

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

Tour Date and Time: Wednesday, October 30, 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. September 26, 2024

5. Receive all Materials and Submittals into Record

Previously Distributed Materials:

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

6. Public Hearings – New Applications

- a. **James & Lori Taylor and Justin Buehring** – Property owners James & Lori Taylor and applicant Justin Buehring are requesting a Variance in order to expand a non-conforming structure (dwelling) which is located closer to the Ordinary High Water Level of East Rush Lake and the centerline of County State Aid Highway 1 than permitted and to exceed the maximum allowable amount of impervious surface coverage. The .30± acre subject site is zoned Rural Residential I (RRI) District / Shoreland Management District and located at 51276 Rush Lake Trail / CSAH 1 in Nessel Township, S14, T37, R22 (PID 06.00289.00).
- b. **David & Julie Visliser** – Property owners David & Julie Visliser are requesting a Variance allowing for reduced setbacks from the Ordinary High Water Level of South Center Lake and the Township Right-of-Way and to exceed the maximum allowable amount of impervious surface coverage for the purpose of redeveloping the property with a new dwelling and attached garage. The .25± acre subject site is zoned Urban Residential (UR) District / Shoreland Management District and located at 29860 Glader Boulevard in Chisago Lake Township, S3, T33, R20 (PID 02.01706.00).

7. Public Hearings – Continued Hearings

None

8. Old Business

9. New Business

10. Miscellaneous

11. Adjourn Meeting

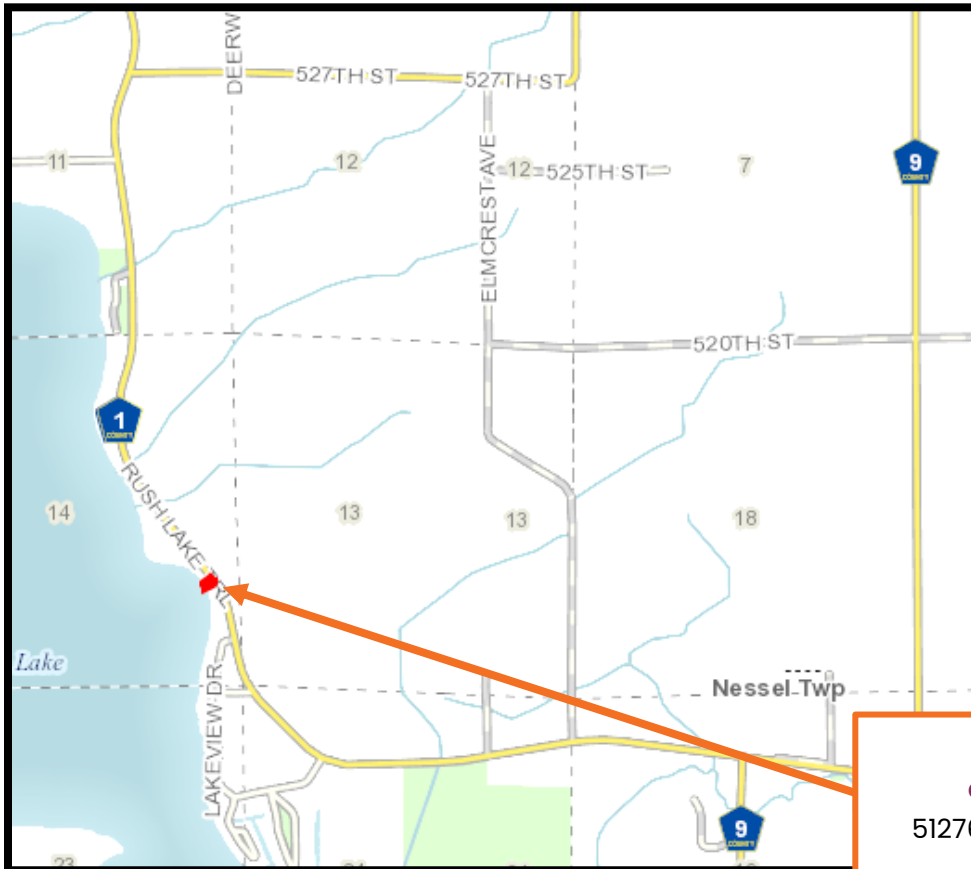
The next meeting is scheduled for **Tuesday**, November 26, 2024 at 7:00 pm.

Board of Adjustment and Appeals

Tour Date and Time:

Wednesday, October 30, 2024 at 8:15 am

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



James & Lori Taylor and Justin Buehring

51276 Rush Lake Trail / CSAH 1
Nessel Township
PID 06.00289.00



David & Julie Vislisel

29860 Glader Boulevard
Chisago Lake Township
PID 02.01706.00



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 11th 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 25th 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



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Expand a Non-Conforming Structure and Exceed the Maximum Allowable Amount of Impervious Surface Coverage
 51276 Rush Lake Trail / CSAH 1, Nessel Township
 DATE: October 31, 2024

ACTION TO CONSIDER

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

SITE & APPLICATION INFORMATION

Property Owner(s): James & Lori Taylor
 Applicant(s): Justin Buehring of JSB Construction, Inc.
 Property Address: 51276 Rush Lake Trail / CSAH 1
 Nessel Township
 General Location: Section 14, Township 37, Range 22
 PID: 06.00289.00
 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: Agricultural (AG) District / Shoreland Management District
 West: East Rush Lake
 Date Application Received: September 27, 2024
 Date Application Complete: September 30, 2024
 60-Day Review Period: November 29, 2024

BACKGROUND

Property owners James & Lori Taylor and applicant Justin Buehring of JSB Construction, Inc. wish to expand a non-conforming dwelling by adding a second story over the southern portion of the dwelling. Additionally, while the property owners and applicant are not proposing to create any new impervious surface, they are seeking Variance approval for the existing non-conforming amount of 31.6%.



SITE ANALYSIS

The .30± acre subject site is generally located 900' north of Rush Lake Way and 660' south of Dakota Circle on the west side of Rush Lake Trail / CSAH 1 in Nessel Township. The subject site is situated adjacent to the east shoreline of East Rush Lake. The County's GIS Viewer indicates that the subject site is approximately 97' wide at the easterly property boundary and centerline of Rush Lake Trail / CSAH 1, approximately 75' wide at the westerly property boundary and shoreline of East Rush Lake, and approximately 150' deep. While the subject site is not platted, records from the Chisago County Assessor's Office indicate that the property was already developed in 1971 (see top image below), which suggests that the existing non-conforming parcel and dwelling pre-date the County's adoption of official land use controls and are therefore considered to be legal non-conforming. The parcel is considered non-conforming being that it doesn't meet the current requirements for lot area and lot width, and the dwelling is considered non-conforming being that it encroaches on the required Ordinary High Water Level (OHWL) and roadway setbacks and has a smaller footprint than required.

The top adjacent image shows how the subject site was developed in November 1971 and the bottom adjacent image shows how the subject site was developed in June 2015. While there have likely been some modifications over the years, the dwelling appears to be largely unchanged since its original construction. The existing dwelling, which features one bedroom, is approximately 575 sf in size and the attached single-stall garage is roughly 220 sf in size. Additionally, the dwelling features an 8' x 19' (152 sf) deck on the westerly side of the structure. The application materials illustrate that the shortest distance between the dwelling (not the deck) and the OHWL is approximately 55' and the shortest distance between the dwelling and the centerline of Rush Lake Trail / CSAH 1 is approximately 66', where the required setbacks are 75' and 135' respectively. The dwelling and attached garage appear to exceed both side yard setback requirements. Staff notes that the reported setbacks are based on the County's GIS Viewer and not a survey, and the County's GIS View is not 100% accurate.



The existing amount of impervious surface coverage is reported by the property owner and applicant to be 31.6%, which is 6.6% 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 or closer to compliance, the property owner and applicant have requested Variance approval to maintain the existing amount. Staff notes a number of contributing factors leading to the excessive amount of impervious surface coverage, including approximately 1,425 sf of improved roadway for which the property owners have no control, a large surfaced area / patio on the easterly side of the dwelling, and three detached accessory structures where the maximum allowable number is two. The property owners have indicated that no additional impervious surface coverage has been added since they purchased the property in 2011 and they simply wish to maintain what is there today. Based on historical aerial imagery of the property, it does appear that the previous property owner added a significant amount of impervious surface (the large surfaced area / patio on the easterly side of the dwelling) sometime between 2007 and 2010; however, there is no record of a Variance being requested or approved which would have allowed the excessive amount of impervious surface coverage. Therefore, staff suggests that the existing amount of impervious surface coverage is considered to be illegal non-conforming and does not have the same statutory rights as if it were legal non-conforming.

Topography of the subject site includes elevations ranging from 915' near the westerly property boundary / shoreline of East Rush Lake to 925' near the easterly property boundary / centerline of Rush Lake Trail / CSAH 1. While the westerly 10' – 15' of the subject site are located within a FEMA flood zone, all structures and the septic system are located entirely outside of the flood zone.

The existing septic system features a 2,000-gallon holding tank located under the large surfaced area / patio easterly of the dwelling. A septic compliance inspection was completed on October 3, 2024 and the system was found to be compliant. Staff notes that the Board granted a Variance in 2008 for the location of the existing holding tank.

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 east are located within the Agricultural (AG) District / Shoreland Management District. Surrounding lakeshore properties are similarly sized and developed, whereas properties to the east are significantly larger and either developed for residential purposes and/or used for agricultural purposes.

PROPOSAL ANALYSIS

The attached application materials explain and show that the property owners and applicant would like to expand the non-conforming dwelling by adding a second story over the southern portion of the structure. The existing attached garage will be converted to habitable space, allowing for two bedrooms on the main level and one bedroom on the proposed second story. Being that the proposed expansion will be constructed upwards, it won't

exacerbate the existing non-conforming setbacks or the existing non-conforming amount of impervious surface coverage.

The property owners have provided a written narrative to explain what they're hoping to accomplish through this Variance request. Additionally, the narrative loosely addresses the State mandated practical difficulty standard by explaining that the request is **reasonable** in that the proposed expansion will not increase the footprint of the non-conforming structure, which means that it won't exacerbate the existing non-conforming setbacks or increase the existing non-conforming amount of impervious surface coverage; and, the proposed expansion will not affect the **essential character** of the neighborhood as several neighboring properties have been developed with two-story dwellings and the proposed height will not impact the lake views of property owners to the east as there are no dwellings directly east. Staff would also offer that the **uniqueness** of the subject site is that the property was created and developed prior to the County's adoption of official land use controls, which the Board commonly refers to as pre-existing development. Additionally, in regard to the excessive amount of impervious surface coverage, staff notes that the overall amount must include the improved roadway surface as it's technically on the subject property, and this is not true for all other properties within the County.

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 / non-conforming factors shown in **red**.

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	135' to centerline of County State Aid Highway	Approximately 66' from centerline of CSAH 1 (dwelling; existing <u>and</u> proposed)
Ordinary High Water Level (OHWL) Setback	75' for structures	Approximately 55' from OHWL (existing <u>and</u> proposed)
Side Yard Setback	10' for dwelling and attached garage	Approximately 21' from northerly and southerly property boundaries
Impervious Surface Coverage	25%	31.6% (existing <u>and</u> proposed)

REVIEW PROCESS

The Technical Review Committee met with applicant Justin Buehring on October 9, 2024. County Sanitarian Davidsavor confirmed that a passing septic compliance inspection had been completed on October 3, 2024. The group discussed the existing non-conforming number of detached accessory structures and possible remedies.

The Nessel Town Board considered the request on October 8, 2024 and recommended approval with no comments or conditions.

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

WRITTEN TESTIMONY

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

VARIANCE ANALYSIS

A Variance to the provisions of the Zoning Ordinance may be issued to provide relief to the landowner in those cases where the application of the strict letter of the Ordinance imposes particular hardship or practical difficulties to the property owner in the use of the land. No Variance may be granted that would allow any use that is prohibited in the zoning district in which the property is located. A Variance may be granted only in the event that the following circumstances exist. Staff has provided notes (shown in *italics*) for each of the circumstances for the Board's consideration.

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control;

The property owners have not cited any specific exceptional or extraordinary circumstances which apply to their property. However, staff suggests that pre-existing development is an exceptional circumstance related to this property, being that the property was most likely created and developed prior to the County's adoption of official land use controls. Additionally, staff suggests that inclusion of the improved roadway, accounting for approximately 11% impervious surface coverage, is an exceptional and extraordinary circumstance as not all properties within the County are required to do the same.

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 Chisago County Zoning and Shoreland Management Ordinances, and the subject site has been developed with a dwelling, various accessory structures, and impervious surfaces. Further, because a previous property owner developed the subject site with more detached accessory structures and impervious surface coverage than allowed, it could be argued that the applicants are currently enjoying more than what

other properties in the same district are allowed to have under the terms of the County's ordinances.

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;

Neither the circumstance of pre-existing development, as it relates to the creation and original development of the land, or inclusion of the improved roadway surface in the overall amount of impervious surface are results of actions of the current property owners or any previous owners under the current Zoning and Shoreland Management Ordinances. The subject site was likely created and developed before the County adopted official land use controls, and a portion of the improved roadway is located on the subject site rather than within a dedicated Right-of-Way. However, some amount of the existing non-conforming amount of impervious surface coverage does also appear to be a direct result of the actions of the previous property owner. Historical aerial imagery shows that the amount of impervious surface coverage drastically increased between 2007 and 2010 when a large surfaced area / patio was installed easterly of the dwelling without prior Variance approval. The existing non-conforming number of detached accessory structures also slightly contributes to the excessive amount of impervious surface coverage.

