFORMING
STRUCTURE AND ALLOWING MORE IMPERVIOUS SURFACE COVERAGE THAN PERMITTED ON
PROPERTY LOCATED AT 52205 BELLE ISLE DRIVE IN NESSEL TOWNSHIP**

WHEREAS, property owner Jeffrey J. Stoks and Peggy A. Stoks Trust and applicant Bigfork Valley Log Cabins, LLC submitted an application dated received August 29, 2024 and considered complete on September 4, 2024 for a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52; and

WHEREAS, the property owner is seeking Variance approval allowing the intensification of a legal non-conforming structure by replacing a deck with a three-season porch and to exceed the maximum allowable amount of impervious surface coverage by 4.5% (existing / proposed coverage is reported to be 29.5%); and

WHEREAS, the .32 acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 06.00972.00

Lot Five (5) of LaBelle Isle, according to the plat thereof on file and of record in the Office of the Registrar of Titles in and for Chisago County, Minnesota.

WHEREAS, notice was provided and on September 26, 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 and/or applicant, and invited members of the public to comment; and

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

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 *The County finds that the proposed three-season porch will be situated in a manner that complies with and exceeds the required side yard setbacks so as not to impair an adequate supply of light and air to adjacent dwellings. The westerly property boundary is adjacent to a public Right-of-Way and the easterly property boundary is adjacent to a public body of water, where there is no impact on the supply of light and air to other dwellings / properties. Further, the County finds that the request to exceed the maximum allowable amount of impervious surface coverage will have no impact on the supply of light and air to adjacent properties as it relates specifically to ground conditions.*

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

- Finding #2 The proposed action will not change the primary use of the subject site or directly cause an increase in the number of residents; therefore, the County finds that the proposed structural intensification (deck to three-season porch) and proposed amount of impervious surface coverage will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns related to impacts on Belle Isle Drive or surrounding Township roads.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;*
- Finding #3 The property owner will be required to obtain a building permit prior to construction of the proposed three-season porch 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. Further, the County finds that the proposed action of exceeding the maximum allowable amount of impervious surface coverage will have no impact on the danger of fire or public safety as it relates specifically to ground conditions.*
- 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 attached deck. The proposed structural intensification (deck to three-season porch) will neither change how the property is being used nor allow for the structure to be located closer to the northerly or southerly property boundaries where there is greatest potential for impacting surrounding dwellings / properties. Therefore, the County finds no evidence to suggest that the proposed structural intensification will have any negative impact to surrounding dwellings / properties.*
- The County further finds, based on lack of evidence or direct testimony from surrounding property owners, that the existing / proposed amount of impervious surface coverage will not create any negative impacts to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;*
- Finding #5 The proposed structural intensification (deck to three-season porch) 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 action will not create any strain or increased impact upon existing facilities and services.*
- Criteria #6 The proposed action will not have a negative direct and indirect fiscal impact upon the County or school district, unless the proposed use is determined to be in the public interest; and*
- Finding #6 There is no evidence to suggest that the proposed action will have any negative fiscal impact on the County or school district. The County finds that the proposed structural intensification (deck to three-season porch) may increase the property*

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

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

Finding #7 *The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses, and the intent of Shoreland Management Ordinance Section 5.21 is to regulate the setback of structures and sewage treatment systems from the Ordinary High Water Level (OHWL), and the intent of Shoreland Management Ordinance Section 5.52 is intended to regulate lot coverage for properties within the Shoreland Management District.*

While the proposed three-season porch is non-conforming in that it will encroach on the required OHWL setback by 33.2', the County finds that it will not exacerbate the existing OHWL setback encroachment. Additionally, the Zoning Ordinance allows for Variances, including setback Variances, when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request to intensify a non-conforming structure is reasonable in that three-season porches are a reasonable use in the Rural Residential I (RRI) District / Shoreland Management District and the property owner and applicant are not constructing the proposed structure any closer to the OHWL than the existing structure; that there is a unique circumstance in that the non-conforming property was platted well before the County adopted official land use controls; and, that the proposed structure fits the essential character of the residential lakeshore neighborhood.

The County also finds that the existing / proposed amount of impervious surface coverage (29.5%) is reasonable in that the subject driveway is often used as a turn-around for local traffic and the existing driveway width helps protect the property from negative traffic impacts and it's reasonable for properties, including lakeshore properties, to have at least one detached accessory structure; that there is a unique circumstance in that the non-conforming property was platted well before the County adopted official land use controls; and, that the proposed amount of impervious surface coverage fits the essential character of the residential lakeshore neighborhood.

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

1. This approval grants the following Variances:
 - a. A Variance allowing the intensification of a legal non-conforming deck which is located closer to the Ordinary High Water Level (OHWL) than required by the Chisago County Shoreland Management Ordinance, allowing for the existing deck to be removed and a three-season porch to be constructed in its place. The three-season porch may not be any larger than 12' x 24' (same dimensions as the existing / former

deck) and, upon completion, it shall not be located any closer than 41.8' from the OHWL. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.

- a. A 4.5% Variance to the impervious surface coverage requirement established by the Chisago County Shoreland Management Ordinance, allowing a total existing / proposed amount of impervious surface coverage of 29.5%. No additional impervious surface shall be added as part of this request and no additional impervious surface shall be added to the subject site without prior Variance approval.
2. The permit holder shall obtain a building permit prior to construction and, further, the three-season porch shall comply with all applicable codes and regulations except as permitted by this Variance.
3. 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 26th day of September, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST:

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Expand a Non-Conforming Structure
 32860 Nueman Trail, Chisago Lake Township
 DATE: September 26, 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) closer to the Ordinary High Water Level (OHWL) and closer to a side property boundary than required in the Rural Residential I (RRI) District / Shoreland Management District.

SITE & APPLICATION INFORMATION

Property Owner(s):	MVMC, LLC
Applicant(s):	Michael O'Malley
Property Address:	32860 Nueman Trail Chisago Lake Township
General Location:	Section 22, Township 34, Range 20
PID:	02.01688.00
Property Area:	.44± Acres
Current Zoning:	Rural Residential I (RRI) District / Shoreland Management District
Adjacent Zoning:	
North:	Rural Residential I (RRI) District / Shoreland Management District
South:	North Center Lake
East:	Rural Residential I (RRI) District / Shoreland Management District
West:	Rural Residential I (RRI) District / Shoreland Management District
Date Application Received:	August 30, 2024
Date Application Complete:	September 4, 2024
60-Day Review Period:	November 3, 2024

BACKGROUND

Property owner MVMC, LLC, represented by applicant Michael O'Malley, wishes to expand their legal non-conforming dwelling through the addition of a second story and attached garage. The dwelling is considered non-conforming due to



the fact that the deck is located 15.3' from OHWL and the dwelling is located approximately 25.3' from OHWL and 7.1' from the westerly property boundary (side yard) where the required OHWL setback is 75' and the required side yard setback is 10'.

MVMC, LLC purchased the subject site in July 2024.

SITE ANALYSIS

The .44± acre subject site is generally located approximately one-tenth of a mile southeast of the intersection of Nueman Circle and Nueman Trail, between Nueman Trail and North Center Lake in Chisago Lake Township. The attached surveys show that the subject site is 78.47' wide and approximately 240' deep (average of westerly and easterly property boundaries). The property, having been platted as Lot 10 and part of Lot 11, Sundberg-Nelson Beach in 1957, is deemed legal non-conforming due to the fact that the lot area and lot width do not meet current standards.



