

**CHISAGO COUNTY**  
**BOARD OF ADJUSTMENT & APPEALS**  
**OFFICIAL PROCEEDINGS**  
**September 26, 2024**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, September 26, 2024 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator

Chair Strand called the meeting to order and led the assembly in the Pledge of Allegiance. A roll call of Board members was then taken. Board members present: 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** – Chair Strand noted that agenda item 6b (Jeffrey J. Stoks and Peggy A. Stoks Trust and Bigfork Valley Log Cabins, LLC) had been withdrawn. **Motion** by Sutcliffe to approve the agenda as presented and with the removal of item 6b; second by Greene. The **motion passed** and carried unanimously.

**APPROVAL OF MINUTES** – **Motion** by Carlson to approve the August 29, 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 Yeager. 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**

**Timothy & Barbara Jansen and Bigfork Valley Log Cabins, LLC** – Coordinator Gervais stated that property owners Timothy & Barbara Jansen, along with applicant Bigfork Valley Log Cabins, LLC, had requested a Variance to allow a reduced Ordinary High Water Level (OHWL) setback in the Rural Residential I (RRI) District / Shoreland Management District on property located at 52469 Belle Isle Drive (PID 06.00983.00).

Gervais presented background information, stating that the property owners and applicant were proposing to redevelop the lakeshore property by demolishing the existing dwelling and detached garage and constructing a new dwelling with attached garage. Gervais highlighted that the subject site was approximately .30± acres in size and platted as Lot 16, LaBelle Isle in 1959, and was deemed legal non-conforming due to the lot area and lot width not meeting current standards. Gervais noted that the existing amount of impervious surface coverage was reported by the property owners and applicant to be 28.67%, which exceeded the maximum allowable amount of 25%. Gervais continued by explaining that the property owners and applicant proposed to reduce the amount of

impervious surface to be at or below 25% by using pervious materials for surfaces like the driveway and patio.

Gervais reviewed the application materials, sharing that the property owners intended to demolish the existing 1,321 sf dwelling and 650 sf detached garage and redevelop the property by constructing a new 1,689 sf dwelling with 945 sf attached garage. The Variance, if granted, would allow for a 49' setback from OHWL where the required setback was 75'. Gervais explained that the original request was for a 59' setback from OHWL; however, it was discovered during the September 11, 2024 Technical Review Committee meeting that, with this proposed setback, the proposed structure would be 10' from the existing compliant septic system where the required setback was 20'. Ultimately, the property owners opted to shift the location of the structure 10' closer to the OHWL and they submitted updated application materials on September 13, 2024.

Gervais shared that the property owners had provided a written narrative explaining that the request was reasonable in that the size of the lot and the required setback from the septic system limited the size of the proposed dwelling and the property owners had made effort to keep the proposed footprint as small as possible; the uniqueness of the property was that the subject site and surrounding lakeshore properties on Belle Isle Drive were small; and, the design of the proposed dwelling would fit the architecture or essential character of the neighborhood and possibly enhance the neighborhood. Further, the property owners described the current state of the neighborhood by explaining that over 90% of the dwellings on the lake side of Belle Isle Drive encroached on the required OHWL setback and the proposed dwelling would have a somewhat similar setback from OHWL as adjacent dwellings.

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. During this time the property owner 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. The Nessel Town Board considered the request on September 10, 2024 and recommended approval with no comments or recommended conditions. Gervais noted that the Town Board had considered the original request (59' setback from OHWL) and not the updated request (49' from OHWL). The State mandated 60-Day review period was scheduled to expire on November 2, 2024.

Gervais concluded by suggesting that the property owners and applicant had 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; however, she recognized that the requested Variance was consistent with past Variances granted by the Board and ultimately offered a recommendation of approval with draft Findings of Fact and conditions and reviewed options available to the Board.

Chair Strand invited the property owners and applicant to address the Board. Property owners Timothy & Barbara Jansen were present and approached the Board along with applicant Tommy Foster, representing Bigfork Valley Log Cabins, LLC. Sutcliffe sought clarification on the location of the proposed garage, asking if it would be in the same location as the existing detached garage. T.

Jansen stated that the proposed attached garage would not be in the same location as the existing detached garage, adding that the attached garage would be attached to the front of the house with a straight driveway rather than the existing "L" shaped driveway. Foster added that the proposed dwelling and attached garage would be 10' closer to the OHWL due to the required septic system setback.

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 further discussion to the Board. Carlson, after noting that the Board toured the subject site on September 25, 2024, inquired if the proposed amount of impervious surface coverage would increase being that the driveway would be longer as a result of the proposed dwelling and attached garage being shifted an additional 10' toward the OHWL. Foster stated that they would be using pervious pavers for the driveway construction, suggesting that there would be no increase to the amount of impervious surface coverage. Carlson asked if they were going to be building a slab or crawlspace under the dwelling. Foster answered that it would be a slab-on-grade with either five courses of block or a Superior Walls pre-pre-caste system and provided additional details about construction of the proposed dwelling. Sutcliffe asked if the elevation of the driveway would be changing. Foster stated that the elevation of the driveway would remain the same.