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

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

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

Being that pre-existing development is suggested as one of the unique circumstances / hardships related to the subject site, the property owners and applicant have no ability to adjust the request as it relates to expansion of the existing dwelling to alleviate this particular hardship. However, the property owners and applicant have demonstrated that they have intentionally proposed an expansion which will not exacerbate the already non-conforming OHWL and roadway setbacks. Conversely, while the property owner and applicant are not proposing to exacerbate the already non-conforming amount of impervious surface coverage and they have no control over the inclusion of improved roadway in the overall amount of impervious surface coverage, they do have the ability to bring the illegal non-conforming amount closer to compliance by eliminating some improvements, such as removing some hard-surfaced areas or one or more detached accessory structures, or replacing some hard-surfaced areas with pervious materials.

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

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

*Staff does believe that the request is **reasonable** in that the proposed expansion will not increase the footprint of the non-conforming structure, which means that it won't exacerbate the existing non-conforming setbacks or increase the existing non-conforming amount of impervious surface coverage; and, the proposed expansion will not affect the **essential character** of the neighborhood as several neighboring properties have been developed with two-story dwellings and the proposed height won't impact the lake views of property owners to the east as there are no dwellings directly east; and, that the **uniqueness** of the subject site is that the property was created and developed prior to the County's adoption of official land use controls, and, in regard to the excessive amount of impervious surface coverage, that the property must include the improved roadway surface as it's technically on the subject property, which is not true for all other properties within the County.*

However, staff also believes that the amount of impervious surface is in-part a direct result of actions taken by the previous property owner without prior Variance approval. Staff does agree that some amount of Variance for impervious surface coverage is appropriate given that the improved roadway accounts for nearly 11%; however, staff also believes that the current property owners have the ability to reduce the existing non-conforming amount by eliminating some impervious surfaces or replacing some impervious surfaces with pervious materials in an effort to bring the amount closer to compliance.

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 westerly 10' – 15' of the subject site are located in the flood district, all structures and the septic system are located entirely outside of the flood zone.

The Board is tasked with determining whether or not a "practical difficulty" exists prohibiting the property owner(s) 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 and Appeals 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 dwelling expansion, including a partial second story, 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 easterly property boundary is adjacent to a public Right-of-Way and the westerly 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 neither the proposed dwelling expansion nor the proposed amount of impervious surface coverage will cause an increase in the amount of traffic generated at the subject site or increase congestion on surrounding public roadways. Further, the Chisago County Highway Department, serving as Road Authority, did not express any concerns related to impacts on Rush Lake Trail / CSAH 1.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| Finding #3 | <i>The permit holder 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. 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.</i> |

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 related accessory structures. The proposed dwelling expansion 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 dwelling expansion 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 related accessory structures. The proposed dwelling expansion 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 dwelling expansion will have any negative impact to surrounding properties.*

However, the County further finds, based on historical aerial imagery, that a significant amount of impervious surface was installed between 2007 and 2010, without Variance approval. The County believes that the existing / proposed amount of impervious surface coverage, being 31.6%, 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 permit holder shall be responsible for returning the subject site to a compliant amount of impervious surface coverage through removal of existing impervious surfaces and/or replacement of impervious materials with pervious materials.

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 primary use of the subject site or the need for additional facilities and services; therefore, the County finds that the proposed actions 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 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 intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses; 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 dwelling expansion is non-conforming in that it will encroach on the required OHWL setback by approximately 20' and the required roadway setback by approximately 69', per the submitted application materials, the County finds that it will not exacerbate the existing OHWL and roadway setback encroachments. Additionally, the Zoning Ordinance allows for Variances, including setback Variances and Variances to the amount of impervious surface coverage, 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 proposed action is **reasonable** in that it won't increase the footprint of the non-conforming structure or exacerbate the existing non-conforming setbacks, or increase the existing non-conforming amount of impervious surface coverage; that the proposed action won't affect the **essential character** of the neighborhood as several neighboring properties have been developed with two-story dwellings and the proposed height won't impact the lake views of property owners to the east as there are no dwellings directly east; and, that the **uniqueness** of the subject site is that the property was created and developed prior to the County's adoption of official land use controls, and, in regard to the excessive amount of impervious surface coverage, that the property must include the improved roadway surface as it's technically on the subject property, which is not true for all other properties within the County.*

-OR-

Finding #7 The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses; 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 dwelling expansion is non-conforming in that it will encroach on the required OHWL setback by approximately 20' and the required roadway setback by approximately 69', per the submitted application materials, the County finds that it will not exacerbate the existing OHWL and roadway setback encroachments. Additionally, the Zoning Ordinance allows for Variances, including setback Variances and Variances to the amount of impervious surface coverage, 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 a non-conforming structure is **reasonable** in that it won't increase the footprint of the non-conforming structure or exacerbate the existing non-conforming setbacks, or increase the existing non-conforming amount of impervious surface coverage; that the proposed action won't affect the **essential character** of the neighborhood as several neighboring properties have been developed with two-story dwellings and the proposed height won't impact the lake views of property owners to the east as there are no dwellings directly east; and, that the **uniqueness** of the subject site is that the property was created and developed prior to the County's adoption of official land use controls.

However, the County further finds that the circumstance of having more impervious surface coverage than allowed is a circumstance in-part created by the previous property owner without the County's knowledge or approval by way of Variance. The County recognizes that the current property owners are 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 31.6%; however, the County has historical information, including aerial imagery, demonstrating that the existing / proposed amount of impervious surface was created between 2007 and 2010, at a time when the Chisago County Shoreland Management Ordinance limited the maximum allowable amount of impervious surface coverage to 25%, without Variance approval. Therefore, the County has determined that the permit holder shall be responsible for returning the subject site to a compliant amount of impervious surface coverage through removal of existing impervious surfaces and/or replacement of impervious materials with pervious materials.

STAFF CONCERNS

- While the Chisago County Zoning Ordinance does not prohibit the conversion of the attached garage into habitable space, staff notes that this proposed conversion will result in the loss of all garage space. Given that most property owners desire to have garage space and this conversion is a direct result of actions by the property owners, staff would not support a future Variance request related to the construction of a new garage.

- The subject site currently features three detached accessory structures where the maximum allowable number is two. While these structures are reported by the property owner to have been on-site since prior to their purchase of the property in 2011, the structures do slightly factor into the excessive amount of impervious surface coverage. Additionally, all three of the structures significantly encroach on the required roadway setback. The Board may wish to consider requiring the elimination of one structure given that it has a direct correlation to the Variance request related to impervious surface coverage.

STAFF RECOMMENDATION

Staff supports the request to expand the existing non-conforming dwelling and recognizes that the roadway contributes significantly to the existing and proposed amount of impervious surface coverage. However, staff does believe that the previous property owner greatly contributed to the circumstance of having more impervious surface coverage than allowed by adding a large surfaced area / patio between 2007 and 2010 and installing / constructing more detached accessory structures than allowed without Variance approval, making these illegal non-conformities. Staff also believes that the current property owners and applicant have the ability to reduce the existing amount of impervious surface coverage to be compliant or closer to compliance 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 expand 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.

Recommended conditions:

1. **The Variance request to expand a legal non-conforming structure (dwelling), which is located closer to the Ordinary High Water Level (OHWL) of Rush Lake and the centerline of CSAH 1 than required by the Chisago County Shoreland Management Ordinance and Zoning Ordinance, is APPROVED, allowing for the construction of a second story.** The dwelling expansion shall be constructed in general compliance with the application materials, including building plans, submitted to the Chisago County Department of Environmental Services on September 27, 2024. The dwelling expansion shall not cause the dwelling to be any closer to the OHWL of Rush Lake or the centerline of CSAH 1 than the existing dwelling. 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 6.6%± is DENIED,** requiring that the property owners 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 owners 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 dwelling expansion / structure 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 expand a legal non-conforming structure and the request to 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 expansion of a legal non-conforming structure (dwelling), which is located closer to the Ordinary High Water Level (OHWL) of Rush Lake and the centerline of CSAH 1 than required by the Chisago County Shoreland Management Ordinance and Zoning Ordinance, allowing for the construction of a second story. The dwelling expansion shall be constructed in general compliance with the application materials, including building plans, submitted to the Chisago County Department of Environmental Services on September 27, 2024. The dwelling expansion shall not cause the dwelling to be any closer to the OHWL of Rush Lake or the centerline of CSAH 1 than the existing dwelling. 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.
 - b. A 6.6% 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 31.6%. No additional impervious surface shall be added as part of this request and no additional impervious surface shall be added to the subject site, causing the amount to exceed 31.6%, without prior Variance approval.
2. The permit holder shall obtain a building permit prior to construction and, further, the dwelling expansion / structure 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 29, 2024, allowing the Board to continue its review at the November 26, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-1001, a resolution approving a Variance allowing the expansion of a legal non-conforming structure and denying a Variance allowing more impervious surface coverage than permitted on property located at 51276 Rush Lake Trail / CSAH 1 in Nessel Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Site plan
 - d. Building plans
 - e. Impervious surface calculations worksheet
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-1001 (approval / denial)
5. Draft Resolution No. BOAA2024-1001 (approval)



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-2014

Township Nessel S/T/R 14-37-22 PID# 06.00289.00
Project Address 51276 Rush Lake Trail Rush City 55069
Property Owner(s) James Taylor, Lori Taylor
Mailing Address (If Different from Project Address) 391 Rum River Way Anoka Mn 55303
Phone# [REDACTED] Email [REDACTED]
Applicant(s) James Taylor & Justin Buchholz
Mailing Address (If Different from Project Address) 391 Rum River Way Anoka Mn 55303
Phone# [REDACTED] Email [REDACTED]

Type of Request (Check All That Apply)

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

Description of Request (Attach Separate Sheet if Necessary) Request is to add a second level to current home and exceed 25% Impervious Surface Coverage.

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

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

James Taylor
Applicant Signature

9/14/24
Date of Application

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

Fees		Dates	
Base Fee	\$ <u>6000</u>	Application Received	<u>9-27-24</u>
Recording Fee	\$ <u>46</u>	Application Complete	<u>9-30-24</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	60 / 120 Day Review Period	<u>11-29-24</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>6046</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Nessel S/T/R 14-37-22 PID# 06.00289.00
Project Address 51276 Rushlake Trail Rushcity, 55069
Property Owner(s) James Taylor, Lori Taylor
Mailing Address (if Different from Project Address) 391 Rum River Way Anoka Mn 55303
Phone# [REDACTED] Email [REDACTED]
Applicant(s) James Taylor + Justin Buchering
Mailing Address (if Different from Project Address) 391 Rum River Way Anoka Mn 55303
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)

Request is to add a second level to current home and extend 25% Impervious Surface

James Taylor
Applicant Signature

9/4/24
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 OCT. 31, 2024

Date of Township Presentation OCT. 8, 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

Betsy Rising

Don [Signature]

Stacy [Signature]

Hello,

My Name is James Taylor and I have a home at 51276 Rush Lake Trail in Rush City. We purchased the property in July 2011. It is a 1 bedroom 1 bathroom space of approximately 575 sq ft. The purpose of this letter is to apply for a variance to modify my property to accommodate the growth of my family, and create the space necessary to continue to stay long term.

Our intent when we purchased the property was to use it as a place my family could gather for recreational fun. For the past 13 years we have made many memories here and continue to do so.

With the increase of the size of our family, and with us seeing many 2 level homes being built in the area immediately surrounding us we decided to look to expand our property from the 1 bedroom 1 Bathroom home that currently exists. I hired a contractor to help me with this and this is where I found out about the lot restrictions to expand sideways and the need to stay within the original footprint of the property.

With this in mind my request is to be able to add a second level to my property. By going up this would allow me to add the space necessary to move my family and guests inside the house, but also stay within the original footprint and setbacks established. Directly behind my property is the road to the settling ponds for the shorewood association so nothing will be built behind me to block views of any other residence.

After going through the document for impervious surface calculations we realized we currently are at 31.6% which is above the allotted 25% but this was already in place before we purchased the property. In our proposal we are not looking to expand the property or increase the impervious surface at all. Our request is to simply add a 2nd level and stay within the current footprint of the home.

I have watched my children grow up here and now hope to have my grandkids have the opportunity to do the same. If granted this will allow us

to move ahead with our plans to remain here and continue to make memories for our family. Thank you so much for your time and consideration of this proposal.

James Taylor



Rush Lake Trail

Approx 100



House

Driv

Approx
Patio

Approx
21
well

Approx
21

Approx
55



"HOME ADDITION"

51276 RUSH LAKE TRAIL
RUSH CITY, MN 55069

PROJECT TITLE:
"One Story Addition"
Prop. ID. 06.00289.00

ADDRESS
51276 RUSH LAKE TRAIL
Nessel Township, MN 55069

CONTACT:
Justin Buehring

Commission Number Date
XXXXX 08/26/2024

Becklin & Whiney
Consulting Engineers, Inc.
139 1st Ave. E, Suite 100
P.O. Box 471
Cambridge, MN 55008
Phone: (763) 689-5631
Fax: (763) 552-5631

Drawn: ROBERTO F. CICERO Checked: WB

I HEREBY CERTIFY THAT THIS PLAN,
SPECIFICATION, OR REPORT WAS PREPARED
BY ME OR UNDER MY DIRECT SUPERVISION
AND THAT I AM A DULY REGISTERED
PROFESSIONAL ENGINEER UNDER THE LAWS
OF THE STATE OF MINNESOTA.