The attached surveys show that the existing deck is located 15.3' from OHWL and the existing dwelling is located approximately 25.3' from OHWL and 7.1' from the westerly property boundary (side yard). The existing dwelling appears to comply with all other setback requirements. The exact age of the dwelling is unknown; however, it appears, from review of Chisago County Assessor's Office records, that the original dwelling was constructed in its current location prior to May 1972 (date of top adjacent image) and may have had several additions over the years. Additionally, records show that the existing detached garage was likely constructed in 1976. Staff did not find record of any past Variances granted for the subject site and, based on age of the dwelling, believes it to be a legal non-conforming structure. The bottom adjacent image shows the existing dwelling in 2007.

The existing amount of impervious surface coverage is reported by the property owner and applicant to be 18.5%, which is well below the maximum allowable amount of 25%.

Topography of the subject site includes elevations ranging from 898' along the beach of North Center Lake to 917' in the northeast corner of the subject site. For reference, the OHWL of North Center Lake is 900.2'. While the southerly 25' - 33' of the subject site are located within a FEMA flood zone, the existing dwelling and proposed expansion are located entirely outside of the flood zone. The adjacent image shows the FEMA flood zone boundary (aqua line and dots) in relation to the existing dwelling.

A new septic system was installed in 2022 between the dwelling and the existing detached garage (refer to attached surveys). The system is designed for a two-bedroom dwelling.

The subject site is located within the County's Rural Residential I (RRI) District / Shoreland Management District as are all surrounding properties. Surrounding lakeshore properties to the west and east appear to be similarly sized, whereas properties to the north are slightly larger in size (1-2 acres). The vast majority of surrounding properties have been developed for residential purposes.



PROPOSAL ANALYSIS

The attached application materials indicate that the property owner would like to expand the legal non-conforming dwelling through the addition of a second story and attached garage. The attached building plans show that the second story will feature two additional bedrooms (for a total of four bedrooms) as well as flex space and storage space. The application materials suggest that the attached garage will be 473 sf in size with storage above. The application materials show and explain that, as part of the proposed project, the existing 22' x 24' detached garage will be removed as well as the 12' x 12' detached screen porch. The existing detached garage appears to comply with all required setbacks; however, the detached screen porch is significantly encroaching on the OHWL setback and removal will eliminate one non-conforming structure.

The attached survey (labeled "New") shows that the proposed attached garage will be located on the easterly side of the dwelling and 54.7' from OHWL where the required setback is 75'. Staff notes that this proposed addition complies with both side yard setback requirements as well as the Township Right-of-Way setback requirement. While the garage addition will encroach on the OHWL, it's not an exacerbation of the encroachment created by the existing dwelling.

Being that the existing dwelling is encroaching on the required OHWL and westerly side yard setbacks, the proposed second story will similarly encroach on these required setbacks. As previously mentioned, the existing dwelling – and therefore the proposed second story – is located approximately 25.3' from OHWL and 7.1' from the westerly property boundary (side yard) where the required setbacks are 75' and 10' respectively. While the addition of a second story is an encroachment on the OHWL and westerly property boundary, it's not an exacerbation of the encroachments created by the existing dwelling.

The proposed amount of impervious surface coverage is 21.5%, which is still well below the maximum allowable amount of 25%. This proposed amount is based on expansion of the dwelling by adding an attached garage, expansion of the driveway, and removal of the existing detached garage, screen porch, and sidewalk.

To explain and provide justification for the requested Variance, the property owner has provided a written narrative providing the following statements as paraphrased by staff:

- Removal of certain non-conforming structures is reasonable and essential for the safety and well-being of the property owner. The removal of these structures will also improve the overall aesthetics of the property and contribute to the safety of the environment.
- The proposed addition of an attached garage will provide a safer and more accessible access to the dwelling. Due to the unique layout and size of the subject site, a standard garage design would not fit without encroaching on required setbacks. The proposed customized garage design will blend with the existing structure and enhance functionality of the property.
- The proposed second story will create room for family members and the proposed two-story dwelling will fit the essential character of the neighborhood.
- Uniqueness of the lot presents limitations that make it impossible to adhere strictly to the County's setback requirements.

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

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	40' to township Right-of-Way	Existing dwelling is approximately 150' from R-O-W and proposed addition is approximately 145' from R-O-W
Ordinary High Water Level (OHWL) Setback	75' for structures; 50' for septic systems	Proposed second story is approximately 25.3' from OHWL and proposed attached garage is 54.7' from OHWL

Side Yard Setback	10' for dwelling and attached garage; 5' for detached accessory structures	Proposed second story is 7.1' from west property boundary and proposed attached garage is 10.7' from east property boundary
Impervious Surface Coverage	25%	21.5%

REVIEW PROCESS

The Technical Review Committee met with Michael O'Malley and contractor Wade Glenna on September 11, 2024. County Sanitarian Davidsavor noted that the existing 1,000 gallon septic system was installed in 2022 and sized for two bedrooms. Being that the applicant was proposing a total of four bedrooms, the group discussed options. Ultimately, and with preliminary consent from Davidsavor, the applicant opted to reduce the proposed number of bedrooms to three and implement a timed dosing system to ensure that the septic system can accommodate one additional bedroom. Neither the proposed number of bedrooms nor the implementation of timed dosing system will impact the Variance request or require action by the Board; instead, this will be addressed at time of building permit application (pending Variance approval). The Committee did not identify any other immediate concerns with the request.

The Chisago Lake Town Board considered the request on September 17, 2024 and recommended approval with the comment "does not move structures near the lake or property lines".

The State mandated 60-day review period will expire on November 3, 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 subject site was platted in 1957 and likely developed with the existing dwelling prior to the County's adoption of official land use controls, which constitutes pre-existing development. The property owner had no control over this circumstance.

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

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

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

The circumstance of pre-existing development is not a result of actions of the current property owner or any previous owners under the current Zoning and Shoreland Management Ordinances. The subject site was platted in 1957 and was most likely developed prior to 1970 which was before the County adopted official land use controls.

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

Dwellings and attached garages are Permitted Uses in the RRI District / Shoreland Management District; therefore, the Variance is not considered a use Variance.

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

Being that pre-existing development is the unique circumstance / hardship related to the subject site, the property owner has no ability to adjust their request in a manner which would eliminate or alleviate this circumstance. However, the property owner has demonstrated that their request is reasonable in that they are not proposing to construct the attached garage any closer to the OHWL of North Center Lake than the existing non-conforming dwelling and the addition of habitable space will be constructed upwards so as not to further encroach on the non-conforming OHWL setback.

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

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance related to the property, and when it will not alter the essential character of the surrounding area. Staff believes that the request to expand the legal non-conforming dwelling by increasing the height through the

addition of a second story and the addition of an attached garage is reasonable in that dwellings and attached garages are Permitted Uses in the RRI District / Shoreland Management District and the expansions will not exacerbate the existing non-conforming OHWL and side yard setbacks; that the subject site is unique in that it was platted and developed prior to the County's adoption of official land use controls; and, that the proposed expansions fit the essential character of the subject site and surrounding residential lakeshore neighborhood. Further, staff does not believe that the Variance, if approved, would be detrimental to other properties in the RRI District / Shoreland Management District.

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

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

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

While the southerly 25' - 33' of the subject site are located in the flood district, all structures, including the dwelling proposed for expansion, are outside of the flood district.

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

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

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

1. Reasonableness

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

2. Uniqueness

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

3. Essential Character

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

FINDINGS OF FACT

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

Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;

Finding #1 *The proposed action will increase the height of the dwelling through the addition of a second story and increase the structure footprint through the addition of an attached garage. Given that there is approximately 18’ between the existing dwelling / proposed second story and the dwelling to the west and approximately 40’ between the proposed attached garage and the*

dwelling to the east, the County finds that the proposed dwelling expansion will be constructed in a manner so as not to impact the supply of light and air to neighboring properties.

