

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
October 31, 2024**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, October 31, 2024 in the County Board Room of the Chisago County Government Center.

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

Chair Strand called the meeting to order and led the assembly in the Pledge of Allegiance. A roll call of Board members was then taken. Board members present: Gregg Carlson, Doug Greene, John Sutcliffe, Chip Yeager, and Chair Becky Strand. Absent: None. A quorum was established with all members present.

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

APPROVAL OF MINUTES – Motion by Carlson to approve the September 26, 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, including written testimony from Patrick McGowan of 51290 Rush Lake Trail, Nessel Township pertaining to agenda item 6a; second by Greene. 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

James & Lori Taylor and Justin Buehring – Coordinator Gervais stated that property owners James & Lori Taylor and applicant Justin Buehring had requested a Variance to expand a non-conforming structure and exceed the maximum allowable amount of impervious surface coverage in the Rural Residential I (RRI) District / Shoreland Management District on property located at 51276 Rush Lake Trail / CSAH 1 in Nessel Township, S14, T37, R22 (PID 06.00289.00).

Gervais provided background information, sharing that property owners James & Lori Taylor and applicant Justin Buehring sought Variance approval to expand a non-conforming dwelling by adding a second story over the southern portion of the dwelling. Although the property owners and applicant did not propose to create any new impervious surface, they had requested Variance approval for the existing non-conforming amount of 31.6%. Gervais reviewed details of the subject site, noting that the .30±-acre property was unplatted. According to records from the Chisago County Assessor's Office, it appeared that the property was already developed in 1971, suggesting that the existing non-conforming parcel and dwelling pre-dated the County's adoption of official land use controls and were therefore considered to be legal non-conforming. Gervais noted that the parcel itself was considered non-conforming as it did

not meet current requirements for lot area and lot width, and the dwelling was considered non-conforming as it was encroaching on the required Ordinary High Water Level (OHWL) and roadway setbacks and had a smaller footprint than required. The shortest distance between the dwelling (not the deck) and the OHWL was approximately 55' and the shortest distance between the dwelling and the centerline of Rush Lake Trail / CSAH 1 was approximately 66', where the required setbacks were 75' and 135' respectively. Additionally, the dwelling footprint was approximately 575 sf where the current required minimum was 960 sf. Gervais mentioned that the existing amount of impervious surface coverage was reported to be 31.6%, which was 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 owners and applicant had requested Variance approval to maintain the existing amount. Gervais noted 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 had no control, a large surfaced area / patio on the easterly side of the dwelling, and three detached accessory structures where the maximum allowable number was two. The property owners had indicated that no additional impervious surface coverage had been added since they purchased the property in 2011 and they simply wished to maintain what was already there. Based on historical aerial imagery of the property, it appeared to staff 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 was no record of a Variance being requested or approved which would have allowed the excessive amount of impervious surface coverage. Therefore, staff suggested that the existing amount of impervious surface coverage was considered to be illegal non-conforming.

Gervais explained that, in addition to constructing a second story, the property owners intended to convert the attached garage into habitable space.

Gervais shared that the property owners and applicant had provided a written narrative that addressed the State mandated practical difficulty standard. The narrative explained that the request was reasonable in that the proposed expansion would not increase the footprint of the non-conforming structure, which meant that it would not exacerbate the existing non-conforming setbacks or increase the existing non-conforming amount of impervious surface coverage, and the proposed expansion would not affect the essential character of the neighborhood as several neighboring properties had been developed with two-story dwellings and the proposed height would not impact the lake views of property owners to the east as there were no dwellings directly east. Gervais offered that the uniqueness of the subject site was that it had been created and developed prior to the County's adoption of official land use controls, which the Board referred to as pre-existing development. In addition, the excessive amount of impervious surface coverage included the improved roadway surface as it was technically on the subject property, and this was not true for all other properties within the County.

The Technical Review Committee met on October 9, 2024 with applicant Justin Buehring. 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 Committee did not identify any other immediate concerns. The Nessel Town Board met on October 8, 2024 and recommended approval with no comments or conditions. The State mandated 60-day review period was scheduled to expire on November 29, 2024.

Gervais briefly reviewed staff concerns noting that, while the Chisago County Zoning Ordinance did not prohibit the conversion of the attached garage into habitable space, this proposed conversion would result in the loss of all garage space and this conversion would be a direct result of actions by the property owners. Therefore, staff would likely not support a future Variance request related to the construction of a new garage. Gervais also mentioned that there were concerns with the three detached accessory structures as the maximum allowed was two. Gervais shared that, while these structures were reported by the property owners to have been on-site prior to their purchase of the property in 2011, the structures did slightly factor into the excessive amount of impervious surface coverage and they significantly encroached on the required roadway setback. Gervais suggested that the Board may wish to consider requiring the elimination of one structure given that it had a direct correlation to the Variance request related to impervious surface coverage.