**Motion** by Sutcliffe to adopt 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, as presented; second by Greene. The **motion passed** 5-0.

Approved 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.

**MVMC, LLC and Mike O'Malley** – Coordinator Gervais stated that property owner MVMC, LLC, along with applicant Michael O'Malley, requested a Variance to allow the expansion of a legal non-conforming dwelling closer to the Ordinary High Water Level (OHWL) and side yard setbacks than

required in the Rural Residential I (RRI) District / Shoreland Management District on property located at 32860 Nueman Trail (PID 02.01688.00).

Gervais presented background information, stating that property owner MVMC, LLC, represented by applicant Michael O'Malley, was proposing to expand their legal non-conforming dwelling through the addition of a second story and attached garage. The dwelling was considered non-conforming as the deck was located 15.3' from OHWL and the dwelling was located approximately 25.3' from OHWL and 7.1' from the westerly property boundary (side yard) where the required OHWL setback was 75' and the required side yard setback was 10'. Gervais shared that the subject site was approximately .44± acres in size and platted as Lot 10 and part of Lot 11, Sundberg-Nelson Beach in 1957, and was deemed legal non-conforming due to the lot area and lot width not meeting current standards. Gervais shared that the existing amount of impervious surface coverage was reported to be 18.5%, which was well below the maximum allowable amount of 25%. Gervais also shared that a new septic system, designed for a two-bedroom dwelling, had been installed in 2022.

Gervais reviewed the application materials, sharing that the property owner wished to expand the legal non-conforming dwelling through the addition of a second story and attached garage. The building plans showed that the second story would feature two additional bedrooms, for a total of four bedrooms, as well as flex space and storage space. Gervais shared that the existing 22' x 24' detached garage would be removed as well as the 12' x 12' detached screen porch. The survey showed that the proposed attached garage would be located on the easterly side of the dwelling and 54.7' from OHWL where the required setback was 75'. Gervais noted that the proposed garage addition complied with both side yard setback requirements as well as the Township Right-of-Way setback requirement and, while it would encroach on the OHWL, it wasn't an exacerbation of the encroachment created by the existing dwelling. Being that the existing dwelling was encroaching on the required OHWL and westerly side yard setbacks, the proposed second story would similarly encroach on these required setbacks. The existing dwelling – and therefore the proposed second story – was located approximately 25.3' from OHWL and 7.1' from the westerly property boundary (side yard) where the required setbacks were 75' and 10' respectively. While the addition of a second story would be an encroachment on the OHWL and westerly property boundary, it wasn't an exacerbation of the encroachments created by the existing dwelling. The proposed amount of impervious surface coverage was 21.5%, which was below the maximum allowable amount of 25%.

Gervais shared that the property owner and applicant had provided a written narrative which stated that removal of certain non-conforming structures was reasonable and essential for the safety and well-being of the property owner, and that removal of these structures would also improve the overall aesthetics of the property and contribute to the safety of the environment. The proposed addition of an attached garage would 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 would blend with the existing structure and enhance functionality of the property. The proposed second story would create room for family members and the proposed two-story dwelling would fit the essential character of the neighborhood. Uniqueness of the lot presented limitations that would make it impossible to adhere strictly to the County's setback requirements.

The Technical Review Committee met on September 11, 2024 with applicant Michael O'Malley and contractor Wade Glenna. 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 and, with preliminary consent from Davidsavor, the applicant opted to reduce the proposed number of bedrooms from four to three and implement a timed dosing system to ensure that the septic system could accommodate one additional bedroom. The Committee did not identify any other immediate concerns. 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 was scheduled to expire on November 3, 2024.

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

Chair Strand invited the property owner and applicant to address the Board. Applicant Michael O'Malley and his mother Virginia O'Malley were present and approached the Board. M. O'Malley shared that he had lived in the area for over 23 years and, with his father's recent passing, he wanted to move his mother closer to family. M. O'Malley shared that they loved the Nueman Trail property; however, they wanted to enhance the property to provide better access for his aging mother. M. O'Malley stated that the challenge with the property was accessibility, and concluded by stating that construction of the proposed addition would be completed by local contractors.