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

Finding #2 *The proposed action will not change the primary use of the subject site or dwelling. Therefore, the County finds that the proposed expansion itself will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways. Further, the Chisago Lake Town Board, serving as Road Authority, did not express any concerns related to impacts on Nueman Trail or surrounding Township roads after considering the request at its September 17, 2024 meeting.*

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

Finding #3 *The property owner will be required to obtain a building permit prior to construction of the proposed dwelling expansion, and it will, therefore, be constructed in compliance with all applicable codes. 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 subject site is currently developed with a dwelling and two detached accessory structures, and the proposed action will not change how the property is being used (residential purposes). The proposed dwelling expansion will maintain the existing westerly side yard setback and slightly exceed the required easterly side yard setback, where there is greatest potential for impacting surrounding dwellings / properties, as well as maintain the existing non-conforming Ordinary High Water Level setback and far exceed the required Township Right-of-Way setback. Therefore, the County finds no evidence to suggest that the proposed action will have any negative impact to surrounding properties.*

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

Finding #5 *The proposed 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 *There is no evidence to suggest that the proposed action will have any negative fiscal impact on the County or school district. The County finds that the proposed dwelling expansion may increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*

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

Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and the Zoning Ordinance allows dwellings and attached garages as Permitted Uses in these districts when in compliance with all applicable ordinances, including all required setbacks. As it relates to this specific request, the intents of Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 are to establish the minimum required setbacks for all structures in relation to property boundaries and the applicable Ordinary High Water Level. While the existing dwelling is considered non-conforming in that it's situated 7.1' from the westerly property boundary (side yard) and approximately 25.3' from the Ordinary High Water Level of North Center Lake (deck is 15.3' from Ordinary High Water Level) where the required setbacks are 10' and 75' respectively, it's assumed that the dwelling was constructed prior to the County's adoption of official land use controls and is therefore considered to be legal non-conforming.*

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 to expand the legal non-conforming dwelling by increasing the height through the addition of a second story and the addition of an attached garage is reasonable in that dwellings and attached garages are Permitted Uses in the RRI District / Shoreland Management District and the expansions will not exacerbate the existing non-conforming OHWL and side yard setbacks; that the subject site is unique in that it was platted and developed prior to the County's adoption of official land use controls; and, that the proposed expansions fit the essential character of the subject site and surrounding residential lakeshore neighborhood.

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 draft Findings of Fact (see above) and recommended conditions (see below) and has prepared a resolution for the Board's consideration.

Recommended conditions:

1. This approval grants a Variance allowing the expansion of a legal non-conforming structure by allowing the addition of a second story and the addition of an attached garage located on the easterly side of the dwelling, subject to the following:
 - a. The second story shall not be located any closer to the Ordinary High Water Level of North Center Lake than the existing dwelling (not the deck; an approximate setback of 25.3') or any closer than 7.1' from the westerly property boundary.
 - b. The attached garage shall not be located any closer than 54.7' from the Ordinary High Water Level of North Center Lake and shall comply with all other required setbacks.
2. The dwelling expansion shall be constructed in general conformance with the application materials dated received August 30, 2024 and the conditions contained herein. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. The overall amount of impervious surface coverage shall not exceed 25%. In order to achieve this amount, and per the application materials on file with the Department of Environmental Services, the permit holder shall, at a minimum, demolish or otherwise remove the existing detached garage and detached screen porch. Removal of the detached garage and detached screen porch shall be completed within one year from the date of this resolution and the property owner shall notify the Chisago County Department of Environmental Services' land use division when this condition has been satisfied and arrange for a compliance inspection.
4. With the expansion and repositioning of the driveway, the permit holder shall ensure that no additional drainage is directed to the neighboring properties or North Center Lake.
5. Based on the size of the existing septic system and upon installation of a timed dosing system, the dwelling shall be allowed a maximum of three bedrooms. No additional bedrooms shall be allowed until and unless the septic system is sized to accommodate more than three bedrooms.
6. The permit holder shall obtain a building permit prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
7. 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.
2. **Deny** the Variance based on amended Findings of Fact or other contributing factors deemed appropriate. The following are suggested findings to assist in motion making. The Board is able to modify these findings and/or make other findings as necessary.
 - a. The request for Variance, as presented, is not consistent with the Chisago County Zoning Ordinance due to _____.
 - b. The proposed Variance will have a negative impact to surrounding properties due to _____.
 - c. The request for Variance, as presented, does not meet the threshold for “practical difficulty” as required by MN Statute 394.27 and Chisago County Zoning Ordinance Section 8.06 Variances, D. because of _____.
3. **Table** action to allow for further review and consideration. The current review period expires on November 3, 2024, allowing the Board to continue its review at the October 31, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-0903, a resolution approving a Variance allowing the expansion of a legal non-conforming structure located closer to the Ordinary High Water Level of North Center Lake and westerly property boundary than required on property located at 32860 Nueman Trail in Chisago Lake Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Surveys / site plans
 - i. “Existing”
 - ii. “New”
 - d. Building plans
 - e. Impervious surface calculation worksheets
 - i. “Existing”
 - ii. “New”
 - f. Photos of other dwellings (locations unknown)
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-0903



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-1774

Township Chisago Lake S/T/R 22/34/20 PID# 02.01688.00

Project Address 32860 Nueman Trl - Lindstrom MN 55045

Property Owner(s) MVMC LLC

Mailing Address (If Different from Project Address) PO Box 764 - Lindstrom MN 55045

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Michael O'Malley

Mailing Address (If Different from Project Address) PO Box 764 - Lindstrom MN 55045

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) Expansion of Non-conforming structures, including Attached garage and second story.

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

☐ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☒ Plat Drawings

Michael O'Malley
Applicant Signature

8-28-24
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Fees		Dates	
Base Fee	\$ <u>600-</u>	Application Received	<u>8-30-24</u>
Recording Fee	\$ <u>46-</u>	Application Complete	<u>9-4-24</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	☒ 60/ 120 Day Review Period	<u>11-3-24</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 CHISAGO LAKE S/T/R 22/34/20 PID# 02.01688.00

Project Address 32860 Nueman tr Lindstrom MN 55045

Property Owner(s) MVMC LLC

Mailing Address (If Different from Project Address) P.O. Box 764 Lindstrom MN 55045

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Michael O'malley

Mailing Address (If Different from Project Address) P.O. Box 764 Lindstrom MN 55045

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) Expansion of non-conforming structure, including Attached garage and second story.

[Signature]
Applicant Signature

8-28-24
Date of Application

I hereby certify that the above information is true and correct to the best of my knowledge, and that any knowingly false representations may invalidate any approvals. With my signature, I also grant permission to Chisago County Officials to enter upon the subject property for the purpose of such inspections as may be necessary.

Date of County Public Hearing SEPT 26, 2024 Date of Township Presentation SEPT 17, 2024

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

Does not move structures near the lake or property lines

Signatures of Township Officials or Authorized Personnel

[Signature] [Signature]

Dear Members of the County Board,

I am writing to formally request your consideration and approval of a variance to improve our lake home located at 32860 Nueman Trail, Lindstrom MN. 55045. Our family has enjoyed this property for just a short time but, we believe that the proposed enhancements will not only add to our enjoyment but also enhance the overall character of the neighborhood.

The improvements we are seeking to make include the removal of old, rundown structures on the property, as well as structures that do not conform to lake setback regulations even for lake lots within city limits. These changes are not only reasonable but essential for the safety and well-being of our family, especially our elderly mother. The removal of these structures will also improve the overall aesthetics of the property and contribute to a safer and more functional environment.

Additionally, we intend to construct a garage that will provide our elderly mother with a safer and more accessible way to park and access our lake home. This addition is unique in its purpose and will greatly enhance our family's ability to care for and enjoy the property for years to come.