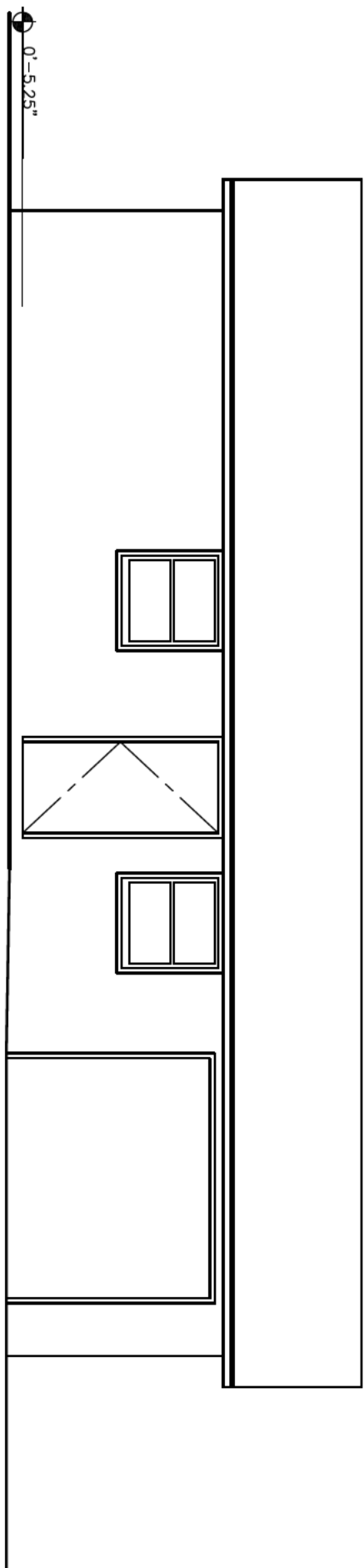
William A. Becklin, P.E.
DATE: 08/26/2024 LIC. NO. 18494

Sheet Name

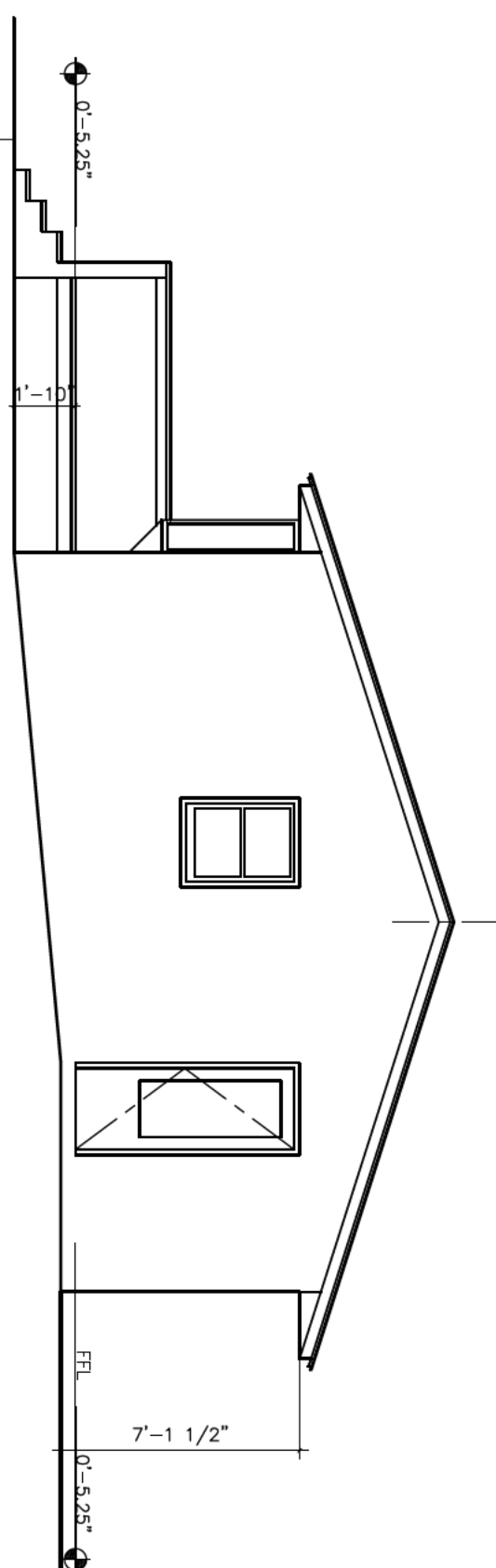
EXISTING CONDITIONS

SCALE: AS INDICATED

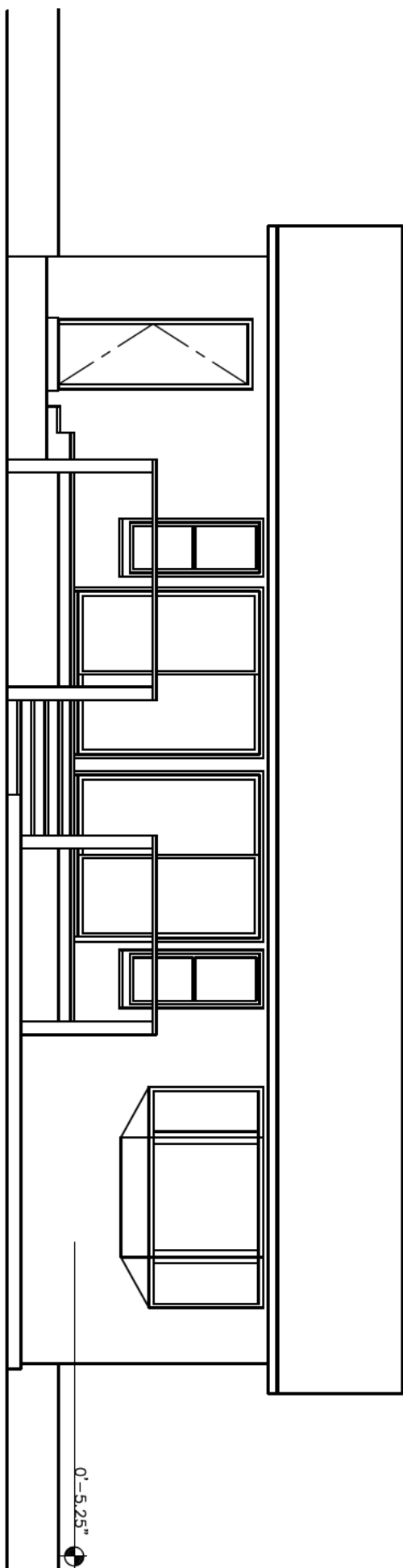
Sheet
T1



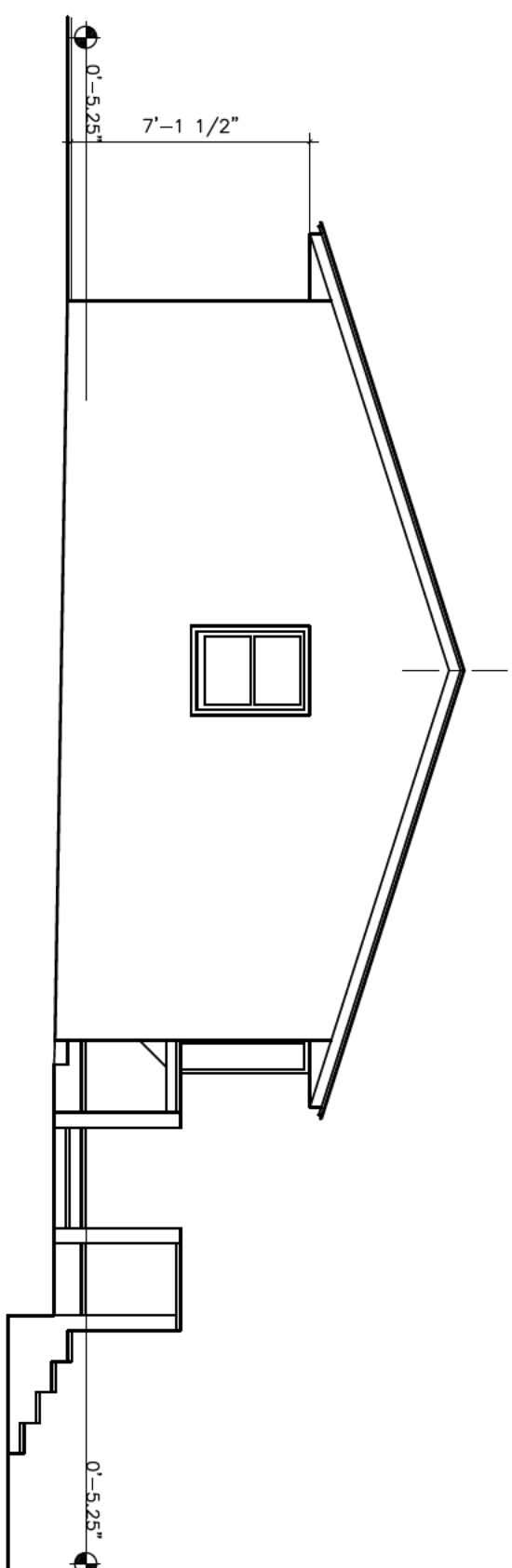
1 NORTHEAST ELEVATION
3/16" = 1'-0"



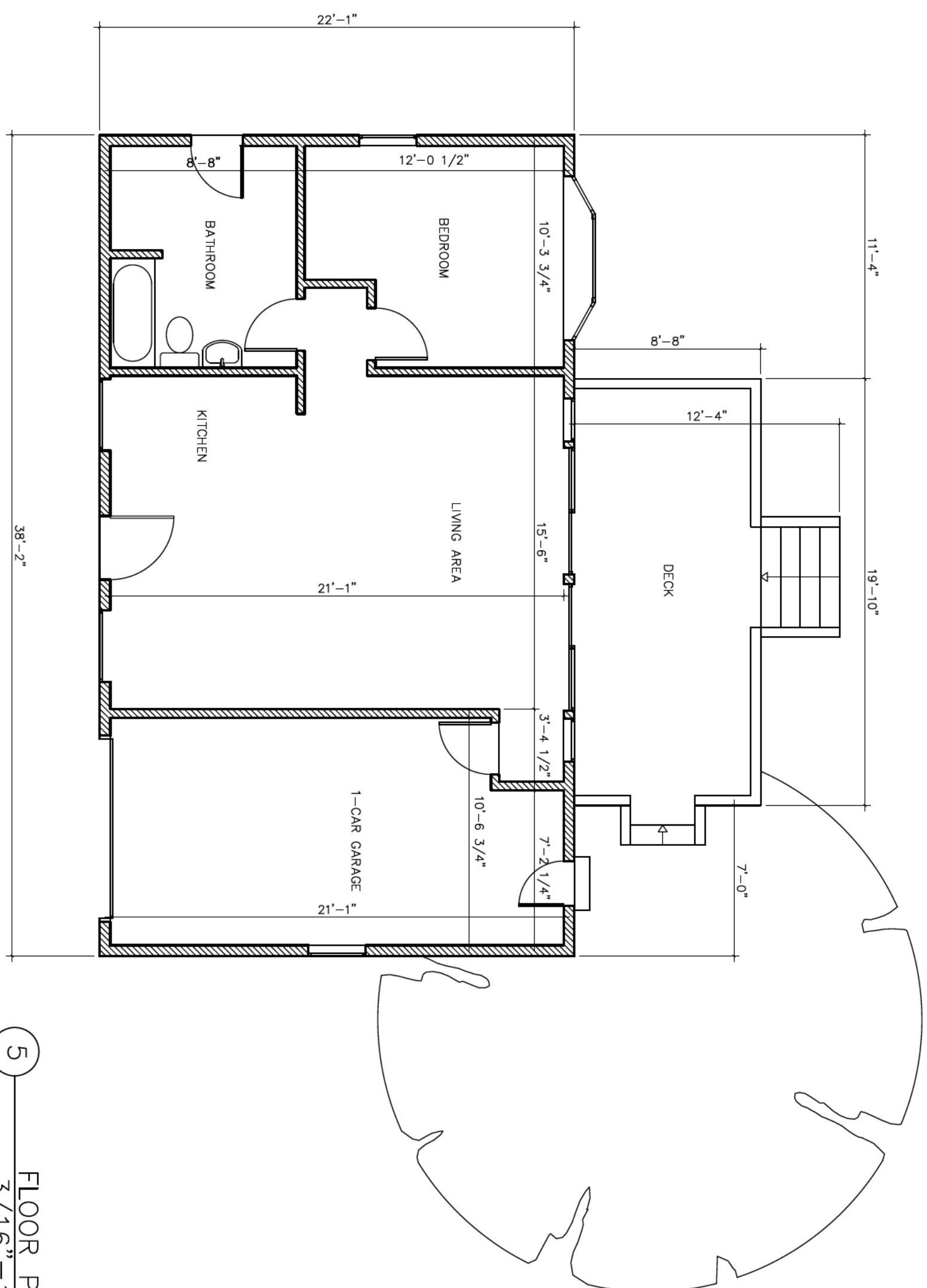
2 SOUTHEAST ELEVATION
3/16" = 1'-0"



3 SOUTHWEST ELEVATION
3/16" = 1'-0"



4 NORTHWEST ELEVATION
3/16" = 1'-0"



5 FLOOR PLAN
3/16" = 1'-0"

- SHEET INDEX**
- T1. EXISTING CONDITIONS
 - PROPOSED ADDITION:
 - S1. FLOOR PLANS, ELEVATION, SECTIONS
 - S2. SECTIONS, ELEVATIONS, DETAILS.
 - S3. STRUCTURAL NOTES

PROJECT TITLE:
"One Story Addition"
Prop. ID. 06.00289.00

ADDRESS
51276 RUSH LAKE TRAIL
Nessel Township, MN 5506

CONTACT:
Justin Buehring

CONTACT:

Justin Buehring

Commission Number	Date
XXXXX	8/26/2024

Revision Number	Date
X	8/26/2024

**Becklin & Whitney
Consulting Engineers, Inc.**

P.O. Box 471
Cambridge, MN 55008
Phone: (763) 689-5631
Fax: (763) 552-5631

Drawn	ROBERTO F. CICERO	Checked	W
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I HEREBY CERTIFY THAT THIS PLAN,
SPECIFICATION, OR REPORT WAS PREPARED
BY ME OR UNDER MY DIRECT SUPERVISION
AND THAT I AM A DULY REGISTERED
PROFESSIONAL ENGINEER UNDER THE LAWS
OF THE STATE OF MINNESOTA.

