

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
July 27, 2023**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, July 27, 2023 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator; and, Diane Sander, Office Manager.

Chair Carlson 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: Doug Greene, Gregg Carlson, Chip Yeager, John Sutcliffe, and Becky Strand. A quorum was established with all members present.

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

APPROVAL OF MINUTES – Motion to approve the June 29, 2023 meeting minutes as presented by John Sutcliffe; second by Becky Strand. The **motion passed** and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECORD – Motion to receive all applications, submittals, reports, and other materials into the record by Becky Strand, including four letters of support received on behalf of the Donelon request; second by Doug Greene. The **motion passed** and carried unanimously. Meeting materials distributed in advance to the Board of Adjustment & Appeals for their review included: staff reports with attachments and four letters of support for the Donelon request. Copies of all correspondence and meeting materials were made available at the entrance to the hearing room and for electronic distribution.

PUBLIC HEARINGS – NEW APPLICATIONS

Trisha & Tim Donelon – Coordinator Gervais provided background information on Trisha & Tim Donelon’s Variance request for property located at 49725 Afton Avenue in Nessel Township (PID 06.00751.00), explaining that the property owners were requesting Variance approval to replace and expand a dwelling and deck closer to the township Right-of-Way and Ordinary High Water Level (OHWL) than required in the Rural Residential I (RRI) District / Shoreland Management District.

Coordinator Gervais explained that the .25-acre subject site located on the southwest side of West Rush Lake and platted as Lot 7, Bayside Townsite in 1954 was considered to be legal non-conforming as it did not meet the current minimum dimensional requirements. The site was developed with a dwelling, a 640 sf detached garage, and a 120 sf shed. The property owners received Variance approval in 2019 allowing the detached garage to encroach on township Right-of-Way and to exceed the maximum allowable height. Gervais explained that the County’s GIS Viewer made it appear as if the existing detached garage was located on the northerly property boundary; however, the property owners had found several property pins and they were confident that the garage was set back 5.5’ from the northerly property boundary.

Gervais explained that the Donelons were proposing to demolish the existing dwelling and deck and construct a new 1,088 sf dwelling and 320 sf deck in the same general location. Gervais shared that the proposed location would not exacerbate the existing R-O-W setback encroachment but it may now encroach on the OHWL setback. The applicants reported that the proposed setbacks were consistent with neighboring properties and past Variance approvals.

The Nessel Town Board considered the request on July 11, 2023 and recommended approval with conditions that the dwelling be set back 15' from the Right-of-Way (rather than the proposed 9' setback) and that all drainage go toward the lake. The Technical Review Committee met with Tim Donelon on July 12, 2023. The Committee discussed the possibility of shifting the dwelling to reduce encroachment on the Right-of-Way as recommended by the Town Board, and that drainage going directly toward the lake was less ideal for the health of the lake. The State mandated 60-day review period was scheduled to expire on September 4, 2023.

Gervais commented that staff believed the request to be reasonable based on the property and existing dwelling constituting pre-existing development for which the property owner had no control; the proposed dwelling expansion would not exacerbate the R-O-W setback encroachment and it would meet or exceed all other required side yard setbacks; the proposed dwelling was reasonably sized for the subject site while still meeting the required minimum dwelling size (960 sf required; 1,088 sf proposed); and, it would be impossible to construct a dwelling on the subject site which met all minimum architectural requirements and the required setbacks. Gervais added that, barring any new or unknown evidence of compliance discovered after the completion of the staff report or during the course of the public hearing, staff recommended approval of the requested Variance with recommended Findings of Fact and conditions. Gervais reviewed options available to the Board and requested a motion to adopt a resolution approving the Variance as requested.