Furthermore, we plan to lift and repair the roof of the home to better accommodate our growing family and align with the surrounding homes in the neighborhood. These enhancements are in line with the essential character of the area and will ensure that our property fits harmoniously with the existing homes in the neighborhood.

The unique characteristics of our lot necessitate this variance, as it presents challenges that require a creative solution to meet our family's needs.

The addition of a garage is essential for us to safely and conveniently store our vehicles and belongings. Due to the unique layout and size of our lot, a standard garage design would not fit without encroaching on setback requirements. Therefore, we are seeking a variance to accommodate a customized garage design that will seamlessly blend with the existing structure and enhance the functionality of our property.

The uniqueness of our lot presents limitations that make it impossible to adhere strictly to the standard zoning regulations. However, we believe that the addition of a garage will not only address our practical needs but also contribute positively to the overall aesthetics and value of our property and the surrounding community.

Our current structures are situated closer to the lake than the zoning regulations permit, and as

such, we are seeking to bring our property more in line with the surrounding essential characteristics of the area.

In order to achieve this, we plan to remove the existing structures that are closer to the lake and rebuild them in a manner that more closely conforms to the zoning regulations. By doing so, we believe that our property will not only come closer to area zoning regulations but also help enhance the aesthetic appeal of the area.

We understand the importance of maintaining the integrity of the natural environment surrounding the lake, and we are committed to ensuring that our property reflects this. We believe that by making these changes, we will not only improve our property but also contribute positively to the overall beauty and character of the community.

We also understand and respect the importance of zoning regulations and building codes, and we are committed to ensuring that our proposed changes will bring this property much closer to meeting all necessary requirements. We kindly ask for your consideration and approval of this variance so that we may make these necessary improvements for the safety and well-being of our family.

Thank you for your time and consideration. We look forward to hearing back from you soon.

Sincerely,

MVMC LLC

CERTIFICATE OF SURVEY

PROPERTY ADDRESS: 32860 NUEMAN TRAIL, LINDSTROM, MN

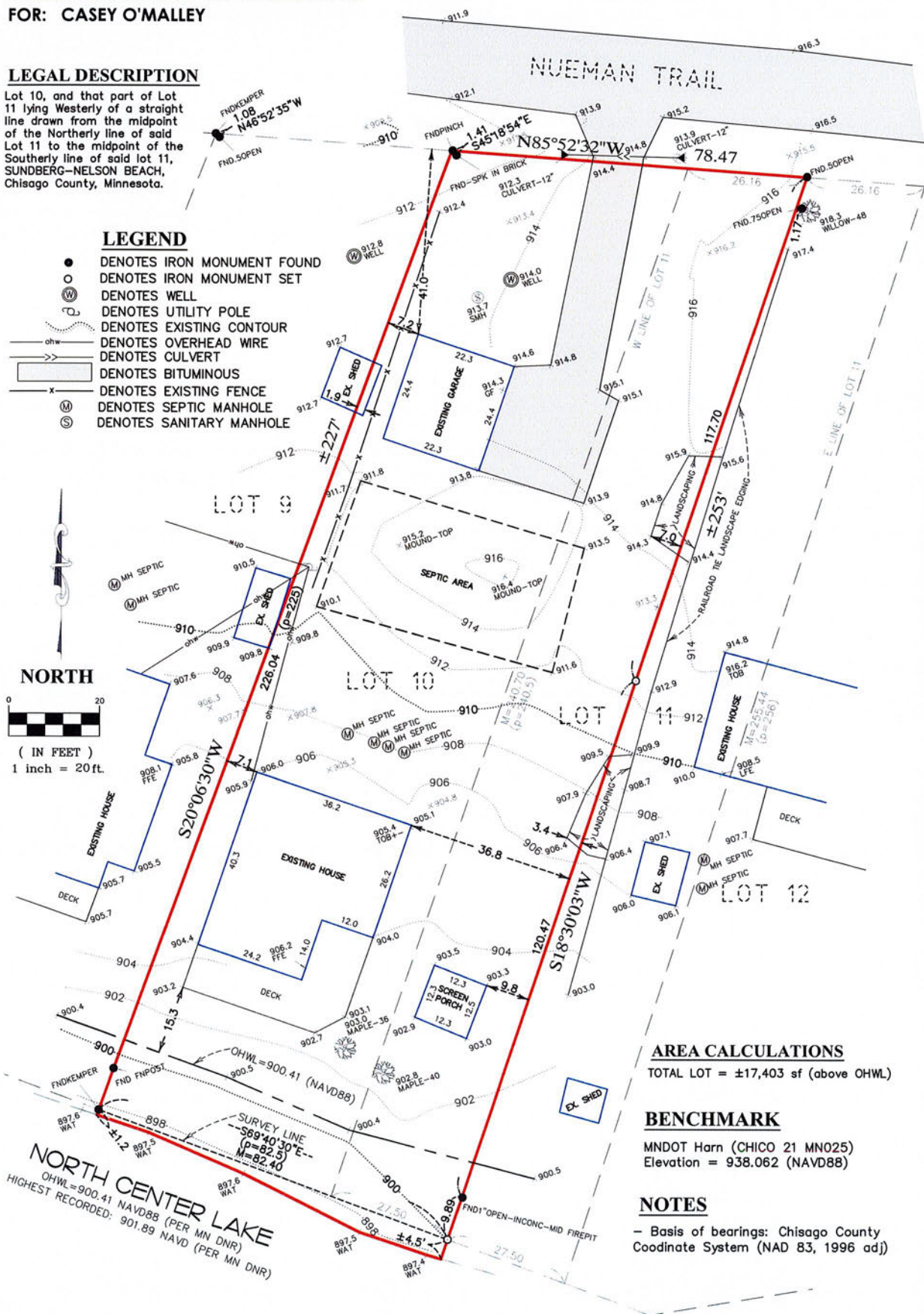
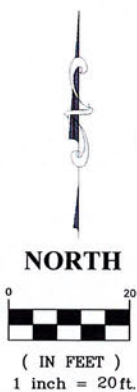
FOR: CASEY O'MALLEY

LEGAL DESCRIPTION

Lot 10, and that part of Lot 11 lying Westerly of a straight line drawn from the midpoint of the Northerly line of said Lot 11 to the midpoint of the Southerly line of said Lot 11, SUNDBERG-NELSON BEACH, Chisago County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES IRON MONUMENT SET
- ⊙ DENOTES WELL
- ⊙ DENOTES UTILITY POLE
- DENOTES EXISTING CONTOUR
- DENOTES OVERHEAD WIRE
- DENOTES CULVERT
- DENOTES BITUMINOUS
- DENOTES EXISTING FENCE
- Ⓜ DENOTES SEPTIC MANHOLE
- Ⓢ DENOTES SANITARY MANHOLE



AREA CALCULATIONS

TOTAL LOT = ±17,403 sf (above OHWL)

BENCHMARK

MNDOT Harn (CHICO 21 MN025)
Elevation = 938.062 (NAVD88)

NOTES

- Basis of bearings: Chisago County
Coordinate System (NAD 83, 1996 adj)

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Joshua P. Schneider
JOSHUA P. SCHNEIDER

JOB #24119

Date: 7-11-2024 Reg. No. 44655

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area and beyond

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0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20

