

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

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, November 26, 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

Acting Chair Greene 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, John Sutcliffe, and Acting Chair Doug Greene. Absent: Chip Yeager (Excused). A quorum was established.

APPROVAL OF AGENDA – Carlson requested that the Board add discussion about voting procedure under New Business. **Motion** by Carlson to approve the agenda as amended; second by Sutcliffe. The **motion passed** and carried unanimously.

APPROVAL OF MINUTES – **Motion** by Sutcliffe to approve the October 31, 2024 meeting minutes as presented; second by Carlson. The **motion passed** and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECORD – **Motion** by Sutcliffe to receive all applications, submittals, reports, and other materials into the record; second by Carlson. The **motion passed** and carried unanimously. Meeting materials distributed in advance to the Board of Adjustment & Appeals for their review included the complete meeting packet with staff reports and attachments. Copies of all meeting materials were made available at the entrance to the County Board Room and for electronic distribution.

PUBLIC HEARINGS – NEW APPLICATIONS

Michael & Wendy Kenneally, Kirk Kenneally and Guy Smith – Coordinator Gervais stated that property owners Michael & Wendy Kenneally and applicants Kirk Kenneally and Guy Smith were requesting a Variance to expand a non-conforming dwelling which was 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 was located at 1476 509th Street in Nessel Township, S22, T37, R22 (PID 06.00464.00).

Gervais provided background information, sharing that property owners Michael & Wendy Kenneally sought Variance approval to expand their legal non-conforming dwelling by adding a second story over the front / lakeside portion of the dwelling, noting that the subject site was approximately .27± acres in size and 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. According to Chisago County Assessor's Office records, the original dwelling was constructed in 1955 and was later lost to a fire. A Variance was granted by the County in July 1989 which allowed redevelopment of the subject site. Board meeting minutes suggested that the 1989 Variance was granted on the basis that the subject site constituted pre-existing development. Gervais added that, based on the

County's GIS Viewer, the subject site appeared to be approximately 90' wide and approximately 135' deep and the property was considered legal non-conforming in that it did not meet current lot area or lot width requirements for the Shoreland Management District. Based on the application materials, the subject site had been developed with a 28' X 34' (952 sf) dwelling and a 24' X 22' (528 sf) detached garage. However, staff noted that Assessor's Office records suggested that the dwelling was 28' X 36' (1,008 sf). Gervais noted that the size of the dwelling was relevant being that the Chisago County Zoning Ordinance required dwellings to be a minimum of 960 sf. The dwelling was considered non-conforming due to an approximate 25'-30' Ordinary High Water Level (OHWL) setback encroachment; however, the encroachment was deemed legal non-conforming as it was allowed by the 1989 Variance. The existing amount of impervious surface coverage was reported by the property owners to be 24.52%.

Gervais provided details of the proposed Variance noting that the building plans indicated the second-story addition would include two bedrooms, a full bathroom, and a family room. The proposed expansion would result in a total of three bedrooms. Being that the proposed expansion was vertical, it would not exacerbate the already non-conforming OHWL setback or increase the amount of impervious surface coverage.

Gervais shared that the property owners 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 dwelling or exacerbate the non-conforming OHWL setback, and the proposed expansion fit the essential character of the area in that it was consistent with other recently improved dwellings in the neighborhood. Staff offered that the subject site was unique in that it constituted preexisting development.

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 at that time. 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 was scheduled to expire on December 31, 2024.

Gervais briefly reviewed staff concerns noting that the November 15, 2024 septic compliance inspection revealed a number of issues.

1. The system was not adequately sized for the existing / proposed three-bedroom dwelling and was technically undersized for even a two-bedroom dwelling.
2. Due to existing setback encroachments, the Type 1 system could not be expanded to support a three-bedroom dwelling. The system was located 0' from the west property boundary where the required setback was 10'; the absorption area was located 15' from the screen porch where the required setback was 20'; and the septic tank was located 4.5' from the garage where the required setback was 10'.

Gervais provided possible remedies such as reducing the number of bedrooms or replacing the existing system with a holding tank sized to accommodate the existing / proposed three-bedroom

dwelling. Gervais shared that replacing compliant Type 1 septic systems with holding tanks was generally discouraged; however, in this specific case, the replacement would allow for the desired number of bedrooms and would resolve multiple setback encroachments.

Gervais concluded by noting that the staff report had provided a recommendation of tabling the request to allow the property owners time to decide what they would like to do in regard to the septic system; however, property owner W. Kenneally had indicated to staff prior to the meeting that she would replace the system with a holding tank to make it compliant for the three-bedroom design. Based on the new information, staff provided a recommendation of approval with draft Findings of Fact and recommended conditions.

Carlson asked staff if recommended condition no. 2 would need to be amended to ensure that the property owners had a properly sized septic system. Gervais responded that she believed the condition was sufficient in that it provided the property owners flexibility by simply requiring that the number of bedrooms be determined based on the size of the septic system.

Acting Chair Greene invited the applicant to address the Board. Applicant Guy Smith was present but had no additional information to offer. Greene asked Smith if W. Kenneally had shared any additional information regarding the septic system concerns. Smith reiterated that the property owner planned to replace the Type 1 system with a 2,000-gallon holding tank. Greene followed up by asking Smith what his role was in the application process. Smith explained that he was the building contractor. Carlson referenced the November 25, 2024 site visit, asking staff if the existing septic system would support two bedrooms. Gervais stated that, per the County Sanitarian, the existing system would support two bedrooms. Carlson asked Smith if he knew when the screen porch was added on to the existing dwelling. Smith stated that he was unsure. Gervais provided slight clarification by referencing photos from the Assessor's Office, stating that the porch was added sometime between 1990 and 2015. There was discussion between Carlson and Smith on the location of the second story addition. Smith assured Carlson that the addition would not go above the existing porch and would only go above the footprint of the house. Smith provided information to the Board on how they were going to approach construction of the second story. Greene asked if the property owners would need to apply for a second Variance for the new holding tank. There was discussion between the Board and staff noting that the new holding tank would fit, and the existing mound system would need to be removed.

Acting Chair Greene opened the public hearing and sought public comment. With no members of the audience wishing to speak, **motion** by Carlson to close the public hearing; second by Sutcliffe. The **motion passed** and carried unanimously.

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

Approved 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.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUISNESS

None

NEW BUISNESS

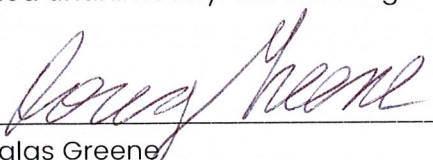
2025 Board of Adjustment & Appeals Meeting Schedule – Motion by Carlson to adopt the 2025 Chisago County Board of Adjustment & Appeals Meeting Schedule as presented; second by Sutcliffe. The **motion passed** and carried unanimously.

Voting Procedure – Carlson asked staff if the voting procedure changed when there were only three Board members present, specifically where the vote wasn't unanimous. Gervais answered by stating that she didn't believe it would be an issue as they only needed a majority vote.

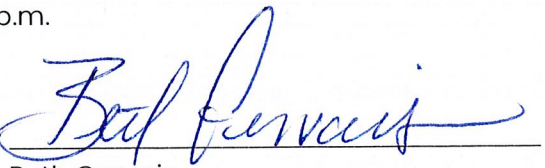
MISCELLANEOUS

None

ADJOURN MEETING – Motion by Sutcliffe to adjourn; second by Carlson. The **motion passed** and carried unanimously. The meeting was adjourned at 7:32 p.m.


Douglas Greene
Acting Chair

12-23-2024
ATTEST


Beth Gervais
Land Services Coordinator