William A. Becklin, P.E.
DATE: 8/26/2024 LIC. NO. 18494

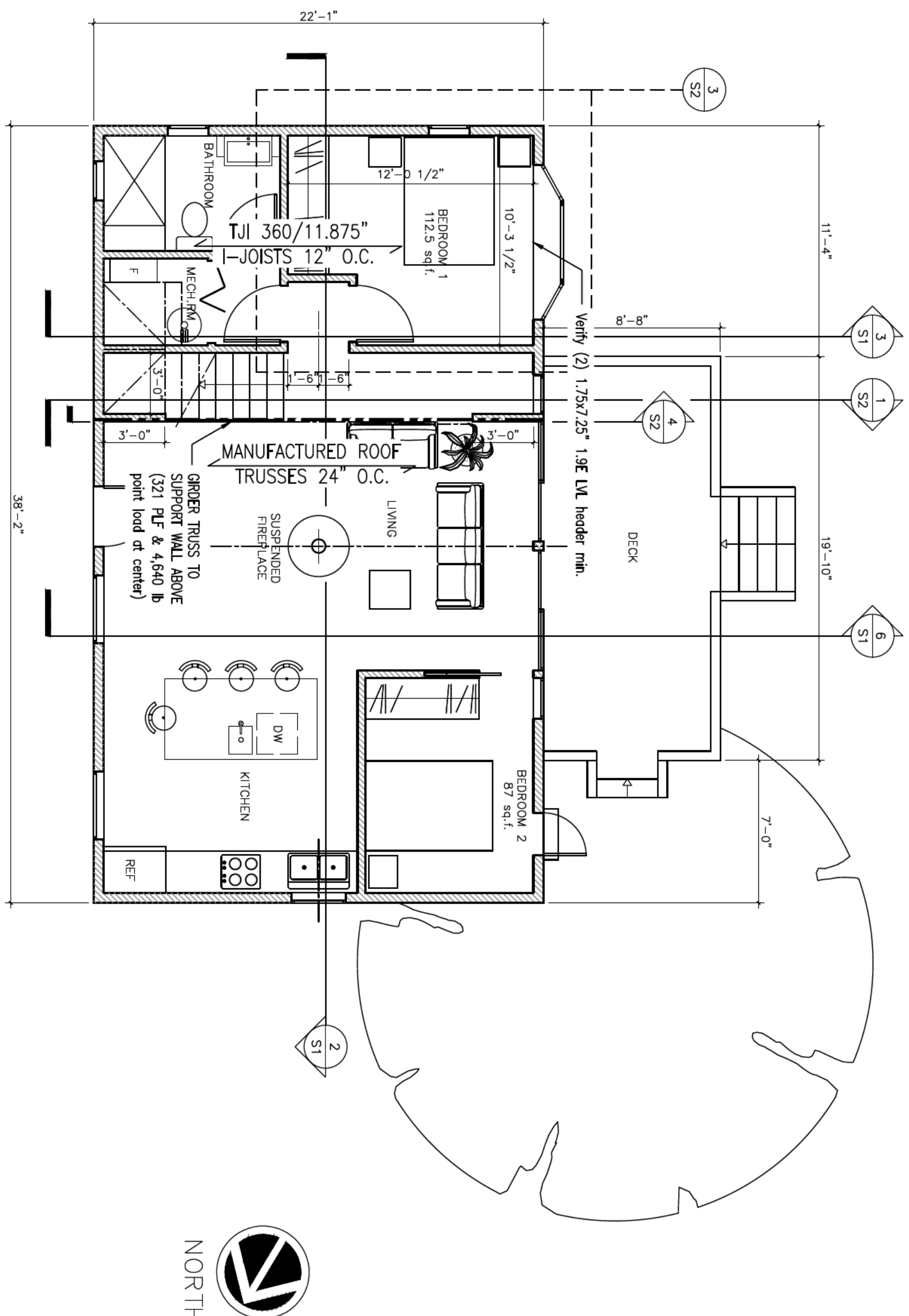
Sheet Name

PROPOSED ADDITION. REV.1

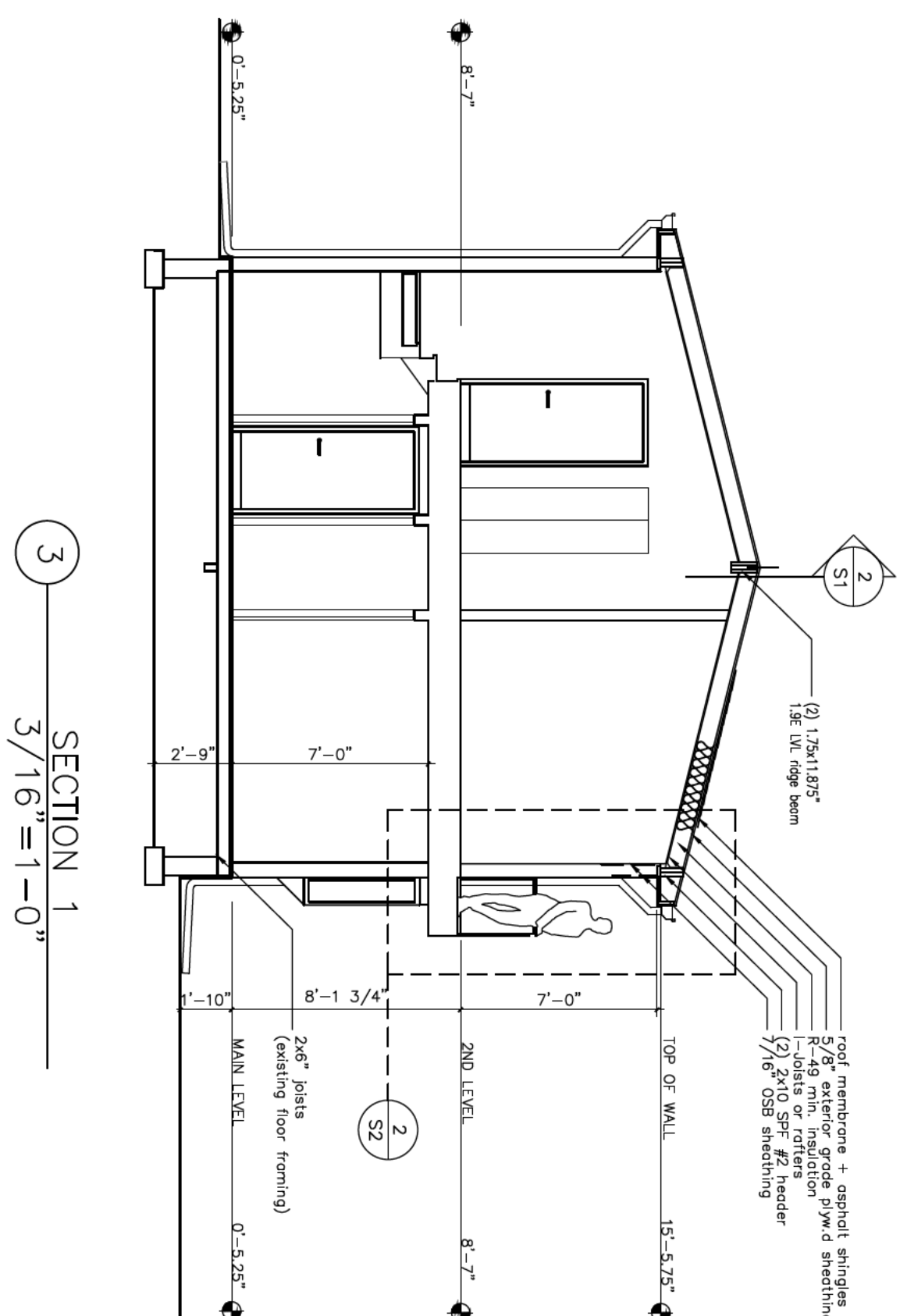
**FLOOR PLANS
SECTIONS
ELEVATION**

SCALE: AS INDICATED

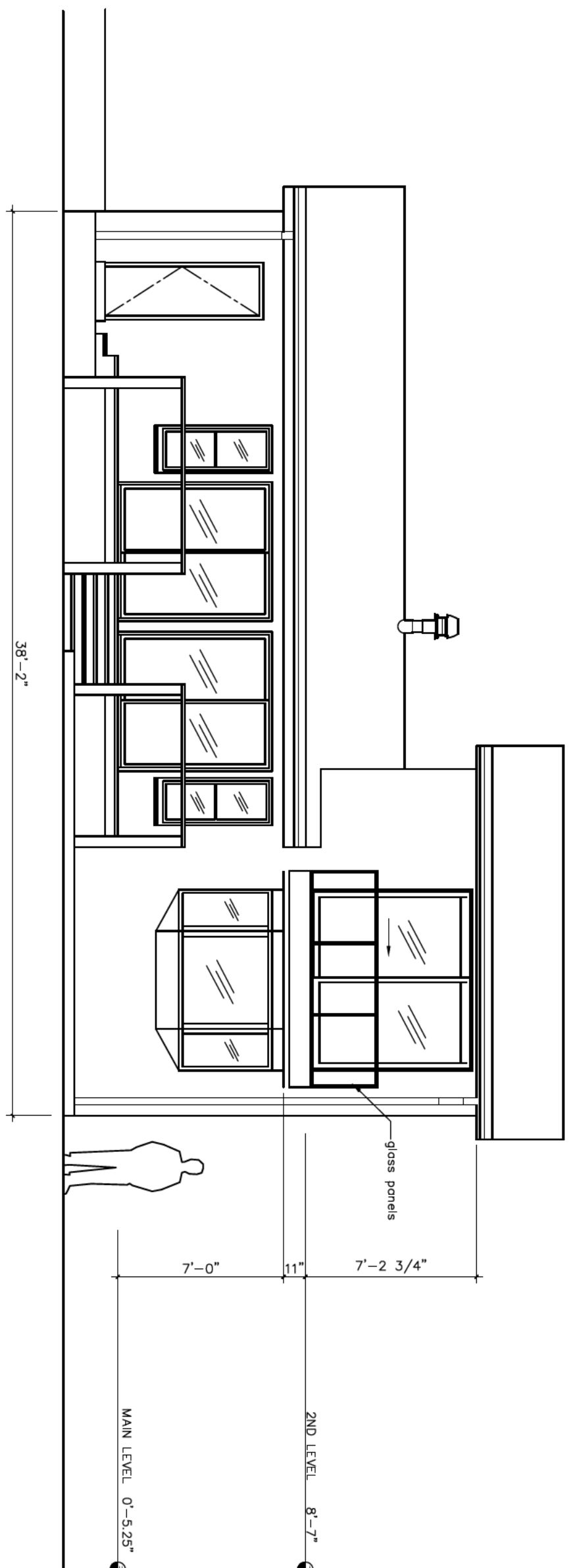
Sheet
S1
REV.1



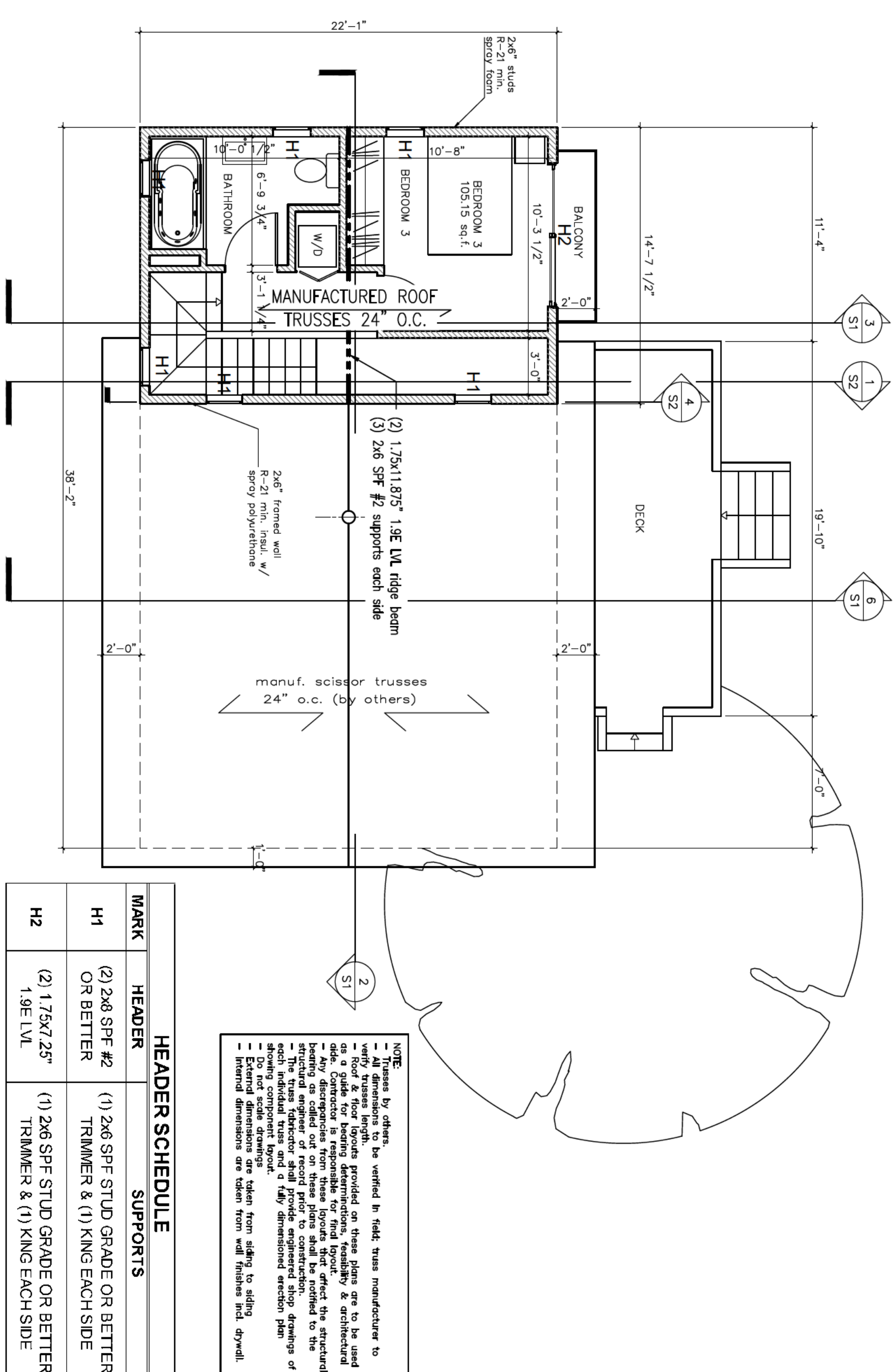
1 MAIN LEVEL FLOOR PLAN
3/16"=1'-0"