CERTIFICATE OF SURVEY

PROPERTY ADDRESS: 32860 NUEMAN TRAIL, LINDSTROM, MN

FOR: CASEY O'MALLEY

LEGAL DESCRIPTION

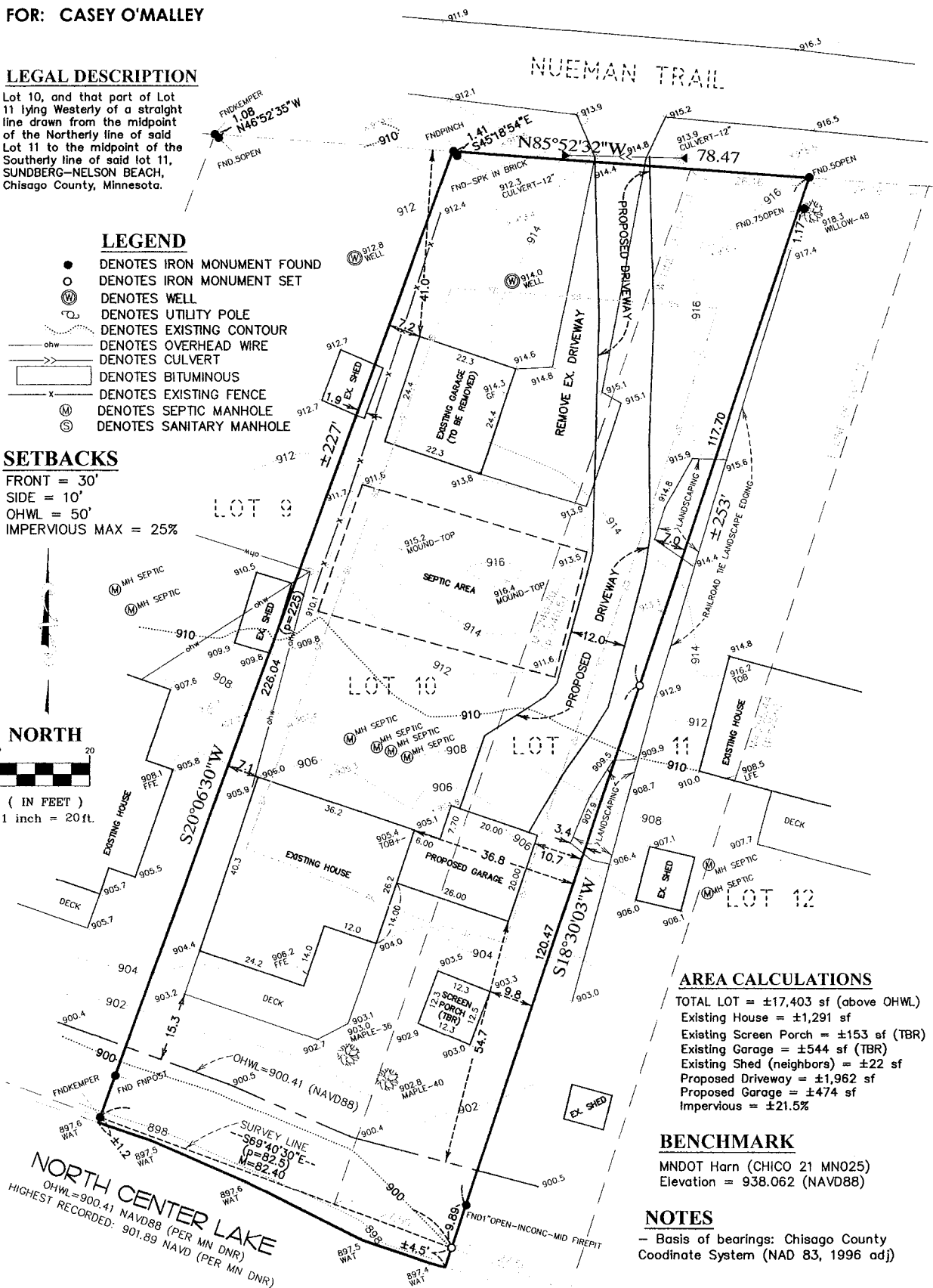
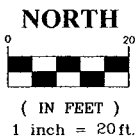
Lot 10, and that part of Lot 11 lying Westerly of a straight line drawn from the midpoint of the Northerly line of said Lot 11 to the midpoint of the Southerly line of said Lot 11, SUNDBERG-NELSON BEACH, Chicago County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES IRON MONUMENT SET
- ⊙ DENOTES WELL
- ⊕ DENOTES UTILITY POLE
- ohw— DENOTES EXISTING CONTOUR
- >>— DENOTES OVERHEAD WIRE
- x— DENOTES CULVERT
- ▭ DENOTES BITUMINOUS
- x— DENOTES EXISTING FENCE
- Ⓜ DENOTES SEPTIC MANHOLE
- Ⓢ DENOTES SANITARY MANHOLE

SETBACKS

FRONT = 30'
SIDE = 10'
OHWL = 50'
IMPERVIOUS MAX = 25%



AREA CALCULATIONS

TOTAL LOT = ±17,403 sf (above OHWL)
Existing House = ±1,291 sf
Existing Screen Porch = ±153 sf (TBR)
Existing Garage = ±544 sf (TBR)
Existing Shed (neighbors) = ±22 sf
Proposed Driveway = ±1,962 sf
Proposed Garage = ±474 sf
Impervious = ±21.5%

BENCHMARK

MNDOT Harn (CHICO 21 MN025)
Elevation = 938.062 (NAVD88)

NOTES

— Basis of bearings: Chisago County
Coordinate System (NAD 83, 1996 adj)

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Joshua P. Schneider
JOSHUA P. SCHNEIDER

JOB #24119

Revised: 8-30-24 (add prop improvements)