Tim Donelon was present and available to address questions and concerns. Donelon provided a brief overview of the request and explained that the Nessel Town Board had expressed concern with the proposed R-O-W setback. Donelon explained that the proposed dwelling would not be located any closer to the R-O-W than the existing dwelling and added that the township had an ordinance to deal with on-street parking issues. Donelon did not believe that on-street parking would be an issue as most people would park in the driveway. Donelon did not want to shift the dwelling closer to the lake due to potential negative impacts to the lake and views of the neighbors, and additional costs associated with backfilling. Donelon provided a PowerPoint presentation which included, among other things, examples of neighboring structures which had similar setbacks as the proposed dwelling. Chair Carlson asked clarifying questions on the location of the property pins and the proposed dwelling. Chair Carlson discussed the proposed setback in relation to the neighboring dwelling to the south (Williams). Chip Yeager spoke about and recollected the recent Variance granted to Foss (two properties to the south) which was similar to the Donelon request. Board members and Donelon discussed the Foss property.

Chair Carlson opened the public hearing and sought public comment. With no members of the audience wishing to speak, **motion** to close the public hearing by Becky Strand; second by Chip Yeager. The **motion passed** and carried unanimously. Chair Carlson requested that Coordinator Gervais read the four letters of support submitted on behalf of the request.

Gary and Lisa Paschke – 350 497th Street, Nessel Township. As a neighboring landowner of the Donelons, we can say they have been wonderful neighbors and have no issues in their requested variance to make improvements on their Rush Lake cabin. We look forward to many more years as neighbors.

Bill and Patti Picha – 49695 Afton Avenue, Nessel Township. This letter is in regard to the Donelon's new cabin proposal. We're in the red cabin at 49695 Afton, which is three lots south of the Donelons. We're in support of them expanding their cabin with a basement which will be safer in a storm. This will also be a great improvement to the neighborhood as well to the community.

Jason Foss – 42185 Afton Avenue, Nessel Township. I am reaching out to you in regards to my neighbor Tim Donelon and his family as they are going through a similar process for a variance. I would like nothing more than to see their request approved next Thursday night and see their new build get started up this fall. As you probably know the lake has changed a lot over the past few years with several rebuilds, etc. It is my opinion this

is a great thing for all involved including the county and the surrounding areas. As a neighbor two doors down from the Donelon family it would be wonderful to have another new build as we see continued growth on our street.

Ken and Linda Williams – 49715 Afton Avenue, Nessel Township. We are emailing in support of the proposed rebuild at 49725 Afton Avenue for the Donelons. My wife Linda and I have been next door at 49715 for four years now. We think it would be a great thing for the Donelons to improve their home not only for more safety with the walk-out but also great for Chisago County and surrounding neighbors. I know at this time Tim would like to keep the alignment from the road the same and we support that also.

Chair Carlson inquired if John Sutcliffe had any insights from attending the July 11, 2023 Nessel Town Board meeting. John Sutcliffe explained that the Town Board wanted to see the dwelling set back farther from the road. Sutcliffe explained that he supported the request but wanted to see water diverted from the roadway and directed toward the lake through some type of settlement pond or drainage system. Sutcliffe added that the elevation of the yard should not be higher than the road. Donelon sought clarification on the use of gutters and drainage options. Chair Carlson discussed positioning of the proposed dwelling in relation to neighboring dwellings and desires of the neighbors. The Board had no other comments or questions.

Motion by John Sutcliffe to adopt Resolution No. BOAA2023-0701, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance allowing reduced Right-of-Way and ordinary High Water Level setbacks on property located at 49725 Afton Avenue in Nessel Township, with the added condition that all water from the roof be diverted to the lake through a sub-surface drainage system (i.e., rain garden, drain tile, French drain, etc.) rather than directed to the road and that the yard elevation shall not change from its current elevation; second by Becky Strand. The **motion passed** and carried unanimously.