Greene sought clarification on the proposed removal of structures from the property as the plans seemed to indicate that only the detached garage would be removed. M. O'Malley stated that the screen porch and the detached garage would be removed from the subject site. M. O'Malley stated that they had no intention of building closer to the lake and they were just enhancing the property and making it more accommodating for his mom. Greene expressed concern with the proposed driveway and the potential for runoff as the proposed driveway would be longer and steeper. M. O'Malley recognized that some neighbors were present and assured that they would be doing the project right and noted that local contractor Kirk Bluhm would be constructing the driveway. M. O'Malley referenced a conversation he had with County Sanitarian Davidsavor during the September 11<sup>th</sup> Technical Review Meeting, in regard to the septic system being too small to accommodate four bedrooms, noting that they had adjusted their plans down to a three-bedroom design. M. O'Malley stated that they wanted to make the property better for his mom, the County, and his neighbors by appreciating the property value. M. O'Malley concluded by noting that, as far as drainage and landscaping, all of it was an essential part to the plan and they did not want to cause any problems for the neighbors or the lake.

Yeager referenced several photos of lake front lots included in the application materials and asked if they were part of the applicant's presentation and if they were located close to the subject property. M. O'Malley stated that contractor Wade Glenna took the photos to show the character of the neighborhood and that what they were proposing was similar to the neighboring homes.

Chair Strand opened the public hearing and sought public comment.

Rick Johnson of 32870 Nueman Trail, Chisago Lake Township stated that he lived next door to the subject site and had reviewed the proposed plans and welcomed the proposed upgrade. Johnson spoke about his personal experience with the Variance process and voiced concern with the location of the proposed garage. Johnson speculated that Variance approval would encourage others to want to do the same thing and he believed that there were other garage options that the property owner could consider.

Don DuBois of 32812 Neuman Trail, Chisago Lake Township provided the Board and applicant with written testimony, including several photos of the subject site and his property. DuBois expressed concern with the flow of water which could cause runoff into the lake and the potential for further erosion of the beach area. DuBois also expressed concern with the height of the proposed second story and the impact it would have on his view of the lake. *Clerk's Note: DuBois' written testimony was added to the official record.*

Danielle DuBois Woog of 32812 Neuman Trail, Chisago Lake Township stated that she was the daughter of Don DuBois and appreciated the idea of the applicants improving the property; however, she was concerned with how it would affect her family's view of the lake from their property. In addition, DuBois Woog expressed concern with the proposed changes having a negative impact on their property value.

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

In response to the public testimony, M. O'Malley stated that he hadn't realized there would be so much push back from neighbors and reiterated that the intent of the improvements was to make the property better suited for his family and his mother. M. O'Malley addressed the concerns of the neighbors by stating that everything would be done right and by professionals.

In response to the concern about the proposed second story blocking neighboring views of the lake, Greene commented that, after the Board toured the subject site on September 25, 2024, he observed that the subject dwelling sat at a much lower elevation than the neighboring dwellings and he felt that the proposed second story wouldn't encroach on the lake view. He also noted that the property owner and applicant were putting a flatter roof on the dwelling and it would be lower than the existing trees. Greene also mentioned that, when considering these types of requests, the Board did consider the impact it would have on the neighboring properties, including drainage and possible impacts on the lake.

Virginia O'Malley mentioned that there were three other structures on the property that had been removed in the last 5-6 years and that, aesthetically speaking, they owned the most humble home in the neighborhood. V. O'Malley reiterated that their intent was to do everything correctly and be environmentally conscious. In response to public testimony about a possible decrease in property values, V. O'Malley stated that she disagreed that the proposed project would decrease the value of neighboring properties.

Carlson, referencing the Board's September 25<sup>th</sup> tour of the subject site, noted that he observed that there was a tree service on site at the same time to remove a maple tree from the property. Carlson asked the property owner and applicant about the status of the two large maple trees near the shoreline. V. O'Malley stated that the right tree (closest to dwelling) was decaying and was therefore removed, and the left tree was canopied. V. O'Malley speculated that neighboring property owner D. DuBois' view of the lake was enhanced as a result.

Carlson asked M. O'Malley why all of the photos, previously mentioned by Yeager, were included in the application packet. M. O'Malley clarified that his builder took photos of all nearby lake shore properties to show what was in the neighborhood.

**Motion** by Yeager to adopt 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 located at 32860 Nueman Trail in Chisago Lake Township, as presented; second by Sutcliffe. The **motion passed** and carried unanimously.

Approved 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.

**PUBLIC HEARINGS – CONTINUED HEARINGS**

None

**OLD BUISNESS**

None

**NEW BUISNESS**

None

**MISCELLANEOUS**

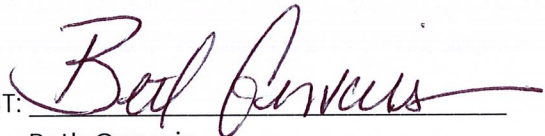
None

**ADJOURN MEETING** – *Motion* by Carlson to adjourn; second by Yeager. The **motion passed** and carried unanimously. The meeting was adjourned at 7:51 p.m.



Rebecca Strand  
Chair

ATTEST:



Beth Gervais  
Land Services Coordinator