

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

Tour Date and Time: Monday, November 25, 2024 at 8:15 am

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

1. Call to Order and Pledge of Allegiance

2. Roll Call and Determination of a Quorum

3. Approval of Agenda

4. Approval of Minutes

- a. October 31, 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 9a.

6. Public Hearings – New Applications

- a. **Michael & Wendy Kenneally, Kirk Kenneally and Guy Smith** – Property owners Michael & Wendy Kenneally and applicants Kirk Kenneally and Guy Smith are requesting a Variance in order to expand a non-conforming structure (dwelling) which is located closer to the Ordinary High Water Level of West Rush Lake than permitted in the Rural Residential I (RRI) District / Shoreland Management District. The .27± acre subject site is located at 1476 509th Street in Nessel Township, S22, T37, R22 (PID 06.00464.00).

7. Public Hearings – Continued Hearings

None

8. Old Business

9. New Business

- a. Adoption of 2025 Meeting Schedule

10. Miscellaneous

11. Adjourn Meeting

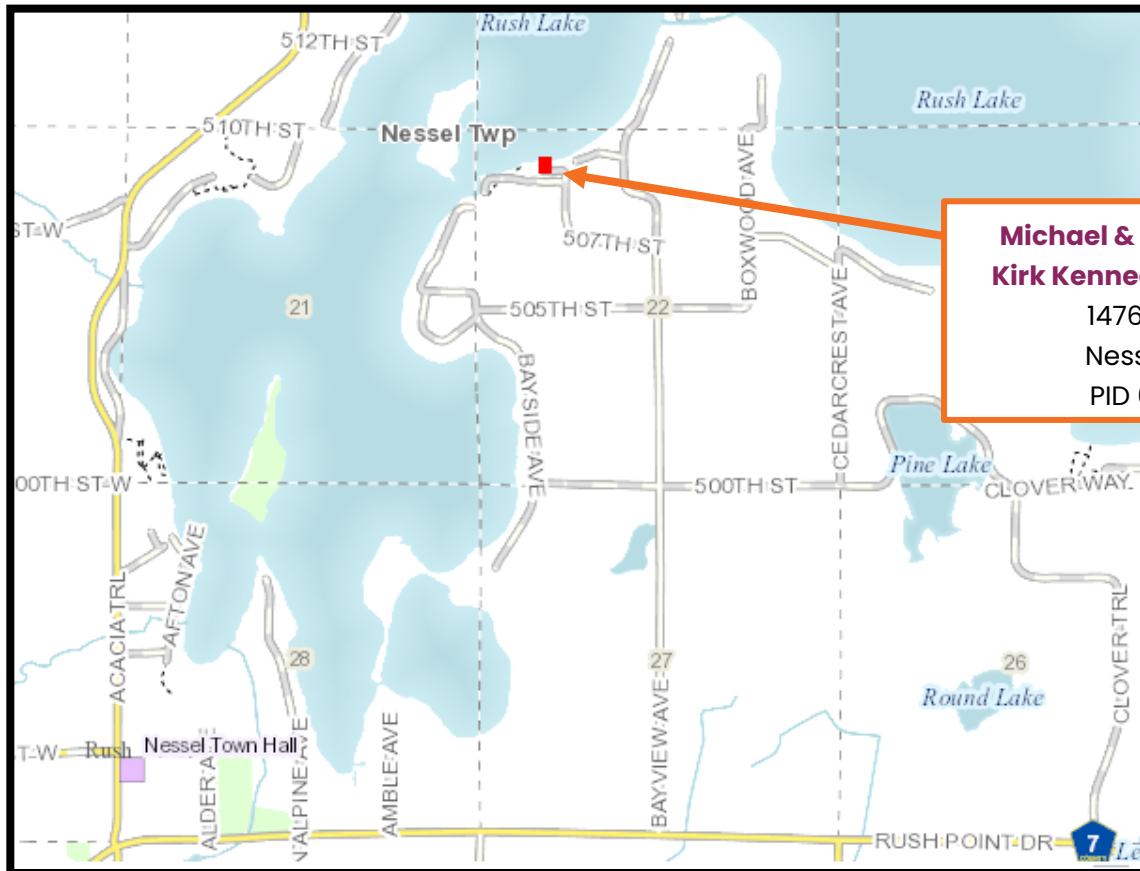
The next meeting is scheduled for Monday, December 23, 2024 at 7:00 pm.

Board of Adjustment and Appeals

Tour Date and Time:

Monday, November 25, 2024 at 8:15 am

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



**Michael & Wendy Kenneally,
Kirk Kenneally and Guy Smith**

1476 509th Street
Nessel Township
PID 06.00464.00



**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 BUSINESS

None

NEW BUSINESS

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



Staff Report

TO: Board of Adjustment and Appeals
 FROM: Beth Gervais, Land Services Coordinator
 SUBJECT: Variance to Expand a Non-Conforming Structure
 1476 509th Street, Nessel Township
 DATE: November 26, 2024

ACTION TO CONSIDER

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

SITE & APPLICATION INFORMATION

Property Owner(s): Michael & Wendy Kenneally
 Applicant(s): Kirk Kenneally and Guy Smith
 Property Address: 1476 509th Street
 Nessel Township
 General Location: Section 22, Township 37, Range 22
 PID: 06.00464.00
 Property Area: .27± Acres
 Current Zoning: Rural Residential I (RRI) District / Shoreland Management District
 Adjacent Zoning:
 North: West Rush Lake
 South: Rural Residential I (RRI) District / Shoreland Management District
 East: Rural Residential I (RRI) District / Shoreland Management District
 West: Rural Residential I (RRI) District / Shoreland Management District
 Date Application Received: November 1, 2024
 Date Application Complete: November 1, 2024
 60-Day Review Period: December 31, 2024

BACKGROUND

Property owners Michael & Wendy Kenneally wish to expand their legal non-conforming dwelling by adding a second story over the front / lakeside portion of the dwelling.



SITE ANALYSIS

The .27± acre unplatted subject site is generally located on a private drive approximately one-half mile northwest of the intersection of Bayview Avenue and 507th Street on the east shore of West Rush Lake in Nessel Township.

According to Chisago County Assessor's Office records, the original 1,224 sf dwelling was constructed in 1955 and was later lost to a fire. Department of Environmental Services records further explain the history of the property, indicating that the dwelling burned in approximately 1988 and the Board granted a Variance in July 1989 which allowed redevelopment of the subject site with a smaller dwelling (reported at time of Variance request to be approximately 988 sf). Board meeting minutes suggest that the Variance was granted on the basis that the subject site constituted pre-existing development (i.e., legal non-conforming lot of record). The top adjacent image shows the dwelling in approximately 1990, following redevelopment, and the bottom adjacent image shows the dwelling in July 2015. It isn't clear to staff when the porch on the west side of the dwelling was added, as there does not appear to be any Variance or building permit records on file for this expansion.



Based on the County's GIS Viewer, the subject site appears to be approximately 90' wide and approximately 135' deep. The property itself is considered legal non-conforming in that it doesn't meet current lot area or lot width requirements for the Shoreland Management District. According to the application materials, the site is currently developed with a 28' x 34' (952 sf) dwelling and 24' x 22' (528 sf) detached garage. Staff notes that Assessor's Office records suggest that the dwelling is 28' x 36' (1,008 sf). The difference in dwelling size is relevant given that the Chisago County Zoning Ordinance currently requires that dwellings be a minimum of 960 sf. The dwelling is considered non-conforming due to an approximate 25'-30' Ordinary High Water Level (OHWL) setback encroachment. However, the existing encroachment is deemed legal non-conforming being that it was allowed by a Variance granted in 1989.