3 SECTION 1
3/16"=1'-0"



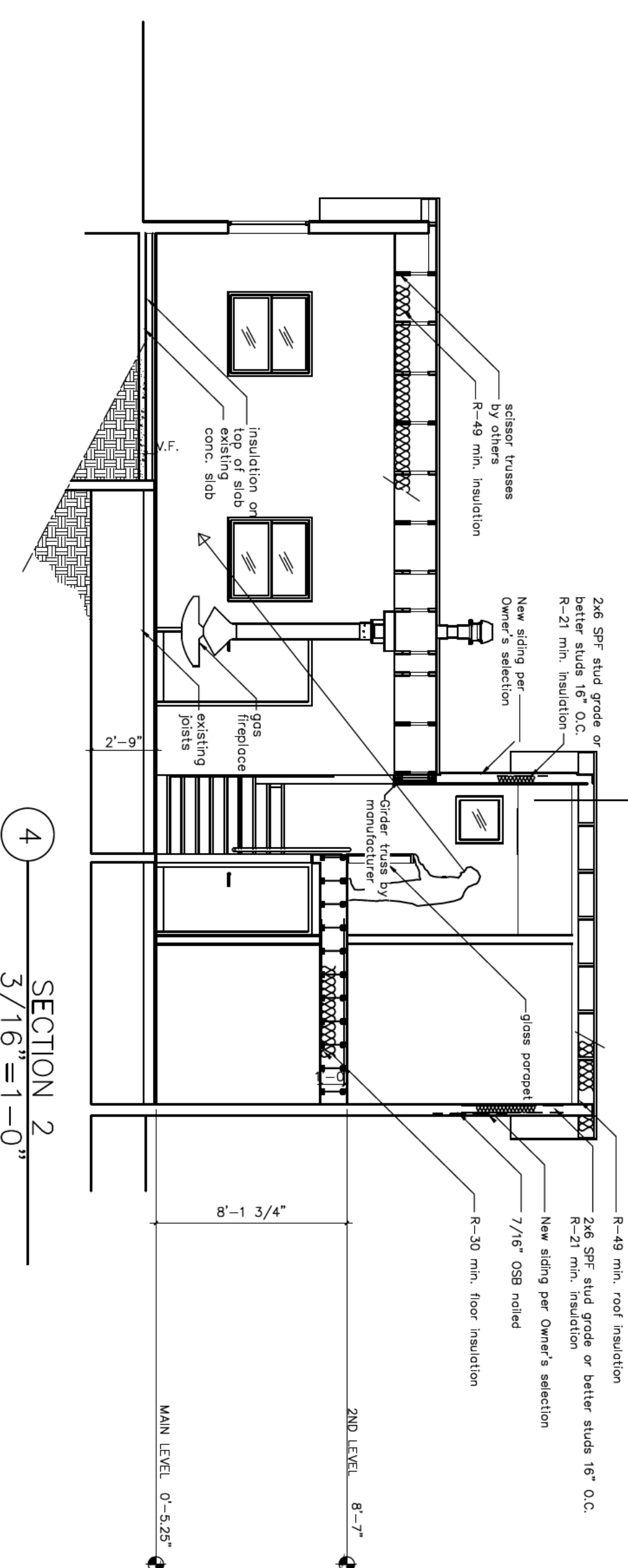
5 SOUTHWEST ELEVATION
3/16"=1'-0"



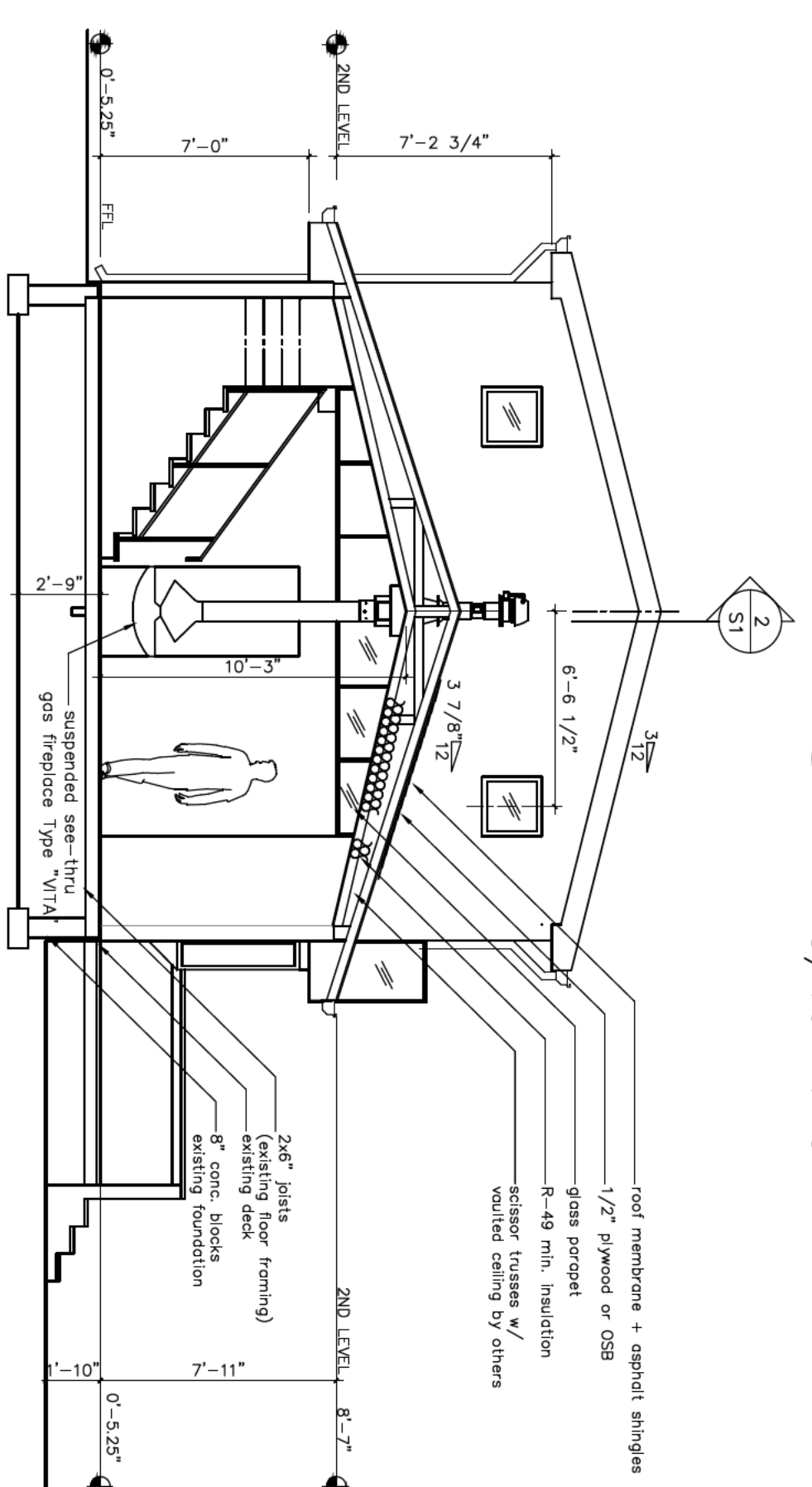
HEADER SCHEDULE	
MARK	HEADER SUPPORTS
H1	(2) 2x6 SFP #2 OR BETTER (1) 2x6 SFP STUD GRADE OR BETTER TRIMMER & (1) KING EACH SIDE
H2	(2) 1.75x7.25" 1.9c LVL (1) 2x6 SFP STUD GRADE OR BETTER TRIMMER & (1) KING EACH SIDE

- NOTE:
 - All dimensions to be verified in field; truss manufacturer to verify truss length.
 - All floor joists provided on these plans are to be used as shown. No other joists are to be used.
 - Contractor is responsible for final layout.
 - Any discrepancies from these layouts that affect the structural integrity of the truss shall be reported to the structural engineer of record prior to construction.
 - The truss fabricator shall provide engineered shop drawings of all components.
 - All dimensions shown on these plans are to be used.
 - Do not scale drawings.
 - All dimensions are taken from right to left.
 - Existing dimensions of truss from right to left shall be drywall.

2ND LEVEL FLOOR PLAN
3/16"=1'-0"



4 SECTION 2
3/16"=1'-0"



6 SECTION 3
3/16"=1'-0"

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

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	22x38	=	836
garage		=	
deck	8x19	=	152
patio	12x14 8x15	=	288
sidewalk	3x6 6x12	=	90
driveway	22x21 31x17	=	989
other; list:			
Shed 1	12x11	=	132
Shed 2	10x14	=	140
Shed 3	8x10	=	80
		=	
TOTAL RESIDENTIAL STRUCTURES			2707

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)			
MAIN ROAD	15x95	=	1425
landscaping with plastic barrier		=	
other; list:			
		=	
		=	
TOTAL OTHER ITEMS			

Calculate:

Total from "Residential Structures":	2707	+
Total from "Agricultural Structures":		+
Total from "Other Items":	1425	+
Total square footage of coverage:		=
(divide by total area of parcel, above)		/
		=
TOTAL IMPERVIOUS SURFACE	31.6	%

signature	
date	10-1-24
corresponding permit number	

James & Lori Taylor and Justin Buehring – Property owners James & Lori Taylor and applicant Justin Buehring are requesting a Variance in order to expand a non-conforming structure (dwelling) which is located closer to the Ordinary High Water Level of East Rush Lake and the centerline of County State Aid Highway 1 than permitted and to exceed the maximum allowable amount of impervious surface coverage. The .30± acre subject site is zoned Rural Residential 1 (RR) District / Shoreland Management District and located at 51276 Rush Lake Trail / CSAH 1 in Nessel Township, S14, T37, R22 (PID 06.00289.00).



James & Lori Taylor and Justin Buehring – Property owners James & Lori Taylor and applicant Justin Buehring are requesting a Variance in order to expand a non-conforming structure (dwelling) which is located closer to the Ordinary High Water Level of East Rush Lake and the centerline of County State Aid Highway 1 than permitted and to exceed the maximum allowable amount of impervious surface coverage. The .30± acre subject site is zoned Rural Residential 1 (RR) District / Shoreland Management District and located at 51276 Rush Lake Trail / CSAH 1 in Nessel Township, S14, T37, R22 (PID 06.00289.00).



RESOLUTION NO. BOAA2024-1001

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY,
MINNESOTA, APPROVING A VARIANCE ALLOWING THE EXPANSION OF A LEGAL
NON-CONFORMING STRUCTURE AND DENYING A VARIANCE ALLOWING
MORE IMPERVIOUS SURFACE COVERAGE THAN PERMITTED ON PROPERTY
LOCATED AT 51276 RUSH LAKE TRAIL / CSAH 1 IN NESSEL TOWNSHIP**

WHEREAS, property owners James Taylor & Lori Taylor and applicant Justin Buehring of JSB Construction, Inc. submitted an application dated received September 27, 2024 and considered complete on September 30, 2024 for a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52; and

WHEREAS, the property owners are seeking Variance approval allowing for the expansion of a legal non-conforming structure by adding a second story and to exceed the maximum allowable amount of impervious surface coverage by 6.6% (existing / proposed coverage is reported to be 31.6%); 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 06.00289.00

That part of Government Lot 4, Section 14, Township 37 North, Range 22 West described as follows:

Commencing at the Southeast Corner of said Section 14;
Thence North along the East line of Section 14 a distance of 1050 feet;
Thence West parallel to the South line of said Section 14 a distance of 408 feet;
Thence North at right angles a distance of 175 feet bearing North 0 degrees 0 minutes;
Thence North 20 degrees 40 minutes West a distance of 250 feet to the point of beginning of the property herein to be described;
Thence North 63 degrees 50 minutes East a distance of 153 feet to the center line of the county road;
Thence Northwesterly along said center line a distance of 96.7 feet;
Thence South 55 degrees 40 minutes West a distance of 150 feet more or less to the shore of Rush Lake;
Thence Southeasterly along the shore of Rush Lake a distance of 75 feet, more or less, to a point that bears South 63 degrees 50 minutes West from the point of beginning;
Thence North 63 degrees 50 minutes East a distance of 8 feet more or less to the point of beginning.

