

**CHISAGO COUNTY
BOARD OF ADJUSTMENT
OFFICIAL PROCEEDINGS
September 30, 2021**

The Chisago County Board of Adjustment met in regular session at 7:00 p.m. on Thursday, September 30, 2021 in County Board Room of the Government Center.

Staff Present: Patty Perreault; Office Manager, Beth Thorp; Land Services Coordinator, and Diane Sander; Land Services & Parks Specialist.

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

APPROVAL OF AGENDA – Motion to approve the amended agenda with the addition of two public comments by John Sutcliffe. Second by Chip Yeager. Roll call vote was taken and motion carried unanimously.

APPROVAL OF MINUTES – Gregg Carlson requested to make corrections to the minutes of the August 26, 2021 meeting. Second page from Richard and Colleen Roloff’s public hearing “*Motion* by Gregg Carlson to approve variance #1 ...”for expansion of a nonconforming structure to encroach into the rear yard, ~~road~~, and side yard setbacks and a holding tank to encroach upon the side ~~and road~~-setbacks...” and under Findings of Fact #3 for Roloff’s Variance #2 “The Variance as presented will ~~have~~ not an adverse impact on the neighborhood...” Motion by Gregg Carlson to approve the corrected August 26, 2021 minutes. Second by John Sutcliffe. Roll call vote was taken and motion carried unanimously.

RECEIPT OF MATERIALS AND SUBMITTALS INTO THE RECORD – Motion by John Sutcliffe to receive all applications, submittals, reports and other materials into the record by reference. Second by Doug Greene. Roll call vote was taken and motion carried unanimously. Meeting materials distributed in advance to the Board of Adjustment and Appeals for their review included the Public Hearing Staff Reports with Attachments and one Public Hearing comment for Jones PID# 08.00370.10, one Public Hearing comment for Stein PID# 08.00370.10 and comment from Mike Bufalini, Gordian Energy Systems. Public Hearing Staff Reports had been distributed in advance to the Board and the applicant for their review. Copies of all correspondence, meeting materials, and Staff Reports were made available at the entrance to the hearing room and for electronic distribution.

PUBLIC HEARING

Donald and Ann Jones – Mr. and Mrs. Jones were present at the hearing to request a variance to expand an accessory building and adjust lean-to posts closer to the side yard than the required setbacks. The property is located at 34604 Redwing Avenue, Shafer Township; Sec. 35, T. 34, R. 19, (PID# 08.00370.10). Manager Perreault presented background information on the Jones application. The property is 10 acres and located in the Agricultural (Ag) Zoning District. The applicants found out the property line to the north was not the tree line as the previous neighbor to the north had thought. Currently, the applicants and new owners of the property to the north are in the process of rectifying it. The applicants will be moving the driveway and propane tank onto their property. Since the north property line was incorrect, the existing lean-to on the pole building is only 7 feet from to the side yard setback/property line. The proposed plans are to build a 30 x 27 addition on the back of the existing detached building along with moving the existing support poles on the lean-to away from the property line to allow access along the property line and addition at the back of the existing building. The existing building meets setbacks where the addition is being proposed. The Jones’ have applied for an Interim Use Permit (IUP) to operate a woodworking business. The addition that is proposed will provide extra square footage and allow all work to be conducted inside the pole building. Shafer Township recommended approval with no conditions on September 9, 2021. Technical review was held on September 8, 2021 and there were no identified impacts or concerns. Mr. and Mrs. Jones were available to address

questions and concerns. Mr. Jones provided a brief history on the property line dispute and limited access with wet soils to the back of the property. Chair Strand asked for more information on the building plans for the addition and adjusting the lean-to poles. Gregg Carlson had questions on property lines, installing a fence and length of the fence. John Sutcliffe inquired why the lean-to was built since the survey was completed and why he did not apply for a building permit for the lean-to. Mr. Jones explained he had gravel in the lean-to area and did not think a building permit was needed. Mr. Jones explained they had found out there was complications to sell the small piece of land. The horseshoe driveway will be closed off and propane tank moved away from the north property line. Chair Strand opened the public hearing and sought comment. No one was present to testify in the matter.