The existing amount of impervious surface coverage is reported by the property owners to be 24.52%, which is slightly less than the maximum allowable amount of 25%.

The subject site is served by a Type 1 septic system which, based on Board meeting minutes, appears to have been installed in 1981. As part of the Variance process, a septic compliance inspection was completed on November 15, 2024. Discussion about the inspection can be found in the “Staff Concerns” section on page 9.

The subject site is located within the RRI District / Shoreland Management District and properties to the west, east, and south are similarly zoned. Neighboring properties to the west, east, and southeast appear to be similarly sized and developed, whereas the property directly south is significantly larger (25.4± acres).

PROPOSAL ANALYSIS

The attached application materials indicate that the property owners would like to construct a second story with the goal of creating additional space for the growing family. The building plans show that the second-story addition will include two bedrooms, a full bathroom, and a family room. The second story appears to be 24' x 28' in size or 672 sf. The existing dwelling includes a total of three bedrooms and the proposed expansion will result in a total of three bedrooms, which means that there will be no need to expand the existing septic system.

The existing dwelling is situated approximately 45' – 50' from OHWL where the required setback is 75'. As previously discussed, the existing dwelling was constructed in this location in approximately 1989 with Variance approval. The dwelling appears to meet all other required setbacks. Being that this proposed dwelling expansion is a vertical expansion, it will not exacerbate the already non-conforming OHWL setback and, like the existing dwelling, it will exceed all other required setbacks.

Given that the request includes an upward expansion and no other improvements, there is no proposed change to the amount of impervious surface coverage. With an existing and proposed amount of 24.52%, the property will be in compliance with the Shoreland Management Ordinance.

The property owners have provided a written narrative to explain what they're hoping to accomplish through this Variance request. The narrative also partially addresses the State mandated practical difficulty standard by suggesting that the request is **reasonable** in that the proposed expansion will not increase the footprint of the dwelling (meaning that the non-conforming OHWL setback will not be exacerbated), and the proposed expansion fits the **essential character** of the area in that it's consistent with other recently improved dwellings in the neighborhood. Staff would offer that the subject site is **unique** in that it constitutes pre-existing development.

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

	RRI District / Shoreland Management District Standards	Proposed
Road Setback	40' to Township Right-of-Way	NA (private drive)
Ordinary High Water Level (OHWL) Setback	75' for structures	Approximately 45' – 50' from OHWL (existing <u>and</u> proposed)
Side Yard Setback	10' for dwelling and attached garage	Approximately 40' from west property boundary and approximately 10' from east property boundary
Impervious Surface Coverage	25%	24.52%

REVIEW PROCESS

The Technical Review Committee met with property owner Wendy Kenneally on November 13, 2024. The group discussed history of the property and screen porch and reviewed details of the Variance request. It was noted that a septic compliance inspection was scheduled for November 15, 2024. The Committee did not identify any immediate concerns with the request.

The Nessel Town Board considered the request on November 12, 2024 and recommended approval with no comments or recommended conditions.

The State mandated 60-day review period will expire on December 31, 2024.

WRITTEN TESTIMONY

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

VARIANCE ANALYSIS

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

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape,

topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control;

The subject site was created prior to the County's adoption of official land use controls and features a lot area and lot width which are considered substandard by the current Chisago County Shoreland Management Ordinance. The Board refers to this circumstance as 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 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 in compliance with the Zoning and Shoreland Management Ordinances, and the subject site has been developed with a dwelling.

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

The circumstance of pre-existing development is not a result of actions of the current property owners or any previous owners under the current Zoning Ordinance and Shoreland Management Ordinance. The subject site was created and originally developed prior to or in 1955 which was well before the County adopted official land use controls.

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

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

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

There is little to nothing that the property owners can do to alleviate the hardship of pre-existing development; however, they are intentionally proposing to expand the dwelling upwards so as to not further encroach on the existing legal non-conforming OHWL setback.

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

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

District / Shoreland Management District and the expansion will not exacerbate the existing legal non-conforming OHWL setback or create any new non-conformities; that the subject site is unique in that it was created and originally developed prior to the County's adoption of official land use controls; and, that the proposed expansion fits the essential character of the subject site and surrounding residential lakeshore neighborhood. Further, staff does not believe that the Variance, if approved, would be detrimental to other properties in the RRI District / Shoreland Management District.

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

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

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

The entire subject site is located outside of the flood district.

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

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

As indicated above, "practical difficulties" is a legal standard that the County must apply when considering applications for Variances. It's a three-factor test, including:

reasonableness, uniqueness, and essential character. In order to constitute practical difficulties, all three factors of the test must be satisfied. Descriptions of the three factors are offered below for the Board's consideration:

1. Reasonableness

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

2. Uniqueness

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

3. Essential Character

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

FINDINGS OF FACT

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

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

Finding #1 *The proposed action will increase the height of the dwelling through the addition of a second story, which means that all existing setbacks will be maintained. Given that the dwelling will meet the required side yard setbacks (west and east), the County finds that the proposed action will have no impact on the supply of light and air to the two closest neighboring dwellings (west and east). The County further finds that the next closest adjacent dwelling is approximately 125' from the subject dwelling (south), and, given the distance, there will be no impact to the supply of light and air.*

- Criteria #2 The proposed action will not unreasonably increase the congestion in the public right-of-way;
- Finding #2 *The proposed action will not change the primary use of the subject site or dwelling or increase the number of bedrooms. Therefore, the County finds that the proposed expansion will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns related to impacts on surrounding roadways.*
- Criteria #3 The proposed action will not increase the danger of fire or endanger the public safety;
- Finding #3 *The property owners will be required to obtain a building permit prior to construction of the proposed dwelling expansion and it will, therefore, be constructed in compliance with all applicable codes. The County finds that this compliance will help ensure that there will be no increase to the danger of fire or endangerment of the public's safety.*
- Criteria #4 The proposed action will not unreasonably cause undue negative impact to surrounding properties;
- Finding #4 *The subject site is currently developed with a dwelling and detached garage. The proposed dwelling expansion will not change how the property is being used and the proposed expansion will meet and/or exceed the required west and east side yard setbacks where there is greatest potential for impact to surrounding properties. Further, the difference in elevation between the subject site and the neighboring property to the south will result in minimal impact to said neighboring property. Therefore, the County finds no evidence to suggest that the dwelling expansion will have any negative impact to surrounding properties.*
- Criteria #5 The proposed action will not cause an unreasonable strain upon existing facilities and services;
- Finding #5 *The proposed dwelling expansion will not change the primary use of the subject site or the number of bedrooms within the dwelling; however, it has been determined by the County through a septic compliance inspection on November 15, 2024 that the existing septic system is undersized for the existing / proposed number of bedrooms. The County finds that, with either a decrease in the number of bedrooms and/or alterations to the septic system, the proposed dwelling expansion 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 dwelling addition will have any negative fiscal impact on the County or school district. The County finds that the dwelling addition 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 existing dwelling is considered legal non-conforming being that it's situated approximately 45' – 50' from Ordinary High Water Level (OHWL) where the required setback is 75'. The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses; however, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the expansion will not exacerbate the existing legal non-conforming OHWL setback or create any new non-conformities; that the subject site is unique in that it was created and originally developed prior to the County's adoption of official land use controls; and, that the proposed expansion fits the essential character of the subject site and surrounding residential lakeshore neighborhood.*

STAFF CONCERNS

The November 15, 2024 septic compliance inspection revealed a number of issues. While the system itself is compliant, it was discovered that the system is not adequately sized for the existing / proposed three-bedroom dwelling. The County Sanitarian has stated that the current system is technically undersized for even a two-bedroom dwelling and, given its encroachment on required setbacks, the system cannot be expanded to support a three-bedroom dwelling. The system is located 0' from the west property boundary where the required setback is 10'; the absorption area is located 15' from the screen porch where the required setback is 20'; and, the septic tank is located 4.5' from the garage where the required setback is 10'.