Conditions:

1. This approval grants the following Variances:
 - a. A 31' Variance to the township Right-of-Way setback requirement allowing the proposed dwelling to be no closer than 9' from the Afton Avenue Right-of-Way. This Variance will allow the proposed dwelling to be located no closer to the township Right-of-Way than the existing dwelling and existing detached garage.
 - b. A 10' Variance to the Ordinary High Water Level (OHWL) setback requirement allowing the proposed dwelling and deck to be no closer than 65' from the OHWL of Rush Lake.
2. Except as specifically required herein, the dwelling shall be constructed in general conformance with the application materials, including "proposed" site plan, dated received June 30, 2023. Any significant deviation, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.
3. All water from the roof shall be diverted to the lake through a sub-surface drainage system (i.e., rain garden, drain tile, French drain, etc.) rather than directed to the road, and the yard elevation shall not change from its current elevation.
4. The permit holder shall obtain a building permit prior to construction and, further, the dwelling shall comply with all applicable codes and regulations.
5. The permit holder shall obtain a compliance inspection for the existing holding tank prior to or in conjunction with the building permit application process.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Patty Jo Hagen and Steven Hagen – Coordinator Gervais provided background information on Patty Jo Hagen and Steven Hagen’s Variance request for property located at 51040 Rush Lake Way in Nessel Township (PID 06.01183.00), explaining that the property owners were requesting Variance approval to exceed the maximum allowable amount of impervious surface coverage in the Shoreland Management District.

Coordinator Gervais explained that the .42± acre subject site was located on the east side of Rush Lake in the Rural Residential I (RRI) District / Shoreland Management District. The property was considered legal non-conforming as it did not meet current minimum dimensional requirements. The site was currently developed with a dwelling and two detached accessory structures but no garage. The dwelling appeared to have been constructed in 1971 and it met all required setbacks.

Gervais explained that the property owners were proposing to construct a dwelling addition which would include an attached two-stall garage. The property owners initially reported that the existing amount of impervious surface coverage was 24.96% and the proposed addition would result in coverage increasing to 26.14%. However, due to suspected discrepancies within the impervious surface calculation worksheets, staff visited the site on July 11, 2023 to gain a better understanding of current conditions. Staff confirmed that the worksheets were not entirely accurate and the property owners were informed that they needed to provide updated worksheets. The property owners submitted updated worksheets showing that the existing amount of impervious surface coverage was 25.4% and the proposed addition would result in coverage increasing to 31.6%. Therefore, the property owners amended their original request for Variance to exceed the maximum allowable amount of impervious surface coverage by 6.6% rather than 1.4%.

Gervais further explained that the subject site included the private roadway known as Rush Lake Way and the improved surface of the roadway accounted for approximately 951 sf of impervious surface. Because the property owners were required to include the improved road surface as impervious surface where most property owners in the same zoning district did not, staff found this to be an exceptional or extraordinary circumstance for which the current property owners had no control. The property owners also cited the private road as a unique circumstance within their written narrative. Gervais noted that the subject site would be exceeding the maximum allowable amount of impervious surface coverage even if the private road was not located on the property; however, it was one factor for the Board’s consideration.

The Technical Review Committee met on July 12, 2023. The Committee discussed the accuracy of the impervious surface calculation worksheets and the need for updated worksheets, but no other concerns were identified. The Nessel Town Board considered the request on July 11, 2023 and recommended approval with no conditions. The State mandated 60-day review period was scheduled to expire on September 4, 2023.

Gervais explained that staff was concerned about the accuracy of the impervious surface calculation worksheets and ensuring that the request was sufficient to support the proposed project, adding that, if the Board shared this concern, it may wish to consider requiring the property owners enlist the services of a registered land surveyor or other professional to prepare a survey / drawing showing proposed conditions (i.e., dwelling / garage addition, new driveway design, etc.) and provide detailed impervious surface coverage calculations. Alternatively, if the Board supported the request as presented, Gervais provided Findings of Fact to support approval as well as suggested conditions of approval. Gervais concluded by reviewing options available to the Board.