Chisago County, Minnesota

WHEREAS, notice was provided and on October 31, 2024 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s) and/or applicant, and invited members of the public to comment; and

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

- Criteria #1 The proposed action will not impair an adequate supply of light and air to adjacent property;
- Finding #1 *The County finds that the proposed dwelling expansion, including a partial second story, 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 easterly property boundary is adjacent to a public Right-of-Way and the westerly 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 neither the proposed dwelling expansion nor the proposed amount of impervious surface coverage will cause an increase in the amount of traffic generated at the subject site or increase congestion on surrounding public roadways. Further, the Chisago County Highway Department, serving as Road Authority, did not express any concerns related to impacts on Rush Lake Trail / CSAH 1.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The permit holder 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. 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 related accessory structures. The proposed dwelling expansion 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 dwelling expansion will have any negative impact to surrounding properties.*

However, the County further finds, based on historical aerial imagery, that a significant amount of impervious surface was installed between 2007 and 2010, without Variance approval. The County believes that the existing / proposed amount of impervious surface coverage, being 31.6%, 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 permit holder shall be responsible for returning the subject site to a compliant amount of impervious surface coverage through removal of existing impervious surfaces and/or replacement of impervious materials with pervious materials.

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 primary use of the subject site or the need for additional facilities and services; therefore, the County finds that the proposed actions 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 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 intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses; 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 dwelling expansion is non-conforming in that it will encroach on the required OHWL setback by approximately 20' and the required roadway setback by approximately 69', per the submitted application materials, the County finds that it will not exacerbate the existing OHWL and roadway setback encroachments. Additionally, the Zoning Ordinance allows for Variances, including setback Variances and Variances to the amount of impervious surface coverage, 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 a non-conforming structure is

*reasonable in that it won't increase the footprint of the non-conforming structure or exacerbate the existing non-conforming setbacks, or increase the existing non-conforming amount of impervious surface coverage; that the proposed action won't affect the **essential character** of the neighborhood as several neighboring properties have been developed with two-story dwellings and the proposed height won't impact the lake views of property owners to the east as there are no dwellings directly east; and, that the **uniqueness** of the subject site is that the property was created and developed prior to the County's adoption of official land use controls.*

However, the County further finds that the circumstance of having more impervious surface coverage than allowed is a circumstance in-part created by the previous property owner without the County's knowledge or approval by way of Variance. The County recognizes that the current property owners are 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 31.6%; however, the County has historical information, including aerial imagery, demonstrating that the existing / proposed amount of impervious surface was created between 2007 and 2010, at a time when the Chisago County Shoreland Management Ordinance limited the maximum allowable amount of impervious surface coverage to 25%, without Variance approval. Therefore, the County has determined that the permit holder shall be responsible for returning the subject site to a compliant amount of impervious surface coverage through removal of existing impervious surfaces and/or replacement of impervious materials with pervious materials.

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 expand a legal non-conforming structure (dwelling), which is located closer to the Ordinary High Water Level (OHWL) of Rush Lake and the centerline of CSAH 1 than required by the Chisago County Shoreland Management Ordinance and Zoning Ordinance, is APPROVED, allowing for the construction of a second story.** The dwelling expansion shall be constructed in general compliance with the application materials, including building plans, submitted to the Chisago County Department of Environmental Services on September 27, 2024. The dwelling expansion shall not cause the dwelling to be any closer to the OHWL of Rush Lake or the centerline of CSAH 1 than the existing dwelling. 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 6.6%± is DENIED,** requiring that the property owners 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 owners 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 dwelling expansion / structure 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 31st day of October, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST:

Beth Gervais
Land Services Coordinator

RESOLUTION NO. BOAA2024-1001

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY,
MINNESOTA, APPROVING A VARIANCE ALLOWING THE EXPANSION OF A LEGAL NON-
CONFORMING STRUCTURE AND MORE IMPERVIOUS SURFACE COVERAGE THAN PERMITTED
ON PROPERTY LOCATED AT 51276 RUSH LAKE TRAIL / CSAH 1 IN NESSEL TOWNSHIP**

WHEREAS, property owners James Taylor & Lori Taylor and applicant Justin Buehring of JSB Construction, Inc. submitted an application dated received September 27, 2024 and considered complete on September 30, 2024 for a Variance to Zoning Ordinance Section 4.03 and Shoreland Management Ordinance Sections 5.21 and 5.52; and

WHEREAS, the property owners are seeking Variance approval allowing for the expansion of a legal non-conforming structure by adding a second story and to exceed the maximum allowable amount of impervious surface coverage by 6.6% (existing / proposed coverage is reported to be 31.6%); 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 06.00289.00

That part of Government Lot 4, Section 14, Township 37 North, Range 22 West described as follows:

Commencing at the Southeast Corner of said Section 14;
Thence North along the East line of Section 14 a distance of 1050 feet;
Thence West parallel to the South line of said Section 14 a distance of 408 feet;
Thence North at right angles a distance of 175 feet bearing North 0 degrees 0 minutes;
Thence North 20 degrees 40 minutes West a distance of 250 feet to the point of beginning of the property herein to be described;
Thence North 63 degrees 50 minutes East a distance of 153 feet to the center line of the county road;
Thence Northwesterly along said center line a distance of 96.7 feet;
Thence South 55 degrees 40 minutes West a distance of 150 feet more or less to the shore of Rush Lake;
Thence Southeasterly along the shore of Rush Lake a distance of 75 feet, more or less, to a point that bears South 63 degrees 50 minutes West from the point of beginning;
Thence North 63 degrees 50 minutes East a distance of 8 feet more or less to the point of beginning.

Chisago County, Minnesota

WHEREAS, notice was provided and on October 31, 2024 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s) and/or applicant, and invited members of the public to comment; and

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

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

Finding #1 The County finds that the proposed dwelling expansion, including a partial second story, 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 easterly property boundary is adjacent to a public Right-of-Way and the westerly 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 neither the proposed dwelling expansion nor the proposed amount of impervious surface coverage will cause an increase in the amount of traffic generated at the subject site or increase congestion on surrounding public roadways. Further, the Chisago County Highway Department, serving as Road Authority, did not express any concerns related to impacts on Rush Lake Trail / CSAH 1.

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

Finding #3 The permit holder 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. 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 related accessory structures. The proposed dwelling expansion 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 dwelling expansion 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 action will not change the primary use of the subject site or the need for additional facilities and services; therefore, the County finds that the proposed actions 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 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 intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses; 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 dwelling expansion is non-conforming in that it will encroach on the required OHWL setback by approximately 20' and the required roadway setback by approximately 69', per the submitted application materials, the County finds that it will not exacerbate the existing OHWL and roadway setback encroachments. Additionally, the Zoning Ordinance allows for Variances, including setback Variances and Variances to the amount of impervious surface coverage, 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 proposed action is **reasonable** in that it won't increase the footprint of the non-conforming structure or exacerbate the existing non-conforming setbacks, or increase the existing non-conforming amount of impervious surface coverage; that the proposed action won't affect the **essential character** of the neighborhood as several neighboring properties have been developed with two-story dwellings and the proposed height won't impact the lake views of property owners to the east as there are no dwellings directly east; and, that the **uniqueness** of the subject site is that the property was created and developed prior to the County's adoption of official land use controls, and, in regard to the excessive amount of impervious surface coverage, that the property must include the improved roadway surface as*

it's technically on the subject property, which is not true for all other properties within the County.

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. This approval grants the following Variances:
 - a. A Variance allowing the expansion of a legal non-conforming structure (dwelling), which is located closer to the Ordinary High Water Level (OHWL) of Rush Lake and the centerline of CSAH 1 than required by the Chisago County Shoreland Management Ordinance and Zoning Ordinance, allowing for the construction of a second story. The dwelling expansion shall be constructed in general compliance with the application materials, including building plans, submitted to the Chisago County Department of Environmental Services on September 27, 2024. The dwelling expansion shall not cause the dwelling to be any closer to the OHWL of Rush Lake or the centerline of CSAH 1 than the existing dwelling. 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.
 - b. A 6.6% 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 31.6%. No additional impervious surface shall be added as part of this request and no additional impervious surface shall be added to the subject site, causing the amount to exceed 31.6%, without prior Variance approval.
2. The permit holder shall obtain a building permit prior to construction and, further, the dwelling expansion / structure 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 31st day of October, 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 Allowing a Reduced Township Right-of-Way Setback and to Exceed the Maximum Allowable Amount of Impervious Surface Coverage
 29860 Glader Boulevard, Chisago Lake Township
 DATE: October 31, 2024

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will conduct a public hearing to consider a Variance allowing a reduced Township Right-of-Way setback and to exceed the maximum allowable amount of impervious surface coverage for the purpose of redeveloping the property with a new dwelling and attached garage.

NOTE: The application materials suggest that the Variance includes allowance for a reduced Ordinary High Water Level (OHWL) setback. Likewise, the legal notice for this request included reference to an OHWL setback. However, it was later determined that the required OHWL setback is 50' – not the more standard 75' – given that the subject site is served by municipal sewer, and the proposed structure meets and slightly exceeds this setback requirement.



SITE & APPLICATION INFORMATION

Property Owner(s):	David & Julie Vislisl
Applicant(s):	David & Julie Vislisl
Property Address:	29860 Glader Boulevard Chisago Lake Township
General Location:	Section 3, Township 33, Range 20
PID:	02.01706.00
Property Area:	.25± Acres
Current Zoning:	Urban Residential (UR) District / Shoreland Management District
Adjacent Zoning:	
North:	Urban Residential (UR) District / Shoreland Management District
South:	Urban Residential (UR) District / Shoreland Management District
East:	Urban Residential (UR) District / Shoreland Management District
West:	South Center Lake

Date Application Received: October 1, 2024
Date Application Complete: October 1, 2024
60-Day Review Period: November 30, 2024

BACKGROUND

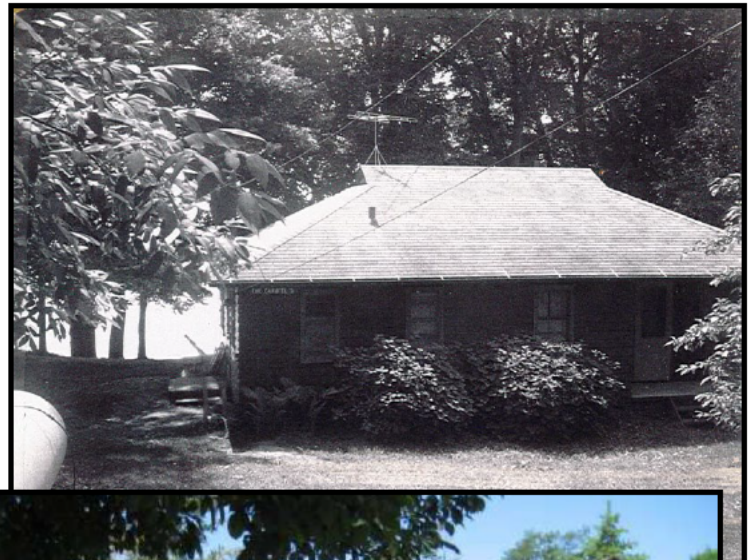
Property owners David & Julie Vislisl wish to redevelop their property by demolishing or otherwise removing the existing dwelling and detached garage and constructing a new dwelling with attached garage. The property owners are seeking Variance approval in order to have a reduced structural setback from the Glader Boulevard Right-of-Way and to have more impervious surface coverage than allowed.

SITE ANALYSIS

The .25± acre subject site is located approximately one-half mile north of the intersection of Old Holt Court and Glader Boulevard on the west side of Glader Boulevard. The subject site is located on a peninsula which is surrounded on the west, north, and east by South Center Lake. The subject site was platted in its current configuration as Lot 9, Sunset Point in 1946. The plat drawing and attached survey show that the property is approximately 67' wide at the easterly property boundary / roadway and approximately 180' deep (as measured to the shoreline). Because the property does not meet current lot area or lot width requirements but was platted prior to the County's adoption of official land use controls, it's deemed legal non-conforming.

Topography of the subject site includes elevations ranging from 898' near the shoreline of South Center Lake to 920' in the extreme northeasterly corner adjacent to the Township Right-of-Way. While the westerly 20'-23' are located within a FEMA flood zone, none of the existing structures are located in the flood zone.

The site is currently developed with a 960 sf dwelling and an approximate 410 sf detached garage. The dwelling appears to sit as close as 46.8' from



OHWL where the required setback is 50', and appears to meet all other required setbacks. The attached deck further encroaches on the OHWL setback with a setback of approximately 36'-37'. The detached garage is situated between the dwelling and the roadway, with a Township Right-of-Way setback of approximately 7' where the required setback is 40'. The garage appears to meet all other required setbacks. The existing amount of impervious surface coverage, as measured above the OHWL, is reported to be 22.2%.

The top image on the previous page shows the dwelling in June 1972 and the bottom image shows the same dwelling, along with the detached garage, in June 2011. Records from the Chisago County Assessor's Office suggest that the dwelling was constructed in 1955 and the detached garage was constructed in 1981 after receiving a Variance in January 1981 allowing the structure to encroach on the Township Right-of-Way.