Possible remedies may include a reduction in the number of bedrooms (two bedrooms being the maximum) or replacement of the existing system with a holding tank sized to accommodate the existing / proposed three-bedroom dwelling. Replacing Type 1 septic systems with holding tanks is generally discouraged; however, in this specific case, the replacement would allow for the desired number of bedrooms and would resolve multiple setback encroachments.

STAFF RECOMMENDATION

In light of the septic system concerns, staff is recommending that the Board table the request to allow the property owners time to fully understand the situation and make decisions on how they wish to proceed. If the Board chooses to table the request, staff also recommends that the review period be extended by an additional 60 days.

The current Variance request only addresses the proposed expansion of the non-conforming dwelling. If the property owners determine that they'd like to expand their Variance request to include any septic related Variances, the current request will need to be withdrawn and a new request will need to be submitted and follow the standard procedure for new Variance requests (i.e., submission of complete application packet and application fee, full meeting cycle, etc.).

Alternatively, if the Board supports the request as submitted and feels comfortable granting approval, staff has provided draft Findings of Fact (see above) and recommended conditions (see below) and has prepared a resolution for the Board's consideration. Staff notes that recommended condition no. 2 addresses septic system related concerns.

Recommended conditions:

1. This approval grants a Variance allowing the expansion of a legal non-conforming structure (dwelling) by allowing an upward expansion through the addition of a second story. The dwelling expansion shall be constructed in general conformance with the application materials dated received November 1, 2024 and kept on file with the Department of Environmental Services and as conditioned 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.
2. The maximum number of bedrooms shall be determined by the size of the septic system. Given that the existing septic system is not designed to accommodate three bedrooms (existing and proposed number of bedrooms), the permit holder will either be required to reduce the number of bedrooms (two bedrooms being the maximum allowed) or a new septic system will need to be designed and installed to support three bedrooms. This Variance does not include any allowances for the existing septic system or potential modifications to the septic system, which means that any potential modifications must be made in compliance with all applicable codes and regulations.
3. The permit holder shall obtain all necessary permits prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

OPTIONS

1. **Approve** the Variance based on the Findings of Fact and conditions as presented or amended.
2. **Deny** the Variance based on amended Findings of Fact or other contributing factors deemed appropriate.
3. **Table** action to allow for further review and consideration. If tabling the request, the Board is encouraged to also include in its motion a **60-day extension** of the review period in order to allow the applicant sufficient time to consider all issues / options and determine how they wish to proceed.

ACTION REQUESTED

Motion to table the request and extend the review period by an additional 60 days to allow the applicants sufficient time to consider all issues / options and determine how they wish to proceed.

Alternatively, motion to adopt Resolution No. BOAA2024-1101, a resolution approving a Variance allowing the expansion of a legal non-conforming structure on property located at 1476 509th Street 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 calculation worksheet
2. Aerial photo (1) – subject site
3. Aerial photo (2) – vicinity map
4. Draft Resolution No. BOAA2024-1101



Chisago County Department of Environmental Services Planning & Zoning Application

Permit # 2024-2340

Township Nessel S/T/R 22-37-22 PID# 06.00464.00
Project Address 1476 509th St Rush City, MN 55069
Property Owner(s) Wendy Kenneally
Mailing Address (If Different from Project Address) 10931 38th Ct N Lake Elmo, MN 55042
Phone# [REDACTED] Email [REDACTED]
Applicant(s) Kirk Kenneally & Guy Smith
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) Expansion of non-conforming structure

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

☐ Full Legal Description

☐ Detailed Site Plan

☐ Detailed Written Narrative

☒ Plat Drawings

Wendy Kenneally
Applicant Signature

10/20/24
Date of Application

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

Fees		Dates	
Base Fee	\$ <u>600</u>	Application Received	<u>11-1-24</u>
Recording Fee	\$ <u>46</u>	Application Complete	<u>11-1-24</u>
Plat Fee - No Road(s) / With Road(s)	\$ _____	60 / 120 Day Review Period	<u>12-31-24</u>
Septic Compliance Fee	\$ _____	Extended Review Period	_____
Wetland Fee	\$ _____		
TOTAL FEE	\$ <u>646</u>		



Chisago County Department of Environmental Services
Planning & Zoning Application

Township Presentation Form

Township Nessel S/T/R 22-37-22 PID# 06.00464.00

Project Address 1476 509th St Rush City, MN 55069

Property Owner(s) Wendy Kenneally

Mailing Address (if Different from Project Address) 10931 38th Ct N Lake Elmo, MN 55042

Phone# [REDACTED] Email [REDACTED]

Applicant(s) Kirk Kenneally, Guy Smith

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) Expansion of non-conforming structure

Wendy Kenneally
Applicant Signature

10/30/24
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 NOV 26, 2024 Date of Township Presentation NOV 12, 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 Paul Ehl
Donna Brian

We are proposing to add an upper level over the front portion of the dwelling on the existing footprint. We will be moving two bedrooms to the upper area. One lower bedroom will be converted to a storage room since it is only 6ft x 7ft. The other bedroom will be converted to a den/office. A bathroom will also be added to the upper space along with a living space area.

My children are now grown and expanding their families, so the extra space is needed.

We are not requesting to expand the current footprint at all, understanding the importance of the setback from the lake. Having the addition go up is definitely the best option for honoring that.

The addition also is consistent with the neighborhood. Next door an addition was put on years ago and doubled the size of their cabin. A few down in the other direction, was a tear down and rebuild. Next to them is a current add on going up as well. So, I believe our addition will definitely fit in with the immediate area.

Thank you so much for considering this variance request.