Chair Carlson invited the property owners to address the Board. Patty Jo Hagen was present and available to address questions and concerns. Hagen stated that she needed a garage and believed it would increase her property value. Chair Carlson reviewed the impervious surface calculation worksheets and discrepancies between the original submittal and the updated submittal. Hagen spoke about her efforts to complete the

worksheets and acknowledged that she made miscalculations in the original worksheets. Hagen spoke about a survey which she recently had prepared and impervious surface detail provided on that survey, believing that the survey detail was not entirely accurate which led to inaccurate worksheets. Hagen added that she personally measured impervious surfaces for the updated worksheets and utilized some detail from the survey as well. Hagen spoke about the challenges of measuring her irregularly shaped driveway and her intent to reconstruct the driveway in a more standard configuration. Hagen concluded by stating that she needed a garage due to lake effects and winter conditions. Chair Carlson continued his review of the worksheets, seeking clarification from Hagen. Chip Yeager inquired about and received clarification on the locations of the private road and the township R-O-W.

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

Chair Carlson sought comment from the Board. John Sutcliffe indicated that there were pervious materials, such as pervious pavers, that could help reduce the total amount of impervious surface coverage. Hagen discussed potentially removing the 8' x 10' (80 square feet) shed once the addition was complete. Chip Yeager commented that, if the Variance was granted, it would result in the impervious surface coverage exceeding the maximum allowed by 6.6%, but the property owners had options to reduce the overall amount of impervious surface coverage to bring the total amount closer to 25%. Doug Greene commented that it was to the property owners benefit and the whole community's benefit to reduce the overall amount of impervious surface, suggesting that the property owners keep this in mind moving forward. The Board had no other comments or questions.

Motion by John Sutcliffe to adopt Resolution No. BOAA2023-0702, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance to exceed the maximum allowable amount of impervious surface coverage on property located at 51040 Rush Lake Way in Nessel Township, with the added condition that the property owners install gutters on the addition to prevent water from the roof infringing upon adjacent properties; second by Doug Greene. The **motion passed** and carried unanimously.

Conditions:

1. This approval grants a 6.6% Variance to the maximum amount of impervious surface coverage in the Shoreland Management District allowing the total amount of impervious surface to be no greater than 31.6%.
2. The size and location of the dwelling / garage addition shall be in general conformance with the application materials dated received June 30, 2023 (with exception of the impervious surface calculation worksheets) and the updated impervious surface calculation worksheets dated received July 18, 2023, so as not to impact the overall amount of impervious surface coverage. Any significant deviation from the approved request and site plan, as determined by Department of Environmental Services staff, shall require further review and approval from the Board of Adjustment and Appeals at the property owner's expense.
3. The property owner shall install gutters on the addition to prevent water from the roof infringing upon adjacent properties.
4. The property owner shall obtain a building permit prior to construction and, further, the dwelling expansion shall comply with all applicable codes and regulations.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

PUBLIC HEARINGS – CONTINUED HEARINGS

None

OLD BUISNESS

None

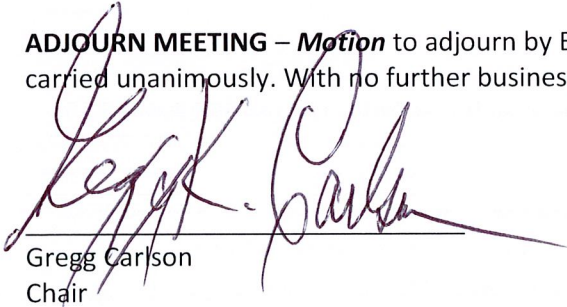
NEW BUISNESS

None

MISCELLANEOUS

None

ADJOURN MEETING – *Motion* to adjourn by Becky Strand; second by John Sutcliffe. The **motion passed** and carried unanimously. With no further business the meeting was adjourned at 7:53 p.m.



Gregg Carlson
Chair

ATTEST: 
Beth Gervais
Land Services Coordinator