PROPOSAL ANALYSIS

The attached application materials indicate that the property owners would like to remove the existing dwelling and detached garage and redevelop the property with a new dwelling and attached garage. The written narrative explains that the existing dwelling is aging and the property owners would like to redevelop the subject site with the intent of making it their full-time residence.

As described in the Site Analysis section above, the existing dwelling encroaches on the required OHWL setback and the detached garage encroaches on the required Township Right-of-Way setback. The application materials describe and illustrate that the proposed dwelling with attached garage will comply with and slightly exceed the required 50' OHWL setback; however, the structure will be as close as 15'7" from the Township Right-of-Way where the required setback is 40'. This proposed setback equates to a 24'5" Variance. Being that the existing detached garage is approximately 7' from Township Right-of-Way, the proposed setback is an improvement. The proposed dwelling and attached garage are shown to meet both required side yard setbacks.

Based on the UR District classification and the size of the subject site, the maximum allowable amount of accessory storage space is 1,000 sf. Based on the survey / site plan, the footprint of the attached garage appears to be 24' x 24' or 576 sf.

The proposed amount of impervious surface coverage is reported to be 28.2%, which is 3.2% more than allowed by the Shoreland Management Ordinance and a 6% increase from current conditions.

The property owners have provided a written narrative to explain what they're hoping to accomplish through this Variance request. The narrative also loosely explains how the request addresses the State mandated practical difficulty standard:

- The proposed dwelling and attached garage will be situated farther from the OHWL than the existing dwelling and it will now meet the required 50' setback. The increased setback

will create more green space by the lake, which will help to control water run-off by creating a larger filtration area.

- The proposed dwelling and attached garage will still encroach on the required Township Right-of-Way setback, but the proposed location will reduce the existing encroachment. With the proposed attached garage being situated farther from the Right-of-Way boundary, the property owners will be able to park a vehicle outside the garage without it being in the Township Right-of-Way.
- The proposed Township Right-of-Way setback will align with neighboring dwellings.
- The size of the proposed dwelling and attached garage reflect the character of the original / existing dwelling.
- Increasing the Township Right-of-Way setback will result in the need for a longer driveway, which also results in more impervious surface coverage.
- The limited size of the subject site contributes to the difficulty of complying with the 25% maximum allowable amount of impervious surface coverage.

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

	UR District / Shoreland Management District Standards	Proposed
Road Setback	40' to Township Right-of-Way	15'7"
Ordinary High Water Level (OHWL) Setback	50'	51'7"
Side Yard Setback	10' for dwelling and attached garage	11' (north) and 10'5" (south)
Impervious Surface Coverage	25%	28.2%

REVIEW PROCESS

The Technical Review Committee met with the property owners and considered the request on October 9, 2024. The group discussed the fact that the subject site is sewered and therefore subject to a 50' OHWL setback rather than a 75' setback; the fact that the proposed development will eliminate the existing OHWL setback encroachment and improve the existing Township Right-of-Way setback encroachment; and, the property owners' efforts to address the proposed non-conforming amount of impervious surface coverage. The Committee did not identify any immediate concerns.

The Chisago Lake Town Board considered the request on October 15, 2024 and recommended approval with no conditions and a comment that the request "meets lakeshore setbacks – impervious surface almost meets requirement".

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

WRITTEN TESTIMONY

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

VARIANCE ANALYSIS

A Variance to the provisions of the Zoning Ordinance may be issued to provide relief to the landowner in those cases where the application of the strict letter of the Ordinance imposes particular hardship or practical difficulties to the property owner in the use of the land. No Variance may be granted that would allow any use that is prohibited in the zoning district in which the property is located. A Variance may be granted only in the event that the following circumstances exist. Staff has provided notes (shown in *italics*) for each of the circumstances for the Board's consideration.

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control;

The property owners have suggested that the shape and size of the subject site are unique characteristics or exceptional and extraordinary circumstances. Staff does not necessarily believe that the shape of the lot, being fairly rectangular, is unique; however, staff does agree that the subject site, having been platted in 1946, is smaller in area and width than required by current standards, constituting pre-existing development, and 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 property owners of rights commonly enjoyed by other UR District / Shoreland Management District properties. Properties located in the UR District / Shoreland Management District have the right to be developed with dwellings, accessory structures, and impervious surfaces and the subject site has been developed with all of these features. Further, even as legal non-conforming structures, the property owners have a statutory right to continue the non-conformities through repair, restoration, maintenance, and even replacement, so long as the non-conformities are not expanded.

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 1946 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, attached garages, and impervious surfaces are Permitted Uses in the UR 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;

Based on the application materials provided, staff does believe that the property owners have requested the minimum Variance needed for the proposed dwelling and attached garage. The property owners have demonstrated an improvement from current non-conforming setbacks and that the proposed structure is not out of scale with the subject site or surrounding area. In regard to the proposed amount of impervious surface coverage, staff does question whether the property owners have requested the minimum Variance needed. Generally speaking, staff believes that property owners have the ability to utilize pervious materials to achieve a compliant amount of impervious surface coverage. In this particular case, staff is aware that the property owners explored options for use of pervious materials and made the decision that these materials presented concerns in terms of maintenance, safety (i.e., tripping hazards), and cost. The Board may wish to discuss this further with the property owners.

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

The Zoning Ordinance allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance related to the property, and when it will not alter the essential character of the surrounding area. Staff does believe that the request is reasonable in that it will eliminate the non-conforming OHWL setback and reduce the non-conforming Township Right-of-Way setback and that the proposed dwelling with attached garage is a reasonable use of the residentially zoned lakeshore property; that the subject site is unique in that it constitutes pre-existing development; and, that the proposed dwelling with attached garage will not alter the essential character of the neighborhood given that it will generally align with neighboring dwellings and it won't be out of scale for the subject site or general area.

Staff also believes that the proposed amount of impervious surface coverage is a reasonable amount for the intended purposes; that the subject site is unique in that it constitutes pre-existing development; and, that the proposed amount of impervious surface coverage fits the essential character of the residential lakeshore neighborhood.

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 westerly 20'-23' are located in the flood district, all existing and proposed structures are outside of the flood district.

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

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

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

1. Reasonableness

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

does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

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

3. Essential Character

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

FINDINGS OF FACT

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

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

Finding #1 *The County finds that the proposed dwelling with attached garage will be situated in a manner that complies with the required side yard setbacks so as not to impair an adequate supply of light and air to adjacent dwellings. The easterly property boundary is adjacent to a public Right-of-Way and the westerly property boundary is adjacent to a public body of water, where there are no impacts 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 dwelling with attached garage 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 Chisago Lake Town Board, serving as Road Authority, did not express any concerns related to impacts on Glader Boulevard or surrounding Township roads.

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

Finding #3 *The permit holder will be required to obtain a building permit prior to construction of the proposed dwelling with attached garage and the structure 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 action will not change how the property is being used and the proposed dwelling with attached garage will meet the required northerly and southerly side yard setbacks where there is greatest potential for impact to surrounding properties. Therefore, the County finds no evidence to suggest that the proposed action will have any negative impact to surrounding properties. The County further finds, based on lack of evidence or direct testimony from surrounding property owners, that the 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 action will not change or intensify the principal use of the subject site; 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 *The County finds no evidence to suggest that the proposed action will have any negative fiscal impact on the County or school district.*

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

Finding #7 *The intent of Zoning Ordinance Section 5.15 is to establish minimum structural setback requirements, including the Township Right-of-Way setback, and the*

intent of Shoreland Management Ordinance Section 5.52 is to regulate lot coverage for properties located within the Shoreland Management District.

While the proposed dwelling with attached garage will encroach on the required Township Right-of-Way setback, the County finds that the proposed action is reasonable in that it will eliminate the existing OHWL setback encroachment and reduce the existing Township Right-of-Way setback encroachment and that the proposed dwelling with attached garage is a reasonable use of the residentially zoned lakeshore property; that the subject site is unique in that it constitutes pre-existing development; and, that the proposed dwelling with attached garage will not alter the essential character of the neighborhood given that it will generally align with neighboring dwellings and it won't be out of scale for the subject site or general area.

The County also finds that the proposed amount of impervious surface coverage is a reasonable amount for the intended purposes; that the subject site is unique in that it constitutes pre-existing development; and, that the proposed amount of impervious surface coverage fits the essential character of the residential lakeshore neighborhood.

STAFF RECOMMENDATION

While staff does have general concerns with the proposed amount of impervious surface coverage and its impact on South Center Lake, staff is offering support for the full request as submitted. 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 the following Variances:
 - a. a 24'5" Variance to the Township Right-of-Way setback requirement, allowing the proposed dwelling with attached garage to be located no closer than 15'7" from the Right-of-Way boundary. The dwelling with attached garage shall comply with all other required setbacks.
 - b. A 3.2% Variance to the maximum allowable amount of impervious surface coverage, allowing up to 28.2% impervious surface coverage.
2. The permit holder shall obtain a building permit prior to construction and, further, the proposed dwelling with attached garage shall comply with all applicable codes and regulations.
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 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.
3. **Table** action to allow for further review and consideration. The current review period expires on November 30, 2024, allowing the Board to continue its review at the November 26, 2024 meeting.

ACTION REQUESTED

Motion to adopt Resolution No. BOAA2024-1002, a resolution approving a Variance allowing a reduced Township Right-of-Way setback and to exceed the maximum allowable amount of impervious surface coverage on property located at 29860 Glader Boulevard in Chisago Lake Township, as presented or amended.

ATTACHMENTS

1. Application materials:
 - a. Application
 - b. Written narrative
 - c. Survey / site plan
 - d. Impervious surface calculations worksheets
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-1002



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 24-2049 2051

Township CHISAGO S/T/R 3-33-20 PID# 02.01706.00

Project Address 29860 GLADER BLVD, LINDSTROM, MN 55045

Property Owner(s) DAVID & JULIE VISLISEL

Mailing Address (If Different from Project Address) 1586 VISLISEL RD., CEDAR RAPIDS, IA 52403

Phone# [REDACTED] Email [REDACTED]

Applicant(s) DAVID & JULIE VISLISEL

Mailing Address (If Different from Project Address) _____

Phone# _____ Email _____

Type of Request (Check All That Apply)

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

Description of Request (Attach Separate Sheet if Necessary) _____

SEE ATTACHED.

REDUCED SETBACKS FOR NEW DWELLING & MORE IMPERVIOUS COVERAGE

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

THAN ALLOWED.

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

DEED
[Signature]
Applicant Signature

SURVEY

10-1-24
Date of Application

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

Fees		Dates	
Base Fee	\$ <u>6000</u>	Application Received	<u>10-1-24</u>
Recording Fee	\$ <u>46</u>	Application Complete	<u>10-1-24</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	60 / 120 Day Review Period	<u>11-30-24</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>6046</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township CHISAGO S/T/R 3-33-20 PID# 02.01706.00
Project Address 29860 GLADER BLVD, LINDSTROM, MN 55045
Property Owner(s) DAVID & JULIE VISLISEL
Mailing Address (If Different from Project Address) 1586 VISLISEL RD, CEDAR RAPIDS, IA 52403
Phone# [REDACTED] Email [REDACTED]
Applicant(s) DAVID & JULIE VISLISEL
Mailing Address (If Different from Project Address) _____
Phone# _____ Email _____

Type of Request (Check All That Apply)

Board of Adjustment & Appeals

☒ Variance

☐ Administrative Appeal

Planning Commission

☐ Conditional Use Permit (CUP)

☐ Interim Use Permit (IUP)

☐ Amendment to CUP or IUP

☐ Preliminary Plat

☐ Rezoning

☐ Ordinance Amendment

Description of Request (Attach Separate Sheet if Necessary)

SEE ATTACHED. REDUCED SETBACKS FOR NEW DWELLING
& MORE IMPERVIOUS COVERAGE THAN ALLOWED.

[Signature]
Applicant Signature

10-1-24

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 OCT. 31, 2024 Date of Township Presentation OCT. 15, 2024

Township Action Taken (Township Use Only)

☒ Recommendation of Approval

☐ Recommendation of Denial

Recommended Conditions of Approval OR Legal Findings for Recommendation of Denial

meets lakeshore setbacks - improves surface almost meets
requirements

Signatures of Township Officials or Authorized Personnel

[Signature] [Signature]
[Signature] [Signature]

Variance Application
David and Julie Vislisl
October 1, 2024

David and I purchased our cabin on South Center Lake in May of 2008. We have thoroughly enjoyed this community and our neighborhood. Since that time, all three of our boys, their wives and our 7 grandchildren have moved to the area. We are hoping to retire here and build a one-level home with an attached garage on our property at 29860 Glader Boulevard. Our cabin has aging windows, doors, roof, chimney and deck boards. We are aging too. It is time.

But, because our property is unique, we cannot comply with both lake *and* road setback requirements. If we *were* to meet these setbacks, we would have approximately a 13' sliver to build a house and garage. We are requesting variances due to the irregular shape and limited depth of our lot.

Our house placement is a compromise.

The Ordinary High Water Level measurement from the lakeshore to the new house varies from 75' (NW corner) to 51.7' (SW corner). Our shoreline sits at an angle. Our new house can not. We plan to move back approximately 16' from our current cabin location creating more green space by the lake. This is a significant improvement because of the downhill slope. We are helping to control the water-runoff by creating a larger filtration area.

In addition, we would build our home 39.1' to the edge of the road, which is 15.7' from the front setback. Our garage is currently 7' from this point. By increasing this distance, we could park a vehicle outside the garage without being in the county right-of-way, something we believe we *both* would like!

Moving our house back from the road has an additional bonus. It aligns us with the neighboring houses. Our one-story rambler would nestle below their two-story frames. Its small size would reflect the small, but quaint character of the original cabin that has been here.