Lake

Approximately 45 ft
to shoreline

Sidewalk

and patio

Screen Porch

Dwelling

Patio

10 ft
to property

40 ft
to property

Septic
Mound

Manhole

Well

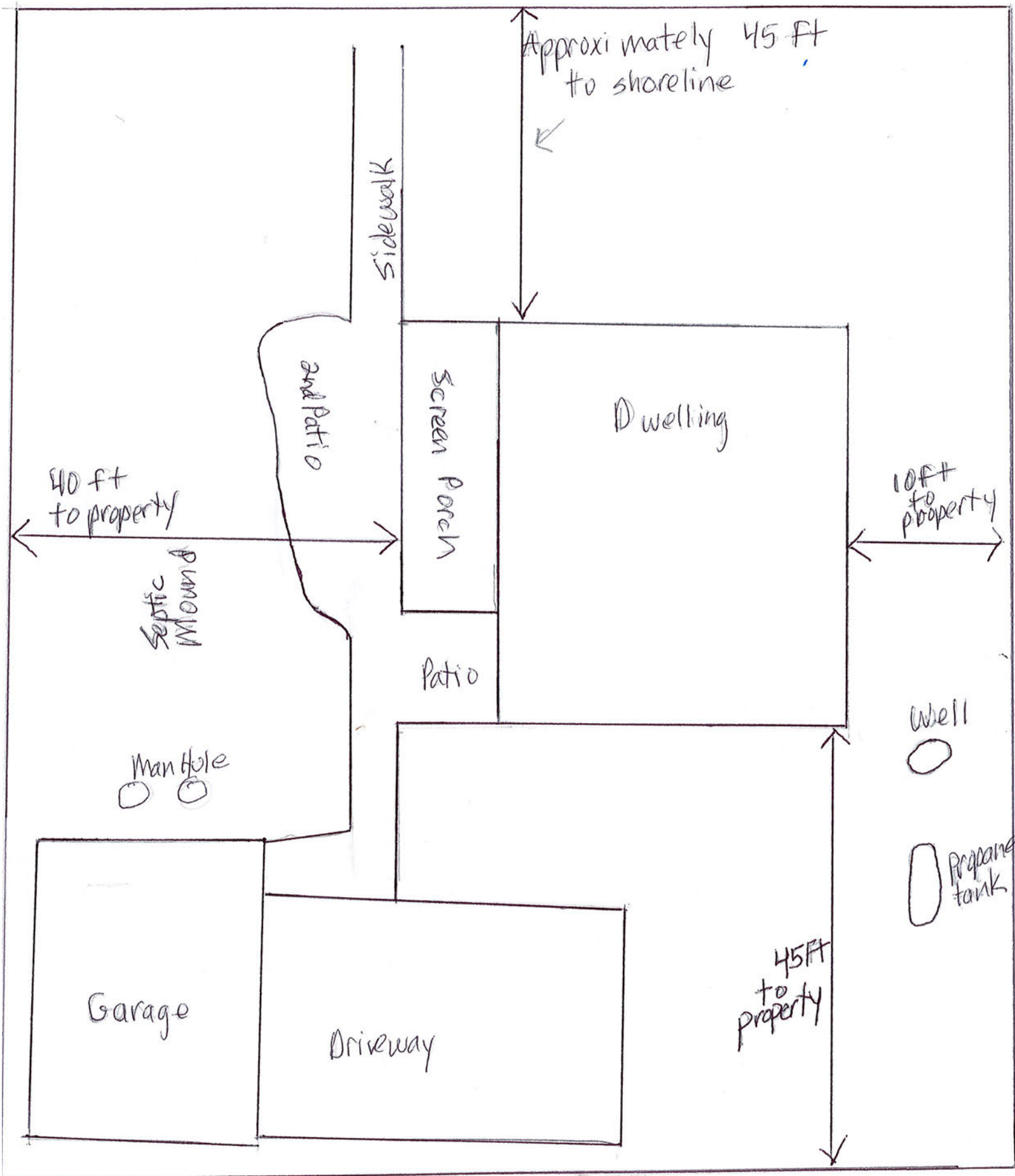
Propane
tank

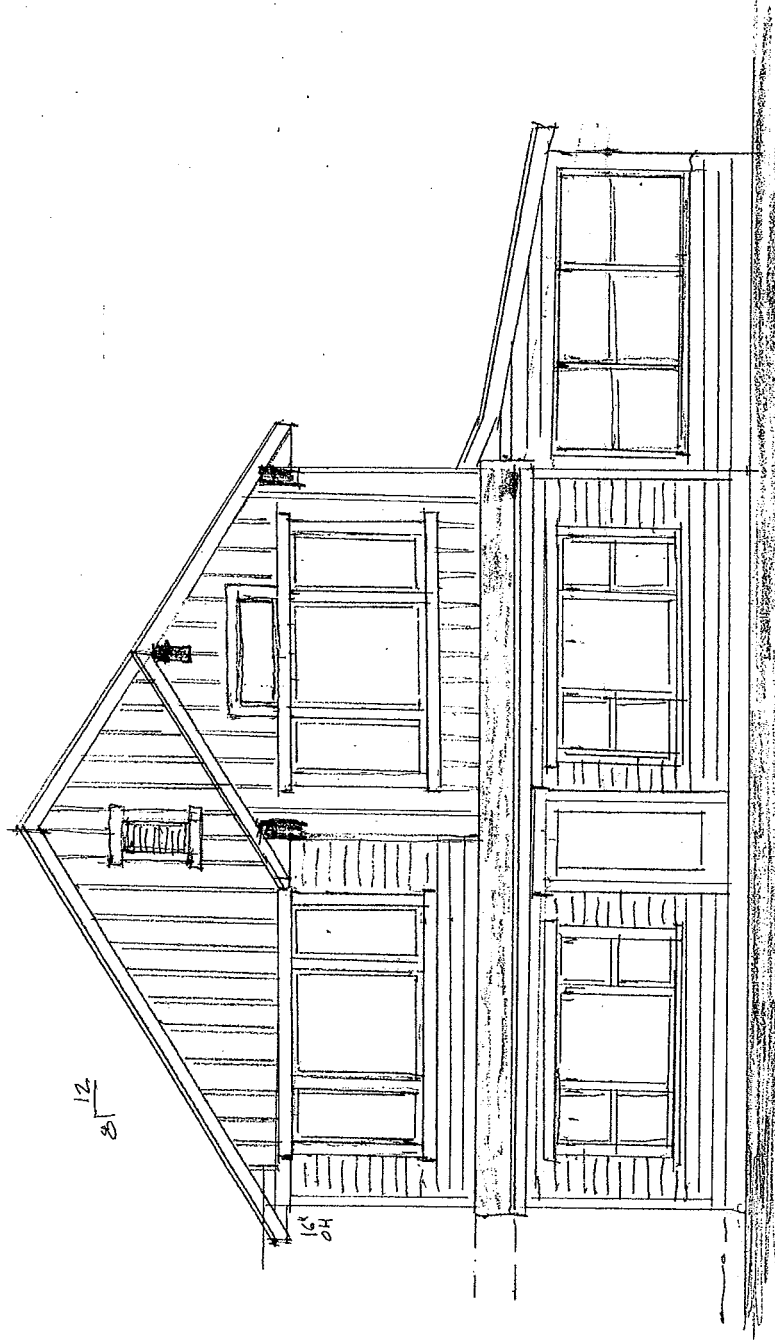
45 ft
to property

Garage

Driveway

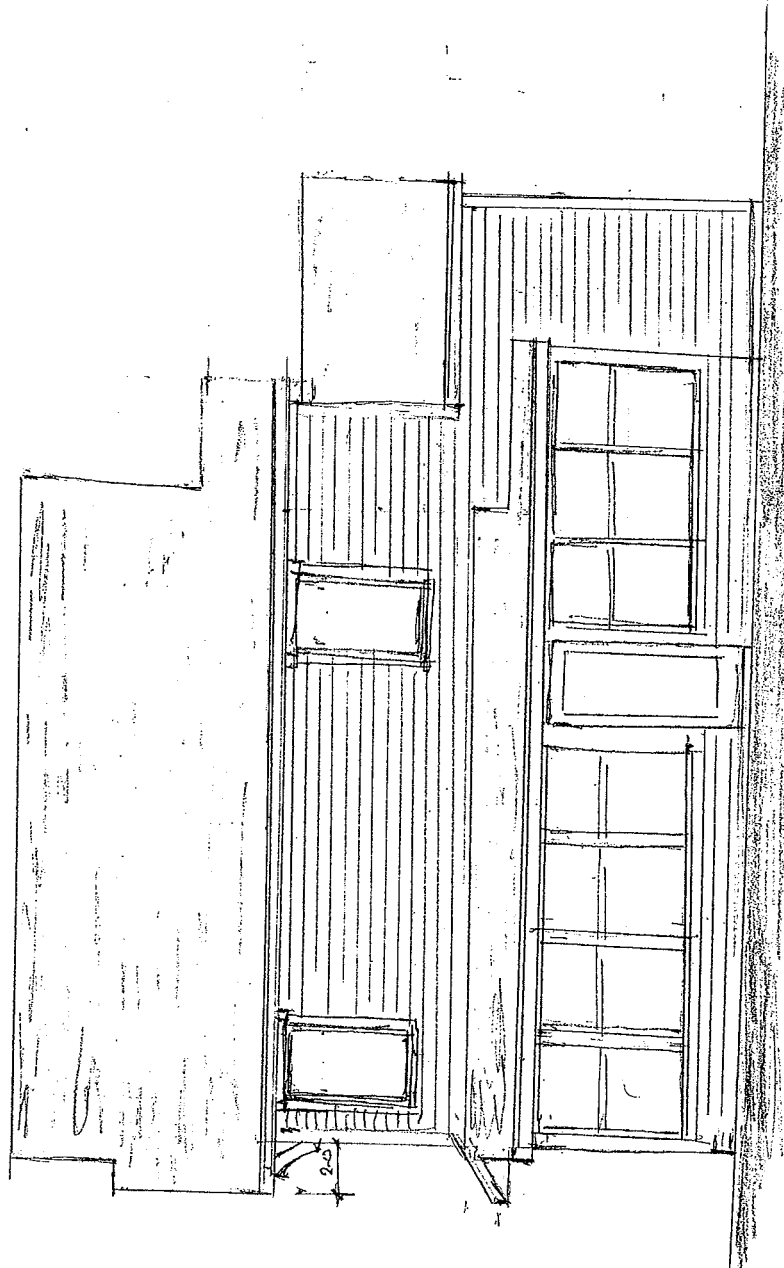
Road 509th St



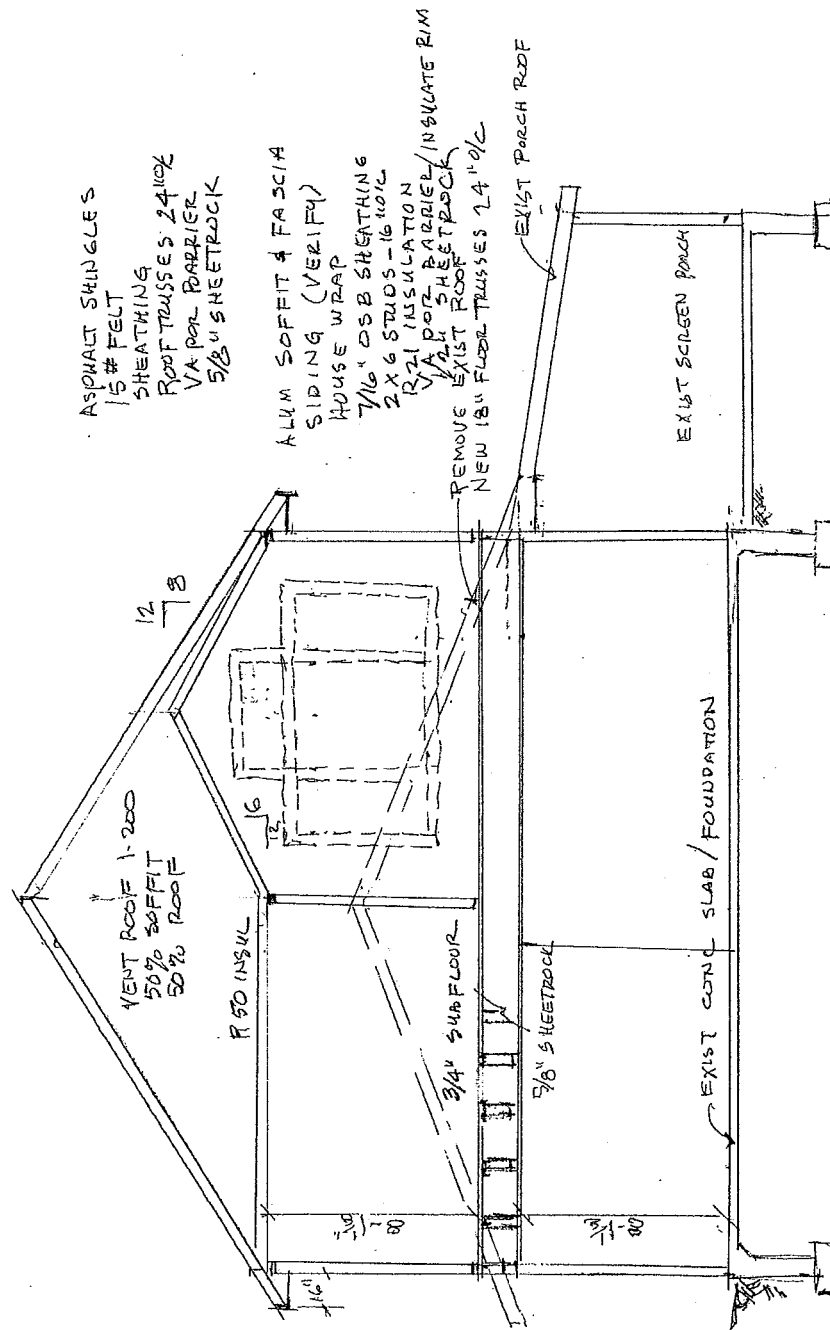


LAKE SIDE ELEVATION REVISED 8/19/24

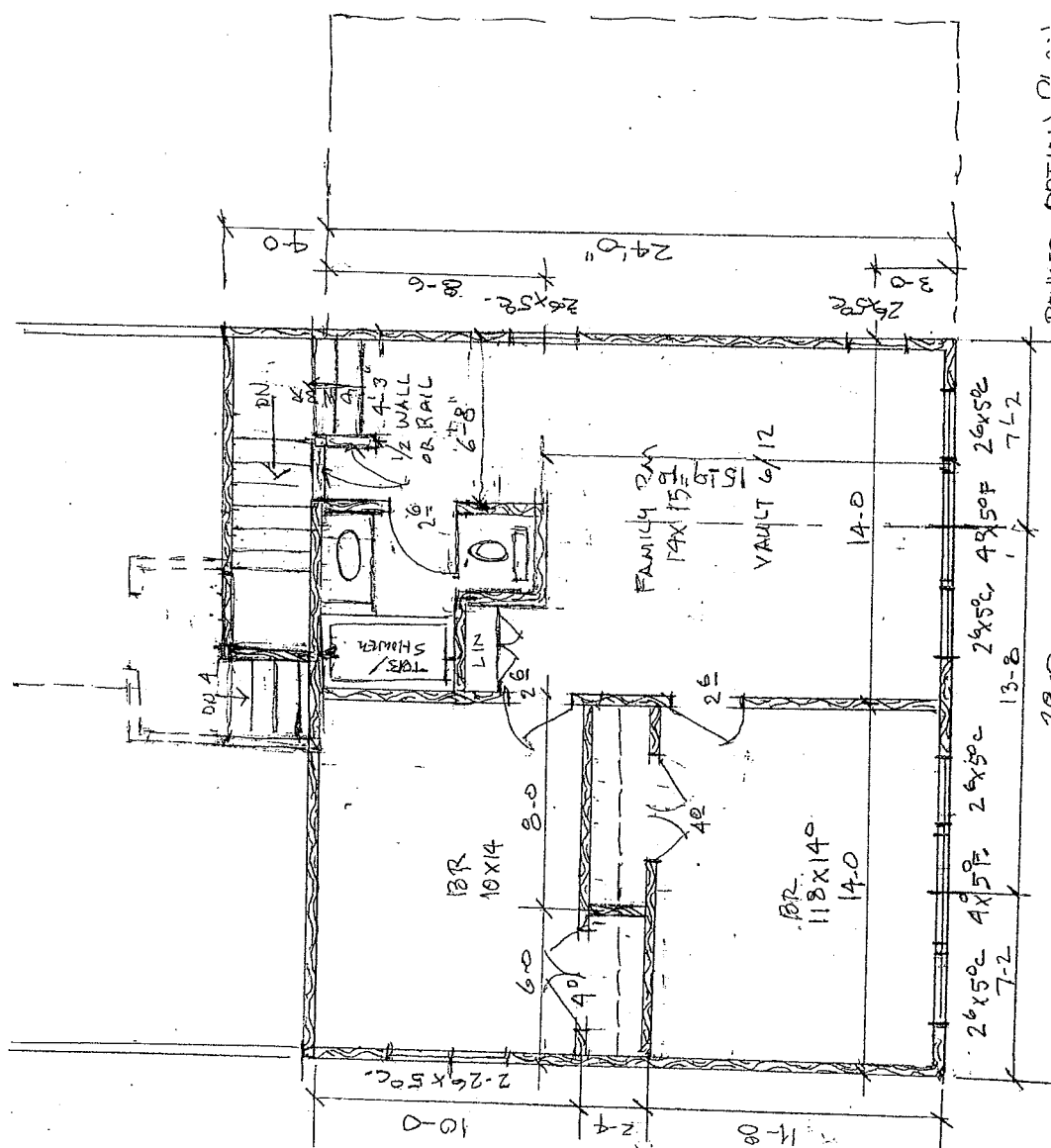
SECOND FLOOR ADDITION

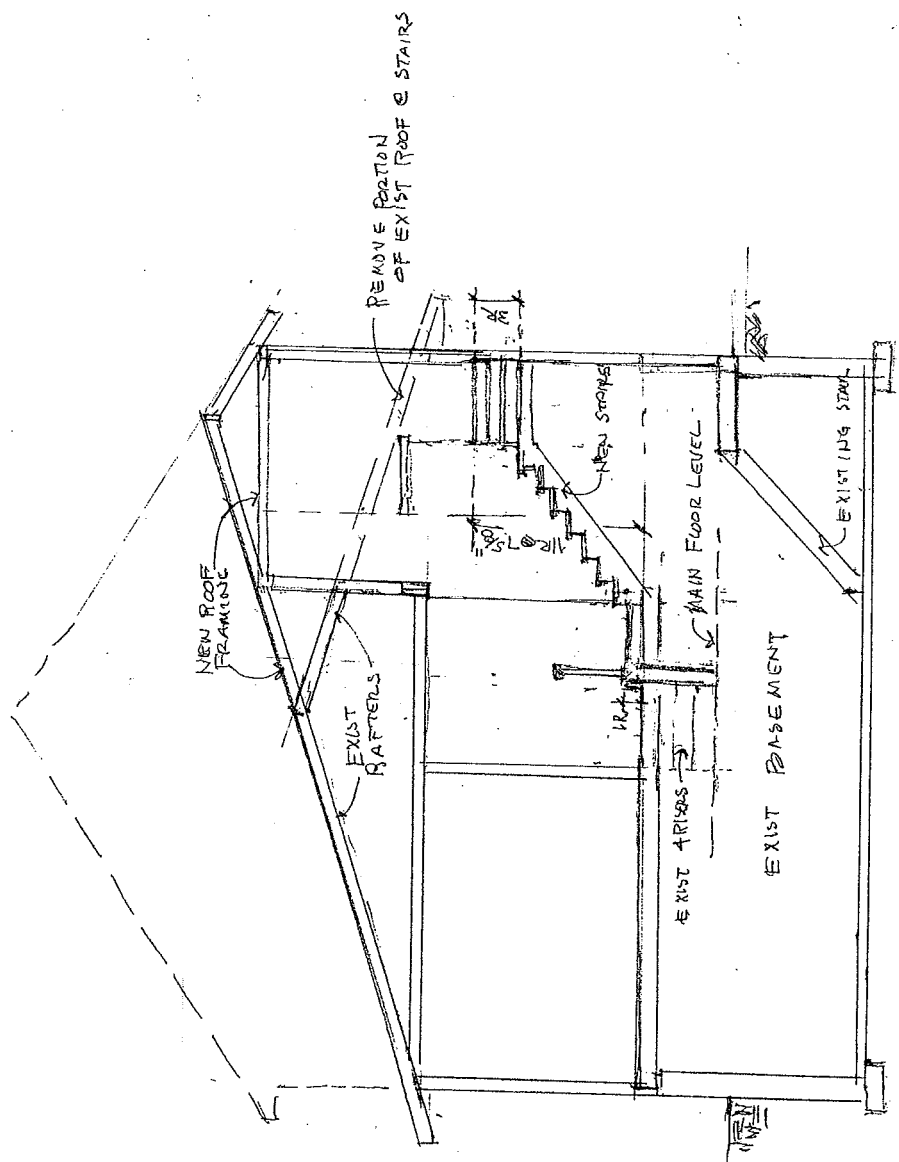


SIDE ELEVATION

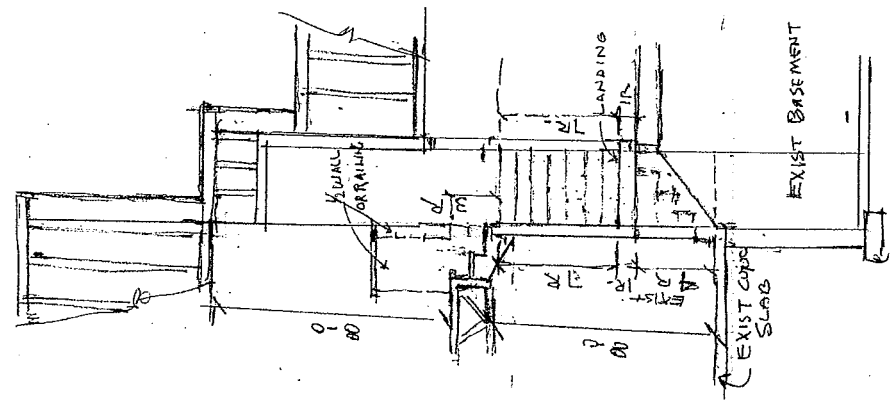


CROSS SECTION THRU NEW ADDITION
REVISED 8/19/24



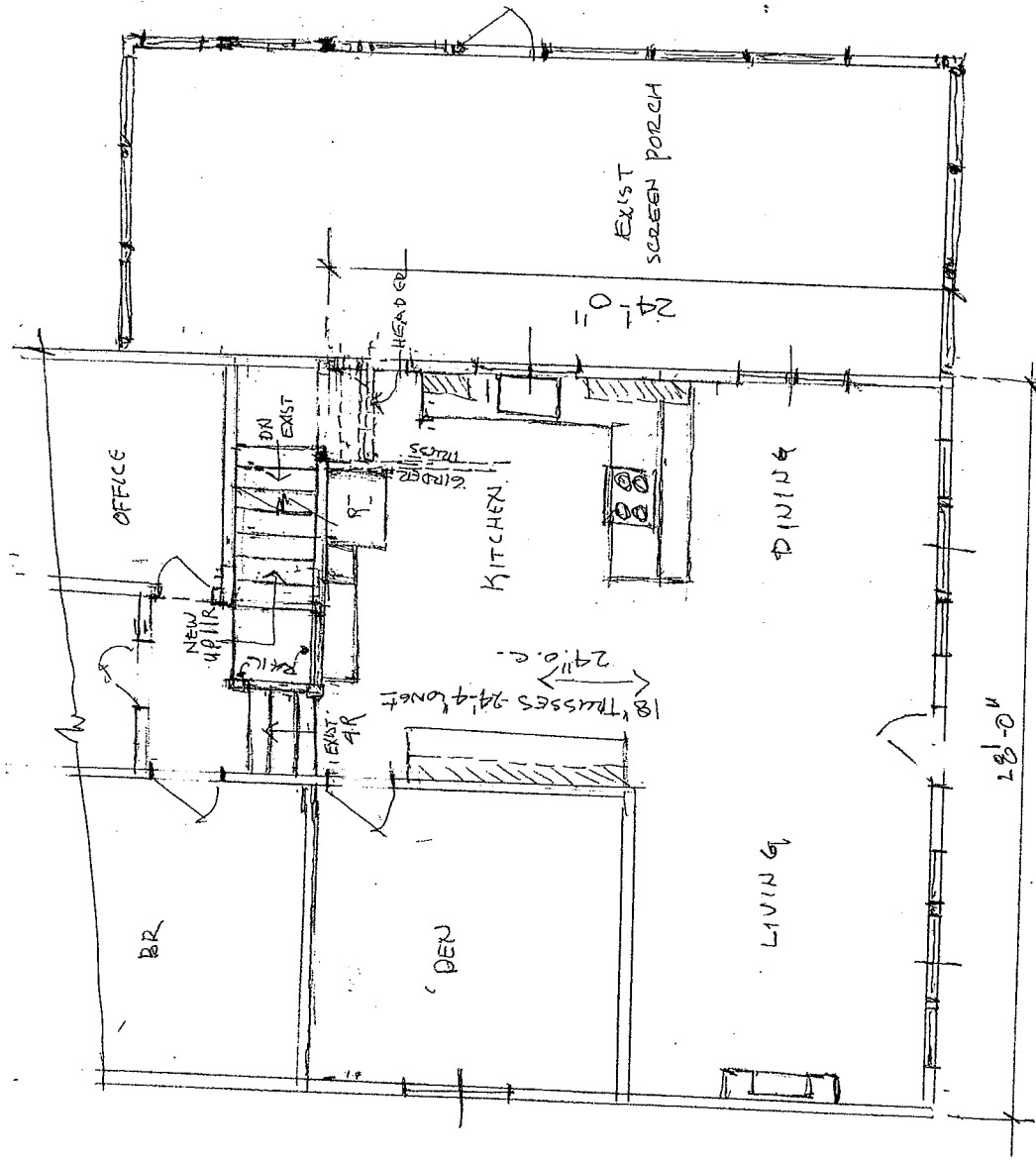


CROSS SECTION THRU EXIST BASEMENT NEW STAIR TO ADDITION



SECTION THRU NEW STAIR

REVISED OPTION PLAN 8/18/24



REVISED OPTION PLAN 8/18/24

1/4" = 1'-0"

EXISTING MAIN FLOOR PLAN

28'-0"

24'-0"

EXIST SCREEN PORCH

DINING

LIVING

KITCHEN

DEN

OFFICE

BR

18' TRUSSES 24'-4" ON C.
24' O.C.

NEW 4x12

DN EXIST

EXIST 4x12

HEADER

IMPERVIOUS SURFACE CALCULATIONS

required for parcels located within shoreland overlay

EXISTING + PROPOSED

AREA OF PARCEL

acres:	square feet per acre:	Total area of parcel in square feet
x	43,560	= 11,761.20

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	28x34	=	952
garage	24x22	=	528
deck		=	
patio	12x9	=	108
sidewalk	63x4	=	252
driveway	33x20	=	660
other; list:			
Screen Porch	7x24	=	168
2nd Patio	24x9	=	216
		=	
		=	
TOTAL RESIDENTIAL STRUCTURES			2884

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"	2884	+
Total from "Agricultural Structures"		+
Total from "Other Items"		+
Total square footage of coverage:		=
(divide by total area of parcel above)		=
TOTAL IMPERVIOUS SURFACE	24.52	%

Wendy Kennedy

signature

10/20/24

date

corresponding permit number