Date: 7-11-2024 Reg. No. 44655

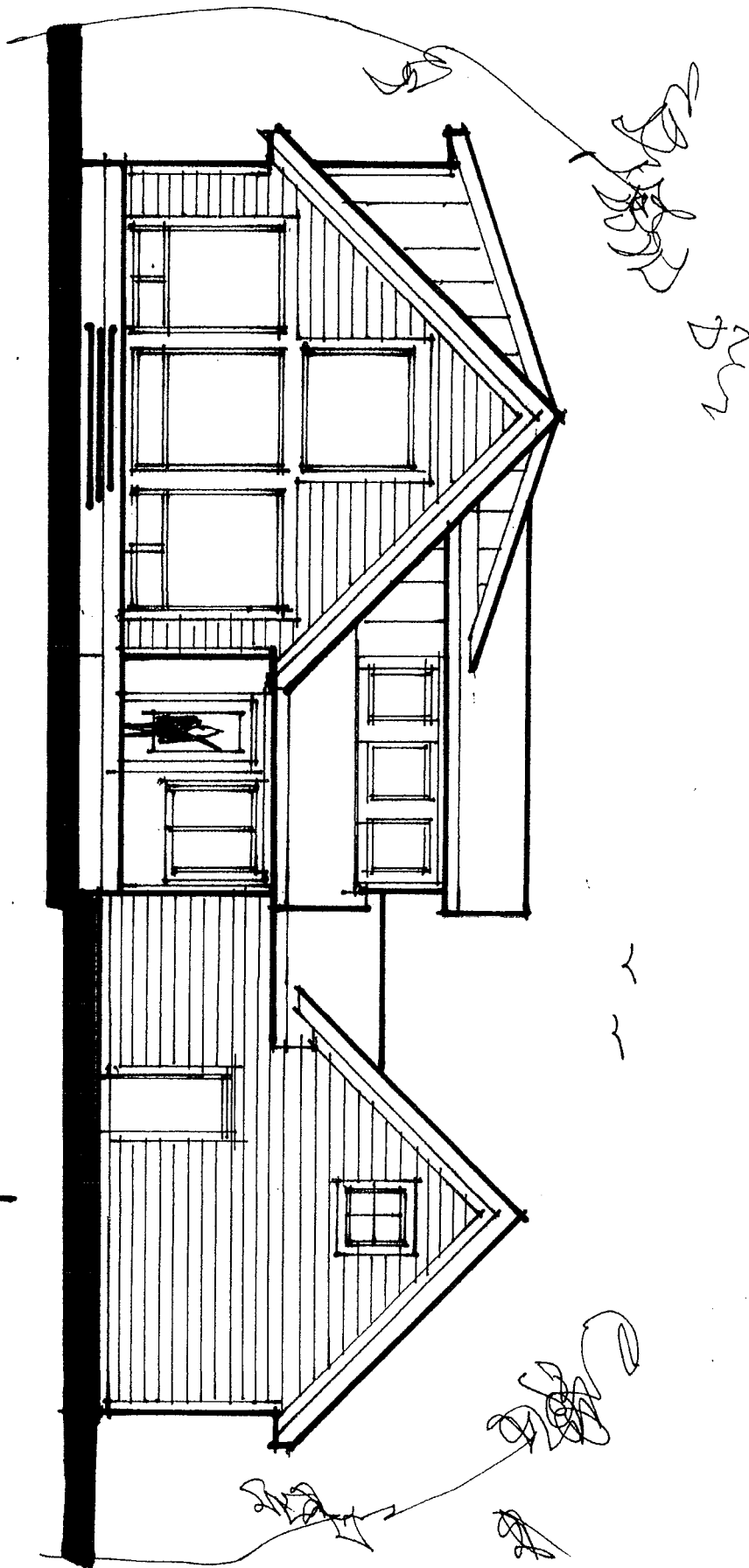
ACRE LAND SURVEYING

Serving Twin Cities Metro
area and beyond

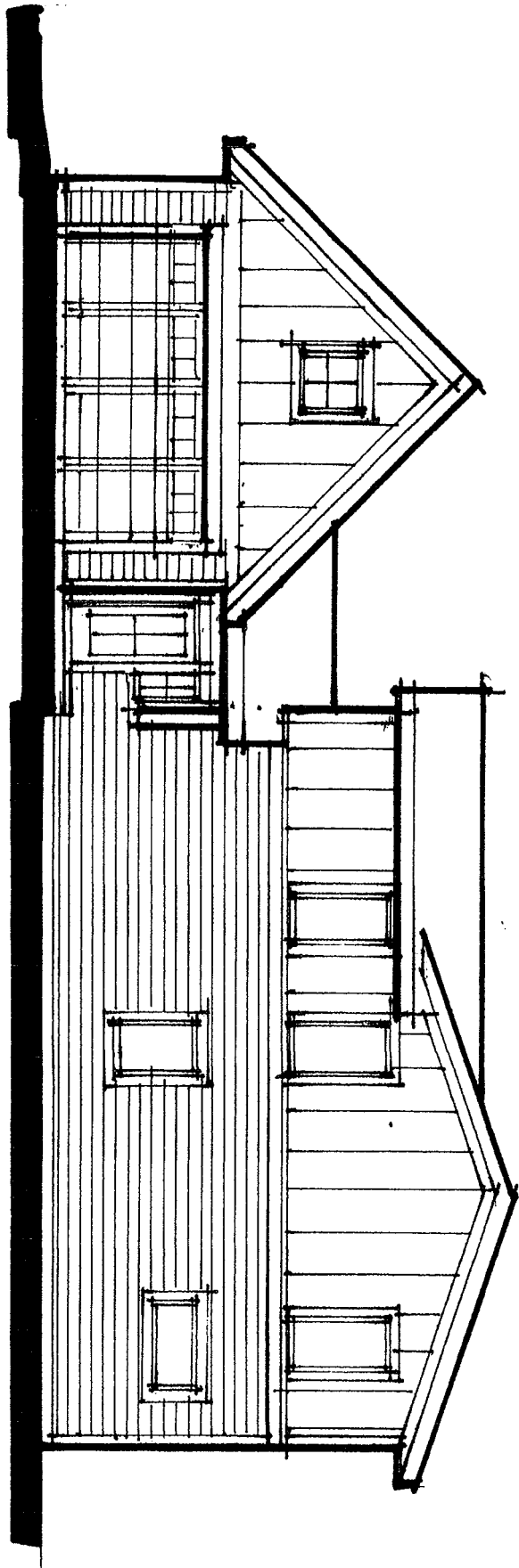
763-238-6278 js.acrelandsurvey@gmail.com

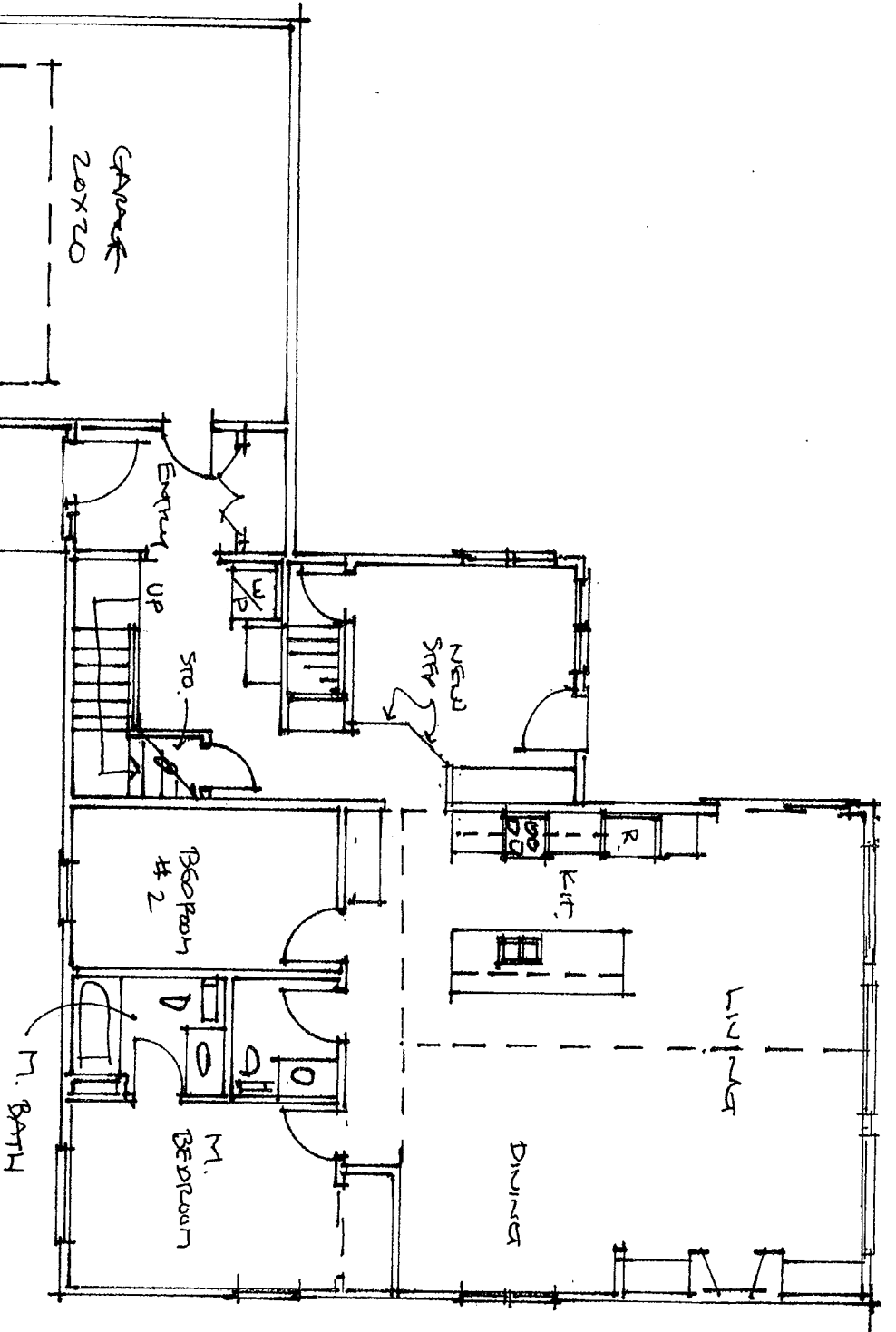
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SOUTH ELEVATION