Gervais concluded by offering a recommendation of approval of the requested Variance to expand the legal non-conforming structure and a recommendation of denial of the requested Variance to exceed the maximum allowable amount of impervious surface coverage with draft Findings of Fact and recommended conditions.

Chair Strand invited the property owners and applicant to address the Board. Property owner James Taylor and applicant Justin Buehring were present and approached the Board. Buehring added that the original sheds were destroyed and, prior to replacing the sheds, Taylor had reached out to the County asking if he could replace them. Taylor was reportedly told that he could replace the sheds as long as they were replaced in the same location and were the same size. Taylor added that they hadn't added anything else to the property since purchasing it in 2011. Greene asked about the concrete slab and if it was what they were referring to as the patio. Buehring clarified that there were two concrete slabs, with one being in the front and one being in the back. Recognizing that these slabs were contributing to the non-conforming amount of impervious surface coverage, Greene asked about the condition of the concrete. The property owner and applicant responded that they were in good condition.

Carlson asked Taylor to explain what had happened to the original sheds. Taylor explained that in February 2024 a drunk driver had gone off the road and destroyed the sheds and then kept driving. Taylor stated that they initially began working with Buehring to replace the sheds, adding that Buehring had suggested calling the County to verify that the sheds could be replaced. Taylor stated that he was told by the County that the sheds could be replaced as long as they were in the same location and the same size as the original sheds. Taylor noted that if he had been told differently, he would have made changes, but he didn't have any knowledge that the sheds were non-conforming as they were there when he purchased the property. Gervais clarified that the response given by County staff to Taylor was a standard response in regard to replacement of non-conforming structures; however, without the benefit of research, staff would not have known during the brief phone call that the structures were considered illegal non-conforming and therefore not subject to the same statutory rights as legal non-conforming structures. Gervais clarified that Minnesota Statute allowed for legal non-conforming structures to be replaced so long as they were replaced in the exact locations and to the exact specifications of the previous structures. Yeager asked the property owner if he was aware of staff's concern about the loss of garage space and that this action could possibly work against them in the future if they sought Variance approval to add a garage. Taylor acknowledged that he understood staff's concern, adding that he had

no intention of adding a garage to the site in the future. Sutcliffe asked staff if a condition could be added to the resolution which would prohibit the allowance of a garage through Variance in the future. Gervais responded that a future Board may feel differently and allow that type of Variance and she cautioned against adding that as a condition. Carlson reiterated to the property owner and applicant that, if they came back with a Variance request in the future to add a garage, the current Board would probably deny it. Taylor stated that he had no interest in having a garage. Carlson asked the property owner if he had considered removing one of the three sheds given that the maximum allowable number of detached accessory structures was two. Taylor said that he had considered it; however, prior to the reconstruction, he had reached out to County staff and was told that he could replace all three sheds as long as they were the same size and in the exact location as the original sheds.

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 Carlson. The **motion passed** and carried unanimously.

Chair Strand opened discussion to the Board. Yeager asked if Mr. McGowan's written testimony should be discussed and read into public record. Gervais shared that neighboring property owner Patrick McGowan of 51290 Rush Lake Trail had provided the Board with written testimony on October 27, 2024 explaining that he was in favor of the request. Carlson asked Taylor where McGowan's property was located in relation to the subject site. Taylor answered that McGowan's property was located directly north of his property. Sutcliffe commented that he believed that the existing / proposed amount of impervious surface was in itself a hardship due to the fact that the property extended to the centerline of the roadway. Carlson commented that he agreed with Sutcliffe's statement.

Carlson noted that there was a typo on page four of the draft resolution for approval of the request as submitted. Within the "NOW THEREFORE" clause, it stated that the request to exceed the maximum allowable amount of impervious surface coverage was denied. Staff noted the typo.

Motion by Carlson to adopt 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; second by Sutcliffe. The **motion passed** and carried unanimously.

Approved 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.

David & Julie Vislisel – Coordinator Gervais stated that property owners David & Julie Vislisel had requested a Variance allowing for a reduced Township Right-of-Way setback and to exceed the maximum allowable amount of impervious surface coverage in the Urban Residential (UR) District / Shoreland Management District on property located at 29860 Glader Boulevard in Chisago Lake Township, S3, T33, R20 (PID 02.01706.00).