Michael & Wendy Kenneally, Kirk Kenneally and Guy Smith – Property owners Michael & Wendy Kenneally and applicants Kirk Kenneally and Guy Smith are requesting a Variance in order to expand a non-conforming structure (dwelling) which is located closer to the Ordinary High Water Level of West Rush Lake than permitted in the Rural Residential I (RRI) District / Shoreland Management District. The .27± acre subject site is located at 1476 509th Street in Nessel Township, S22, T37, R22 (PID 06.00464.00).



Michael & Wendy Kenneally, Kirk Kenneally and Guy Smith – Property owners Michael & Wendy Kenneally and applicants Kirk Kenneally and Guy Smith are requesting a Variance in order to expand a non-conforming structure (dwelling) which is located closer to the Ordinary High Water Level of West Rush Lake than permitted in the Rural Residential I (RRI) District / Shoreland Management District. The .27± acre subject site is located at 1476 509th Street in Nessel Township, S22, T37, R22 (PID 06.00464.00).



RESOLUTION NO. BOAA2024-1101
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 ON PROPERTY LOCATED AT 1476 509TH STREET IN NESSEL TOWNSHIP

WHEREAS, property owners Michael Kenneally & Wendy Kenneally and applicants Kirk Kenneally and Guy Smith submitted an application for Variance dated received and considered complete on November 1, 2024; and

WHEREAS, the property owners wish to expand their legal non-conforming dwelling through the addition of a second story where the dwelling encroaches on the required Ordinary High Water Level setback; and

WHEREAS, the .27± 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 06.00464.00

“That part of Government Lot 1, Section 22, Township 37 North, Range 22 West, Chisago County, Minnesota described as follows:

Commencing at the west quarter corner of said Section 22; thence North 0 degrees 13 minutes 49 seconds West, assumed bearing along the west line of said Section 22, a distance of 1520.00 feet; thence North 62 degrees 00 minutes 18 seconds East, a distance of 1147.42 feet, to the point of beginning; thence North 87 degrees 41 minutes 32 seconds East, a distance of 90.55 feet; thence North 0 degrees 46 minutes 31 seconds West, to the shore line of Rush Lake; thence southwesterly along said shore line to the intersection with a line that bears North 0 degrees 09 minutes 51 seconds West from the point of beginning; thence South 0 degrees 09 minutes 51 seconds East along said line to the point of beginning.”

AND

Together with that part of said Government Lot 1 lying southerly of the above described parcel, lying between the southerly intersections of the West and East lines of the above described parcel and lying northerly of the following described “Line A”:

Line A:

Commencing at the west quarter corner of said Section 22; thence North 0 degrees 13 minutes 49 seconds West, assumed bearing along the west line of said Section 22, a distance of 1511.72 feet; thence North 56 degrees 48 minutes 25 seconds East, a distance of 1056.31 feet; thence North 89 degrees 45 minutes 34 seconds East, a distance of 89.43 feet; thence South 00 degrees 01 minute 39 seconds East, a distance of 48.00 feet to the point of beginning of said “Line A”; thence North 84 degrees 12 minutes 16 seconds East, to the east line of said Government Lot 1 and said “Line A” there terminating.

Subject to the proprietary and sovereign rights of the State of Minnesota in all that proportion of the land lying below the natural ordinary high watermark of Rush Lake,; not intending , however, to deprive the fee owners of the usual riparian rights that attach to the land riparian to a navigable public body of water incident to the ownership thereof.