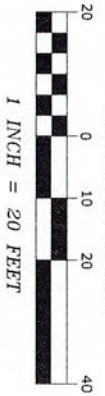
Finally, our impervious coverage sits at 28.2%. This includes the proposed house, garage, porch, walk and lower level patio. It also includes the longer driveway, being set back from the road. While we are above the allotted 25%, the limited size of this particular lot makes it difficult to meet that criteria.

With these changes, we feel we have done our best to come to a reasonable solution to the challenges we face. We appreciate the conservation efforts made to protect our lake and lakeshore. We look forward to working with you as we update our own property in that regard.

CERTIFICATE OF SURVEY

~for~ DAVID AND JULIE VISLSEL
~of~ 29860 GLADER BLVD
LINDSTROM, MN

GRAPHIC SCALE



BENCHMARK

MNDOT GSID STATION #4796
LYK MNDT
ELEV = 940.81 (NGVD 29)

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES IRON MONUMENT SET
- DENOTES EXISTING ELEVATION
- DENOTES PROPOSED ELEVATION
- DENOTES WOOD HUB/METAL SPIKE AT 11 FOOT OFFSET (UNLESS OTHERWISE NOTED)
- DENOTES DIRECTION OF DRAINAGE
- DENOTES FIBER OPTIC BOX
- DENOTES GAS METER
- DENOTES WELL
- DENOTES SANITARY SEWER MANHOLE
- DENOTES POWER POLE
- DENOTES MAILBOX
- DENOTES RETAINING WALL
- DENOTES OVERHEAD UTILITY
- DENOTES EXISTING CONTOURS
- DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES GRAVEL SURFACE

TREE DETAIL

- DENOTES ELEVATION
- DENOTES TREE QUANTITY
- DENOTES TREE SIZE IN INCHES
- DENOTES TREE TYPE

DIAG: 60.00 X 66.00 = 89.20
(10' POURED WALL WALKOUT)

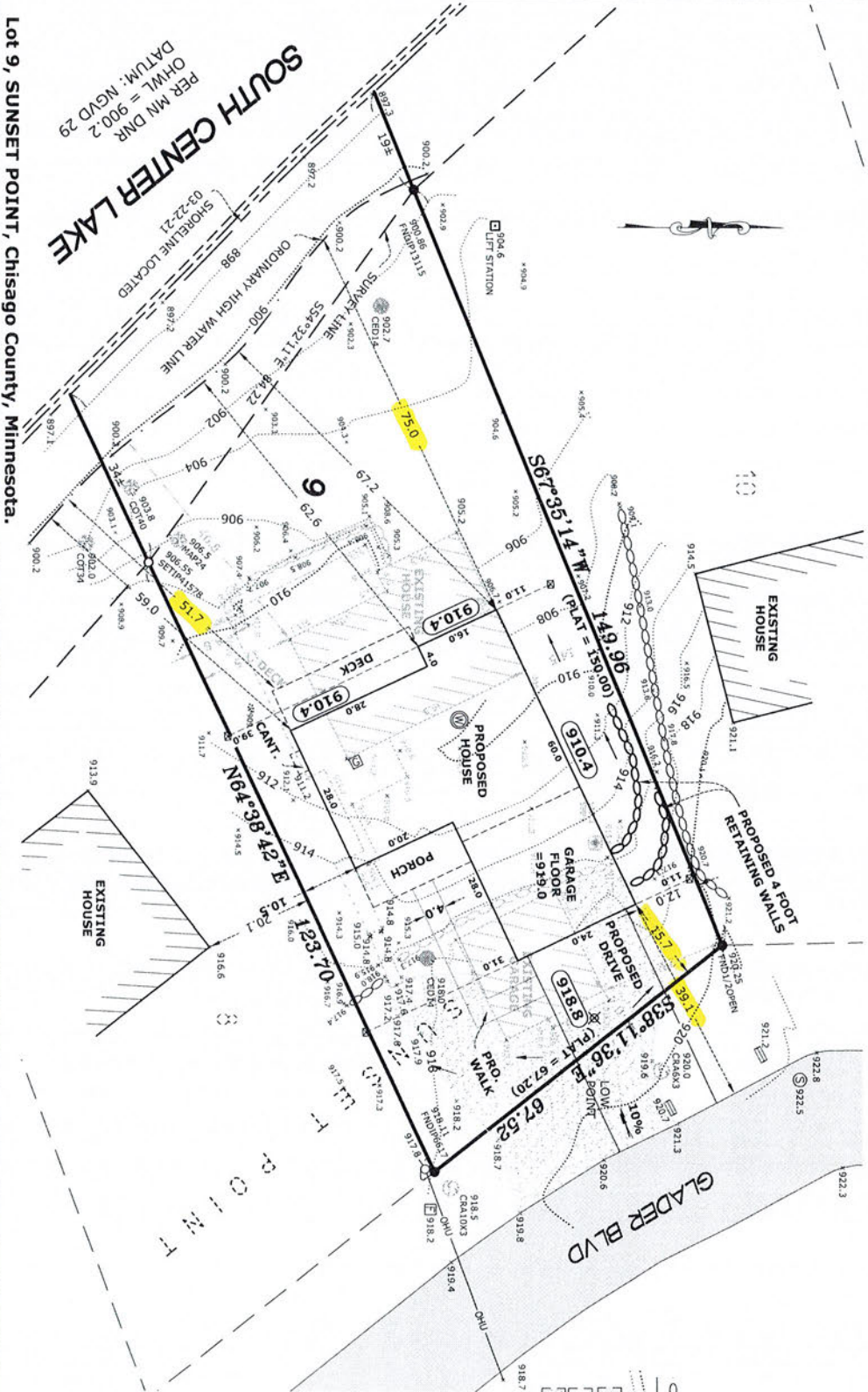
PROPOSED ELEVATIONS

TOP OF WALL = 919.4
GARAGE FLOOR = 919.0
LOWEST FLOOR = 910.7
TOP OF FOOTING = 910.4

IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA (ABOVE OHW) 10,245 SF

EXISTING HOUSE	960 SF
EXISTING GARAGE	410 SF
EXISTING GRAVEL	886 SF
EXISTING CONCRETE	23 SF
TOTAL IMPERVIOUS SURFACE	2,279 SF
PERCENT IMPERVIOUS	22.2%
PROPOSED HOUSE, GARAGE, PORCH	2,136 SF
PROPOSED WALK	132 SF
PROPOSED DRIVEWAY	378 SF
TOTAL IMPERVIOUS SURFACE	2,646 SF
PERCENT IMPERVIOUS	26.0%



Lot 9, SUNSET POINT, Chicago County, Minnesota.

Field survey was completed by E.G. Rud and Sons, Inc. on 03/22/21.
Bearings shown are on Chicago County datum.
Curb shots are taken at the top and back of curb.
This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

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.
By: E.G. RUD
Minnesota License No. 41578
Dated 26th day of September, 2024.

BEARING DATUM: CHS990		SCALE: 1" = 20'	
REVISIONS		JOB NO. 2102309BT	
1	05/30/24	ADDED IMPERVIOUS CALC.	BCD
2	09/11/24	PROPOSED HOUSE	BCD
3	09/12/24	ADD DIMENSIONS TO OHW	CMS
4	09/26/24	UPDATE SITE PLAN	BCD
		DRAWN BY: RAF	CREW: BH/SO

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

EXISTING 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

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		=	9140
garage		=	410
deck		=	
patio		=	
sidewalk		=	
driveway		=	886 GRAVEL
other; list:		=	23 CONCRETE
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			22.29 SF

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"		+
Total from "Agricultural Structures"		+
Total from "Other Items"		+
Total square footage of coverage:		=
(divide by total area of parcel, above)		/
		=
TOTAL IMPERVIOUS SURFACE	22.2%	%

signature

John Wilson

date

10-1-24

corresponding permit number

PROPOSED IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

AREA OF PARCEL

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

OR

Total area of parcel in square feet

10,245

25% =

2,561.25

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		=	
PORCH deck		=	2,136
L.L. patio		=	224
sidewalk		=	152
driveway		=	378
other; list:		=	
		=	
		=	
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2,890

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":

Total from "Agricultural Structures":

Total from "Other Items":

Total square footage of coverage:

(divide by total area of parcel, above)

	+
	+
	+
2,890	=
	/
	=
28.2	%

signature

John Wilson

date

10-1-24

corresponding permit number

TOTAL IMPERVIOUS SURFACE

28.2

%

David & Julie Vislissel – Property owners David & Julie Vislissel are requesting a Variance allowing for reduced setbacks from the Ordinary High Water Level of South Center Lake and the Township Right-of-Way and to exceed the maximum allowable amount of impervious surface coverage for the purpose of redeveloping the property with a new dwelling and attached garage. The .25± acre subject site is zoned Urban Residential (UR) District / Shoreland Management District and located at 29860 Glader Boulevard in Chicago Lake Township, S3, T33, R20 (PID 02.01706.00).



David & Julie Vislitsel – Property owners David & Julie Vislitsel are requesting a Variance allowing for reduced setbacks from the Ordinary High Water Level of South Center Lake and the Township Right-of-Way and to exceed the maximum allowable amount of impervious surface coverage for the purpose of redeveloping the property with a new dwelling and attached garage. The .25± acre subject site is zoned Urban Residential (UR) District / Shoreland Management District and located at 29860 Glader Boulevard in Chicago Lake Township, S3, T33, R20 (PID 02.01706.00).



RESOLUTION NO. BOAA2024-1002

**A RESOLUTION OF THE BOARD OF ADJUSTMENT AND APPEALS OF CHISAGO COUNTY, MINNESOTA,
APPROVING A VARIANCE ALLOWING A REDUCED TOWNSHIP RIGHT-OF-WAY SETBACK AND TO
EXCEED THE MAXIMUM ALLOWABLE AMOUNT OF IMPERVIOUS SURFACE COVERAGE ON PROPERTY
LOCATED AT 29860 GLADER BOULEVARD IN CHISAGO LAKE TOWNSHIP**

WHEREAS, property owners David Vislisel & Julie Vislisel submitted an application dated received and considered complete on October 1, 2024 for a Variance to Zoning Ordinance Section 5.15 and Shoreland Management Ordinance Section 5.52; and

WHEREAS, the property owners are seeking Variance approval allowing a reduced Township Right-of-Way setback and to exceed the maximum allowable amount of impervious surface coverage for the purpose of redeveloping the property with a new dwelling and attached garage; and

WHEREAS, the .25 acre subject site is located in the Urban Residential (UR) District / Shoreland Management District; and

WHEREAS, the subject site is legally described as:

PID 02.01706.00

Lot Nine (9), Sunset Point, Chisago County, Minnesota.

WHEREAS, notice was provided and on October 31, 2024 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator and the property owner(s), and invited members of the public to comment; and

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

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

Finding #1 The County finds that the proposed dwelling with attached garage will be situated in a manner that complies with the required side yard setbacks so as not to impair an adequate supply of light and air to adjacent dwellings. The easterly property boundary is adjacent to a public Right-of-Way and the westerly property boundary is adjacent to a public body of water, where there are no impacts 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 dwelling with attached garage 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 Chisago Lake Town Board, serving as Road Authority, did not express any concerns related to impacts on Glader Boulevard or surrounding Township roads.

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

Finding #3 *The permit holder will be required to obtain a building permit prior to construction of the proposed dwelling with attached garage and the structure 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 action will not change how the property is being used and the proposed dwelling with attached garage will meet the required northerly and southerly side yard setbacks where there is greatest potential for impact to surrounding properties. Therefore, the County finds no evidence to suggest that the proposed action will have any negative impact to surrounding properties. The County further finds, based on lack of evidence or direct testimony from surrounding property owners, that the 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 action will not change or intensify the principal use of the subject site; 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 *The County finds no evidence to suggest that the proposed action will have any negative fiscal impact on the County or school district.*

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

Finding #7 *The intent of Zoning Ordinance Section 5.15 is to establish minimum structural setback requirements, including the Township Right-of-Way setback, and the intent of Shoreland Management Ordinance Section 5.52 is to regulate lot coverage for properties located within the Shoreland Management District.*

While the proposed dwelling with attached garage will encroach on the required Township Right-of-Way setback, the County finds that the proposed action is reasonable in that it will eliminate the existing OHWL setback encroachment and reduce the existing Township Right-of-Way setback encroachment and that the proposed dwelling with attached garage is a reasonable use of the residentially zoned lakeshore property; that the subject site is unique in that it constitutes pre-existing development; and, that the proposed dwelling with attached garage will not alter the essential character of the neighborhood given that it will generally align with neighboring dwellings and it won't be out of scale for the subject site or general area.

The County also finds that the proposed amount of impervious surface coverage is a reasonable amount for the intended purposes; that the subject site is unique in that it constitutes pre-existing development; 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 is hereby **approved**, subject to the following conditions:

- 1. This approval grants the following Variances:
 - a. a 24'5" Variance to the Township Right-of-Way setback requirement, allowing the proposed dwelling with attached garage to be located no closer than 15'7" from the Right-of-Way boundary. The dwelling with attached garage shall comply with all other required setbacks.
 - b. A 3.2% Variance to the maximum allowable amount of impervious surface coverage, allowing up to 28.2% impervious surface coverage.
- 2. The permit holder shall obtain a building permit prior to construction and, further, the proposed dwelling with attached garage shall comply with all applicable codes and regulations.
- 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 31st day of October, 2024.

Gregg Carlson _____
Douglas Greene _____
Becky Strand _____

John Sutcliffe _____
Charles Yeager _____

Rebecca Strand
Chair

ATTEST: _____
Beth Gervais
Land Services Coordinator