Gervais began by providing clarification on the request, stating that the application materials had suggested the Variance included allowance for a reduced Ordinary High Water Level (OHWL) setback. Likewise, the legal notice for the request included allowance for a reduced OHWL setback. However, it was later determined that the required OHWL setback was 50' and not the more standard setback of 75' given that the subject site was served by municipal sewer.

Gervais continued and provided background information, sharing that property owners David & Julie Vislisel wished to redevelop their 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 .25± acres in size and was platted in its current configuration as Lot 9, Sunset Point in 1946, and was deemed legal non-conforming due to substandard lot area and lot width. Gervais shared that the existing amount of impervious surface coverage, as measured above the OHWL, was reported to be 22.2%, and the site was served by municipal sewer.

Gervais reviewed details of the property owners' written narrative, which explained that the existing dwelling was aging and the owners wished to redevelop the subject site with the intent of making it their full-time residence. The application materials described and illustrated that the proposed dwelling with attached garage would comply with and slightly exceed the required 50' OHWL setback; however, the structure would be as close as 15'7" from the Township Right-of-Way where the required setback was 40'. The proposed setback equated to a 24'5" Variance. Being that the existing detached garage was approximately 7' from Township Right-of-Way, the proposed setback was viewed as an improvement. The proposed dwelling and attached garage were shown to meet both required side yard setbacks. The proposed amount of impervious surface coverage was reported to be 28.2%, which was 3.2% more than allowed by the Shoreland Management Ordinance and a 6% increase from current conditions.

The written narrative provided the following justifications for the Variance request: The proposed dwelling and attached garage would be situated farther from the OHWL than the existing dwelling and it would meet the required 50' setback; The increased setback would create more green space by the lake, which would help to control water run-off by creating a larger filtration area; The proposed dwelling and attached garage would still encroach on the required Township Right-of-Way setback, but the proposed location would reduce the existing encroachment; With the proposed attached garage being situated farther from the Right-of-Way boundary, the property owners would 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 would align with neighboring dwellings; The size of the proposed dwelling and attached garage reflected the character of the original / existing dwelling; Increasing the Township Right-of-Way setback would result in the need for a longer driveway, which resulted in more impervious surface coverage; and, The limited size of the subject site contributed to the difficulty of complying with the 25% maximum allowable amount of impervious surface coverage.

The Technical Review Committee met with the property owners on October 9, 2024. The group discussed the fact that the subject site was sewered and therefore subject to a 50' OHWL setback rather than a 75' setback; the fact that the proposed development would 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 with the request. The Chisago Lake Town Board considered the request on October 15, 2024 and recommended approval with the comment that the request "meets lakeshore setbacks – impervious surface almost meets requirement". The State mandated review period was scheduled to expire on November 30, 2024.

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

Chair Strand invited the applicants to address the Board. David & Julie Vislisl were present but had no additional information to offer. Carlson asked if there was a patio on the proposed dwelling. D. Vislisl answered that there would be a patio underneath the deck. Yeager stated that the applicants' written narrative was very well prepared. Sutcliffe asked the applicants if they had considered the use of pervious materials to reduce the overall amount of impervious surface coverage. D. Vislisl answered that they had considered the use of pervious pavers but were concerned with maintenance and safety issues related to the gaps created between the pavers. Carlson asked if the driveway and sidewalk would both be concrete. D. Vislisl stated that the sidewalk would be cement but they had not yet decided on the material for the driveway.

Chair Strand opened the public hearing and sought public comment.

Mark Zeman of 29820 Glader Boulevard, Chisago Lake Township stated that he was in favor of the Variance request.

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

Chair Strand opened discussion to the Board.

Motion by Carlson to adopt 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, as presented; second by Yeager. The **motion passed** and carried unanimously.

Approved 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.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUISNESS

None

NEW BUISNESS

Chair Strand announced that the October 31, 2024 meeting was going to be her last meeting due to her moving out of the County. There was discussion on the process of filling her vacancy and her role as Chair. It was acknowledged that Vice Chair Greene would take over as Acting Chair.

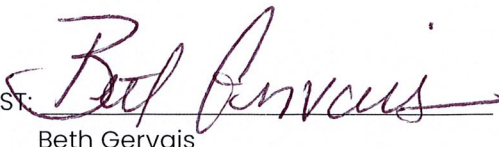
Yeager announced that he would be absent from the November 26, 2024 meeting.

MISCELLANEOUS

None

ADJOURN MEETING – **Motion** by Carlson to adjourn; second by Sutcliffe. The **motion passed** and carried unanimously. The meeting was adjourned at 7:49 p.m.


Doug Greene
Acting Chair

ATTEST: 
Beth Gervais
Land Services Coordinator