WHEREAS, notice was provided and on November 26, 2024 the Board of Adjustment and Appeals conducted a public hearing regarding this application, at which it heard from the Land Services Coordinator, the property owner(s) and/or applicant(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 | <i>The proposed action will increase the height of the dwelling through the addition of a second story, which means that all existing setbacks will be maintained. Given that the dwelling will meet the required side yard setbacks (west and east), the County finds that the proposed action will have no impact on the supply of light and air to the two closest neighboring dwellings (west and east). The County further finds that the next closest adjacent dwelling is approximately 125' from the subject dwelling (south), and, given the distance, there will be no impact to the supply of light and air.</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 dwelling or increase the number of bedrooms. Therefore, the County finds that the proposed expansion will not cause any increase in the amount of traffic generated at the subject site and will not increase congestion on surrounding public roadways. Further, the Nessel Town Board, serving as Road Authority, did not express any concerns related to impacts on surrounding roadways.</i> |
| Criteria #3 | The proposed action will not increase the danger of fire or endanger the public safety; |
| Finding #3 | <i>The property owners 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.</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 detached garage. The proposed dwelling expansion will not change how the property is being used and the proposed expansion will meet and/or exceed the required west and east side yard setbacks where there is greatest potential for impact to surrounding properties. Further, the difference in elevation between the subject site and the neighboring property to the south will result in minimal impact to said neighboring property. Therefore, the County finds no evidence to suggest that the dwelling expansion will have any negative impact to surrounding properties.