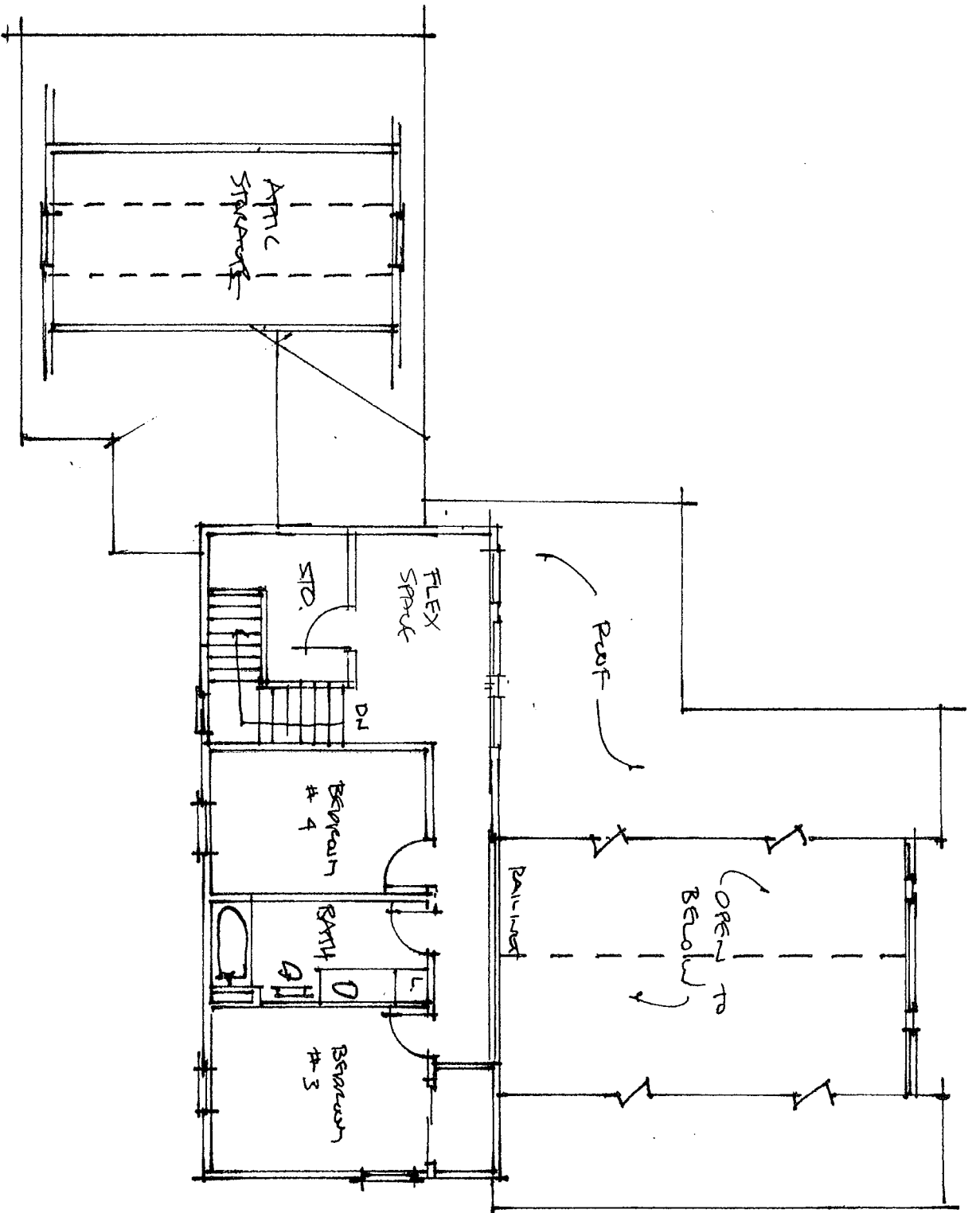


NORTH ELEVATION





Floor Plan



UPPER FLOOR PLAN

new

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

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

OR	Total area of parcel in square feet
	17,403

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		=	1287.24
garage		=	473.2
S/P deck		=	602
patio		=	
sidewalk		=	
driveway		=	1981.21
other; list:		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			3741.65

Agricultural Structures:	length X width	=	square foot of structure
barn		=	
machine shed		=	
bin		=	
other; list:		=	
		=	
		=	
		=	
		=	
		=	
		=	
TOTAL AG STRUCTURES			

Other Items:	length X width	=	square foot of structure
roadway (if not publicly dedicated)		=	
landscaping with plastic barrier		=	
other; list:		=	
		=	
TOTAL OTHER ITEMS			

Calculate:

Total from "Residential Structures"	3741.65	+
Total from "Agricultural Structures"		+
Total from "Other Items"		+
Total square footage of coverage:		=
(divide by total area of parcel above)		/
TOTAL IMPERVIOUS SURFACE	21.5%	%