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

Finding #5 The proposed dwelling expansion will not change the primary use of the subject site or the number of bedrooms within the dwelling; however, it has been determined by the County through a septic compliance inspection on November 15, 2024 that the existing septic system is undersized for the existing / proposed number of bedrooms. The County finds that, with either a decrease in the number of bedrooms and/or alterations to the septic system, the proposed dwelling expansion 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 dwelling addition will have any negative fiscal impact on the County or school district. The County finds that the dwelling addition 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 existing dwelling is considered legal non-conforming being that it's situated approximately 45' – 50' from Ordinary High Water Level (OHWL) where the required setback is 75'. The intent of Zoning Ordinance Section 4.03 is to regulate non-conforming buildings, structures, and uses; however, the Zoning Ordinance also allows for Variances when the requested action proves to be reasonable, when there is a unique circumstance to the property, and when it will not alter the essential character of the surrounding area. The County finds that the request is reasonable in that dwellings are a Permitted Use in the RRI District / Shoreland Management District and the expansion will not exacerbate the existing legal non-conforming OHWL setback or create any new non-conformities; that the subject site is unique in that it was created and originally developed prior to the County's adoption of official land use

controls; and, that the proposed expansion fits the essential character of the subject site and surrounding residential lakeshore neighborhood.

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

1. This approval grants a Variance allowing the expansion of a legal non-conforming structure (dwelling) by allowing an upward expansion through the addition of a second story. The dwelling expansion shall be constructed in general conformance with the application materials dated received November 1, 2024 and kept on file with the Department of Environmental Services and as conditioned 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.
2. The maximum number of bedrooms shall be determined by the size of the septic system. Given that the existing septic system is not designed to accommodate three bedrooms (existing and proposed number of bedrooms), the permit holder will either be required to reduce the number of bedrooms (two bedrooms being the maximum allowed) or a new septic system will need to be designed and installed to support three bedrooms. This Variance does not include any allowances for the existing septic system or potential modifications to the septic system, which means that any potential modifications must be made in compliance with all applicable codes and regulations.
3. The permit holder shall obtain all necessary permits prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
4. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Adopted by the Board of Adjustment and Appeals of Chisago County, Minnesota,
this 26th day of November, 2024.

Gregg Carlson _____
Douglas Greene _____

John Sutcliffe _____
Charles Yeager _____

Douglas Greene
Acting Chair

ATTEST:

Beth Gervais
Land Services Coordinator



Staff Report

TO: Board of Adjustment and Appeals
FROM: Beth Gervais, Land Services Coordinator
SUBJECT: Adoption of 2025 Meeting Schedule
DATE: November 26, 2024

ACTION TO CONSIDER

The Board of Adjustment and Appeals (Board) will consider adoption of the 2025 meeting schedule.

DISCUSSION

The Board adopts an annual meeting schedule which includes dates, times and locations for tours and regular meetings. Attached is the draft 2025 meeting schedule showing dates and times consistent with previously adopted schedules: tours held one day prior to regular meetings at 8:15 am and regular meetings on the last Thursday of the month at 7:00 pm. The draft schedule also provides dates for application deadlines. The application deadline is generally the 1st of the month, but this can vary if the 1st falls on a weekend or holiday.

The only known conflicts with the draft meeting schedule are related to the November and December tours and meetings due to the Thanksgiving and Christmas holidays. Staff has proposed alternate dates for the Board's consideration.

This is the Board's opportunity to review the meeting schedule and discuss possible changes, such as starting times for tours and/or meetings.

If the Board feels inclined to postpone adoption of the 2025 meeting schedule until the Board is made whole again, staff advises that adopting the 2025 schedule before the end of 2024 is vital. In order to conduct Board activity seamlessly from 2024 to 2025, it's important to have the January 2025 dates established before the end of 2024 and the Board will not be made whole until the County Board's January 7, 2025 organizational meeting.

OPTIONS

1. Adopt the 2025 meeting schedule as presented or amended.
2. Table adoption of the 2025 meeting schedule until the December 23, 2024 meeting.

ACTION REQUESTED

Motion to adopt the Chisago County Board of Adjustment and Appeals 2025 Meeting Schedule as presented or amended.

ATTACHMENTS

1. Draft Chisago County Board of Adjustment and Appeals 2025 Meeting Schedule



DRAFT * 2025 Meeting Schedule * DRAFT

Purpose	Date	Time	Location
January			
Application Deadline for Jan 30 Meeting	Tuesday, December 31, 2024	4:00 PM	
Tour	Wedesday, January 29	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, January 30	7:00 PM	Government Center/Board Room 160A
February			
Application Deadline for Feb 27 Meeting	Friday, January 31	4:00 PM	
Tour	Wednesday, February 26	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, February 27	7:00 PM	Government Center/Board Room 160A
March			
Application Deadline for Mar 27 Meeting	Friday, February 28	4:00 PM	
Tour	Wednesday, March 26	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, March 27	7:00 PM	Government Center/Board Room 160A
April			
Application Deadline for Apr 24 Meeting	Tuesday, April 1	4:00 PM	
Tour	Wednesday, April 23	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, April 24	7:00 PM	Government Center/Board Room 160A
May			
Application Deadline for May 29 Meeting	Thursday, May 1	4:00 PM	
Tour	Wednesday, May 28	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, May 29	7:00 PM	Government Center/Board Room 160A
June			
Application Deadline for Jun 26 Meeting	Friday, May 30	4:00 PM	
Tour	Wednesday, June 25	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, June 26	7:00 PM	Government Center/Board Room 160A
July			
Application Deadline for Jul 31 Meeting	Tuesday, July 1	4:00 PM	
Tour	Wednesday, July 30	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, July 31	7:00 PM	Government Center/Board Room 160A
August			
Application Deadline for Aug 28 Meeting	Friday, August 1	4:00 PM	
Tour	Wednesday, August 27	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, August 28	7:00 PM	Government Center/Board Room 160A
September			
Application Deadline for Sep 25 Meeting	Friday, August 29	4:00 PM	
Tour	Wednesday, September 24	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, September 25	7:00 PM	Government Center/Board Room 160A
October			
Application Deadline for Oct 30 Meeting	Wednesday, October 1	4:00 PM	
Tour	Wednesday, October 29	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Thursday, October 30	7:00 PM	Government Center/Board Room 160A
November			
Application Deadline for Nov 25 Meeting	Friday, October 31	4:00 PM	
Tour	Monday, November 24	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Tuesday, November 25	7:00 PM	Government Center/Board Room 160A
December			
Application Deadline for Dec 23 Meeting	Monday, December 1	4:00 PM	
Tour	Monday, December 22	8:15 AM	Depart from Chisago County Public Works
Regular Meeting	Tuesday, December 23	7:00 PM	Government Center/Board Room 160A

*Rescheduled Tour and/or Meeting Dates

All Tours, Regular Meetings and Special Work Sessions are open to the public.
Public Comment is reserved for public hearing portions of meetings and at the discretion of the Board Chair.

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

Chisago County Public Works
31325 Oasis Road
Center City, MN 55012

Adopted by the Board of Adjustment & Appeals on XX/XX/2024