signature

8-29-24
date

corresponding permit number























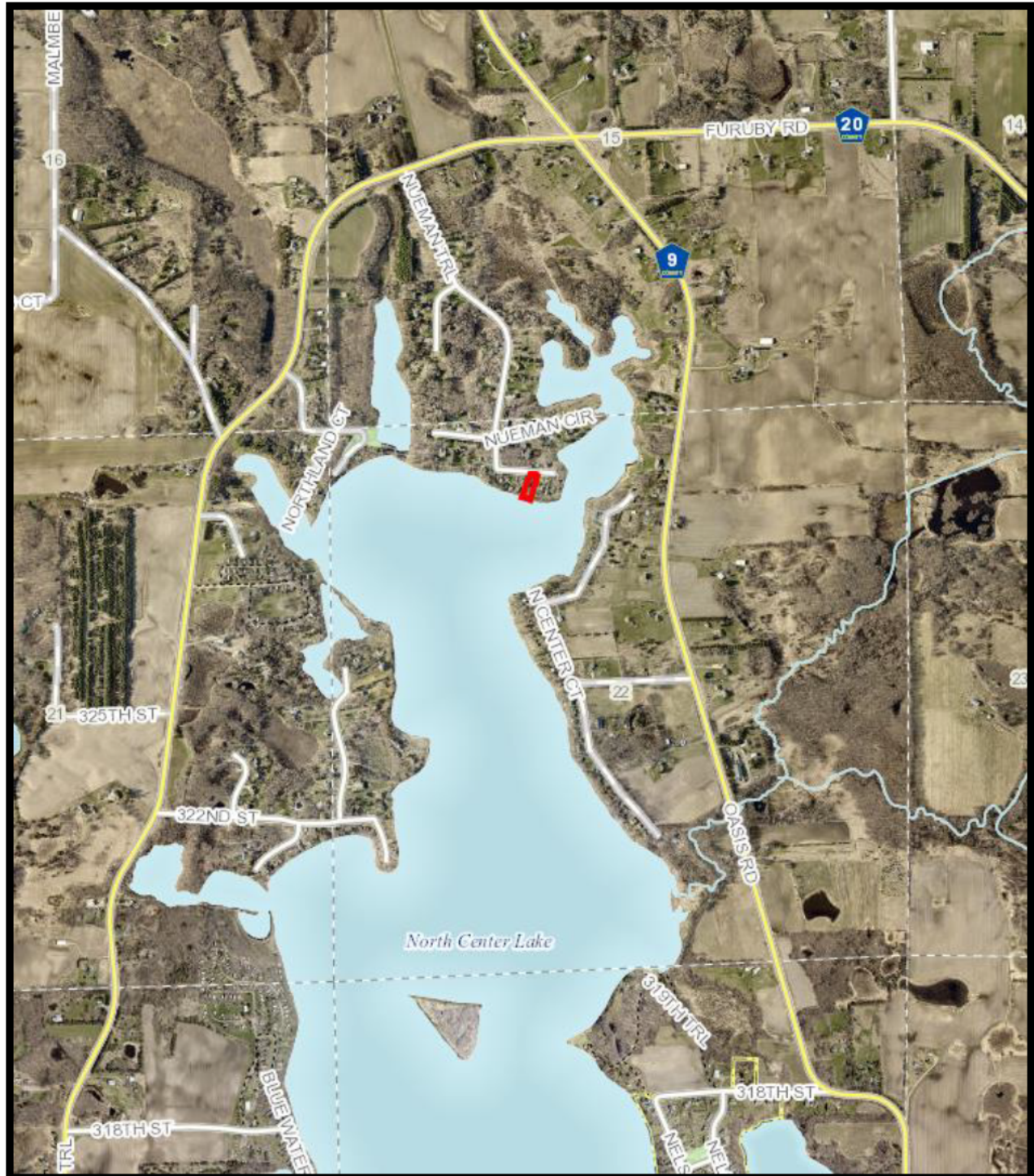




MVMC, LLC and Mike O'Malley – Property owner MVMC, LLC and applicant Mike O'Malley are requesting a Variance allowing for the expansion of a non-conforming structure (dwelling) located closer to the Ordinary High Water Level of North Center Lake and westerly property boundary than allowed in the Rural Residential I (RRI) District / Shoreland Management District. The property owner is proposing to expand the dwelling by adding an attached garage and second story. The .44± acre subject site is located at 32860 Nueman Trail in Chisago Lake Township, S22, T34, R20 (PID 02.01688.00).



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RESOLUTION NO. BOAA2024-0903
A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY,
MINNESOTA, APPROVING A VARIANCE ALLOWING THE EXPANSION OF A LEGAL
NON-CONFORMING STRUCTURE LOCATED CLOSER TO THE ORDINARY HIGH WATER
LEVEL OF NORTH CENTER LAKE AND WESTERLY PROPERTY BOUNDARY THAN REQUIRED
ON PROPERTY LOCATED AT 32860 NUEMAN TRAIL IN CHISAGO LAKE TOWNSHIP

WHEREAS, property owner MVMC, LLC and applicant Michael O'Malley submitted an application for Variance dated received August 30, 2024 and considered complete on September 4, 2024; and

WHEREAS, the property owner wishes to expand their legal non-conforming dwelling through the addition of a second story and attached garage where the dwelling encroaches on the required Ordinary High Water Level and westerly side yard setbacks; and

WHEREAS, the .44± acre subject site is located in the Rural Residential I (RRI) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 02.01688.00

Lot 10, and that part of Lot 11 lying Westerly of a straight line drawn from the midpoint of the Northerly line of said Lot 11 to the midpoint of the Southerly line of said Lot 11, SUNBERG-NELSON BEACH, Chisago County, Minnesota.

WHEREAS, notice was provided and on September 26, 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 and/or applicant, and invited members of the public to comment; and

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

- | | |
|-------------|--|
| Criteria #1 | The proposed action will not impair an adequate supply of light and air to adjacent property; |
| Finding #1 | <i>The proposed action will increase the height of the dwelling through the addition of a second story and increase the structure footprint through the addition of an attached garage. Given that there is approximately 18' between the existing dwelling / proposed second story and the dwelling to the west and approximately 40' between the proposed attached garage and the dwelling to the east, the County finds that the proposed dwelling expansion will be constructed in a manner so as not to impact the supply of light and air to neighboring properties.</i> |

- Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;
- Finding #2 *The proposed action will not change the primary use of the subject site or dwelling. Therefore, the County finds that the proposed expansion itself will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways. Further, the Chisago Lake Town Board, serving as Road Authority, did not express any concerns related to impacts on Nueman Trail or surrounding Township roads after considering the request at its September 17, 2024 meeting.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owner will be required to obtain a building permit prior to construction of the proposed dwelling expansion, and it will, therefore, be constructed in compliance with all applicable codes. 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 subject site is currently developed with a dwelling and two detached accessory structures, and the proposed action will not change how the property is being used (residential purposes). The proposed dwelling expansion will maintain the existing westerly side yard setback and slightly exceed the required easterly side yard setback, where there is greatest potential for impacting surrounding dwellings / properties, as well as maintain the existing non-conforming Ordinary High Water Level setback and far exceed the required Township Right-of-Way setback. Therefore, the County finds no evidence to suggest that the proposed action will have any negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed 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 *There is no evidence to suggest that the proposed action will have any negative fiscal impact on the County or school district. The County finds that the proposed dwelling expansion may increase the property value which will, in fact, create a positive fiscal impact for both the County and school district.*

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

Finding #7 *The subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and the Zoning Ordinance allows dwellings and attached garages as Permitted Uses in these districts when in compliance with all applicable ordinances, including all required setbacks. As it relates to this specific request, the intents of Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.21 are to establish the minimum required setbacks for all structures in relation to property boundaries and the applicable Ordinary High Water Level. While the existing dwelling is considered non-conforming in that it's situated 7.1' from the westerly property boundary (side yard) and approximately 25.3' from the Ordinary High Water Level of North Center Lake (deck is 15.3' from Ordinary High Water Level) where the required setbacks are 10' and 75' respectively, it's assumed that the dwelling was constructed prior to the County's adoption of official land use controls and is therefore considered to be legal non-conforming.*

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 to expand the legal non-conforming dwelling by increasing the height through the addition of a second story and the addition of an attached garage is reasonable in that dwellings and attached garages are Permitted Uses in the RRI District / Shoreland Management District and the expansions will not exacerbate the existing non-conforming OHWL and side yard setbacks; that the subject site is unique in that it was platted and developed prior to the County's adoption of official land use controls; and, that the proposed expansions fit the essential character of the subject site and surrounding residential lakeshore neighborhood.

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

1. This approval grants a Variance allowing the expansion of a legal non-conforming structure by allowing the addition of a second story and the addition of an attached garage located on the easterly side of the dwelling, subject to the following:
 - a. The second story shall not be located any closer to the Ordinary High Water Level of North Center Lake than the existing dwelling (not the deck; an approximate setback of 25.3') or any closer than 7.1' from the westerly property boundary.

- b. The attached garage shall not be located any closer than 54.7' from the Ordinary High Water Level of North Center Lake and shall comply with all other required setbacks.
2. The dwelling expansion shall be constructed in general conformance with the application materials dated received August 30, 2024 and the conditions contained herein. Any significant deviation from the approved request, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
 3. The overall amount of impervious surface coverage shall not exceed 25%. In order to achieve this amount, and per the application materials on file with the Department of Environmental Services, the permit holder shall, at a minimum, demolish or otherwise remove the existing detached garage and detached screen porch. Removal of the detached garage and detached screen porch shall be completed within one year from the date of this resolution and the property owner shall notify the Chisago County Department of Environmental Services' land use division when this condition has been satisfied and arrange for a compliance inspection.
 4. With the expansion and repositioning of the driveway, the permit holder shall ensure that no additional drainage is directed to the neighboring properties or North Center Lake.
 5. Based on the size of the existing septic system and upon installation of a timed dosing system, the dwelling shall be allowed a maximum of three bedrooms. No additional bedrooms shall be allowed until and unless the septic system is sized to accommodate more than three bedrooms.
 6. The permit holder shall obtain a building permit prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
 7. 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 26th day of September, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST:

Beth Gervais
Land Services Coordinator