Submitted Pubic Correspondence Prior to Meeting:

Ron and Julie Robideau – 34740 Redwing Avenue, We live directly north of Don and Ann Jones and are very opposed to the variance. The Jones’ had a survey completed in 2017 clearly demonstrating the property lines. The lean-to was built after May 2018, which they were fully aware the lean-to was too close to the property line and did not meet setbacks. This was wrong and we are opposed to adjusting anything closer to our property. We object to the addition onto the accessory structure with limited access to their backyard.

With no additional person wishing to speak, ***motion*** by Gregg Carlson to close the public hearing. Second by Chip Yeager. Roll call vote was taken and motion carried unanimously. Each board member was asked for additional questions and comments.

Motion by Gregg Carlson to approve the variance to allow an addition to an accessory structure and to relocate support posts closer to side property line than the required setback at 34604 Redwing Avenue, (PID# 08.00370.10) based on findings of fact, staff report, site plan and narrative of record as presented with the following condition:

Condition:

1. Building permit will be obtained for the accessory building addition and lean-to for review and inspection by the Building Inspector.

Findings of Fact:

1. The Variance application as proposed is consistent with the zoning regulations and Comprehensive Plan for Chisago County.
2. The Variance application as presented meets the threshold for Practical Difficulty as required by MN State Statute 394 and County Ordinance 8.06.D because the request as viewed by the Board of Adjustment and Appeals is not due to circumstances created by the landowners.
3. The Variance application as proposed has demonstrated an inability to comply with the regulations of Section 4.08.1 for Accessory Structures in the AG District for which are beyond the control of the landowner.

Second by Chip Yeager. Roll call vote was taken and motion carried unanimously.

Michael and Amy Barrera – Mr. and Mrs. Barrera were present at the hearing to request a variance to build a detached accessory structure closer to the road and side yard than the required setbacks. The property is located at 1410 Brunswick Road, Fish Lake Township; Sec. 22, T. 36, R. 22, (PID# 03.00296.00). Manager Perreault presented background information on the Barrera application. The parcel is 4.8 acres and located in the Agricultural (Ag) Zoning District with Shoreland Overlay on Rabour Lake. The parcel is irregular shaped and 2/3 of it is wetland. Parcel has a house with attached garage and detached shed. The applicants are proposing building a detached three stall 30 x 40 garage near the driveway. The proposed building spot will be away from septic and wetland areas; however, will be five feet from the side yard setback and 80 feet from the county road. Due to large parcel size, impervious surface calculation would be 3.4%. Fish Lake Township recommended approval with no conditions on September 13, 2021. Technical review was held on September 8, 2021 and there were no identified impacts or concerns. Mr. and Mrs. Barrera were available to address

questions and concerns. Mr. and Mrs. Barrera indicated they would like to build a garage and the proposed location seemed to be the only place on their property that made the sense, due to the odd shape. Chair Strand asked each board member for additional questions and comments. Gregg Carlson inquired how the Barrera's determined the proposed garage size and stated the Board of Adjustment had never given a variance that close from the road. Mr. Barrera indicated they thought about tearing down the existing shed and build on the property line. The new garage would need to be pushed back closer to house and that would cut off access to the propane tank and the backyard. Mr. and Mrs. Barrera have discussed adding onto the house, but that is a bigger endeavor. With the wetlands and steep slope, they are limited on building locations.

Chair Strand opened the public hearing and sought comment. No one was present to testify in the matter. With no additional person wishing to speak, ***motion*** by Chip Yeager to close the public hearing. Second by John Sutcliffe. Roll call vote was taken and motion carried unanimously. Each board member was asked for additional questions and comments. Gregg Carlson stated a variance was given for 110 feet setback from the road, road setback is 135 feet. The request is 80 feet from the centerline of the county road. Manager Perreault indicated the County Highway Engineer did not provide any comments on variance request. Discussion was held on a different location, adjusting the position of the proposed garage and reducing the three car to a two car garage. Doug Greene suggested the applicants could build a garage that would maintain the 100-foot road setback and five foot side yard setback.

Motion by Gregg Carlson to approve the variance to allow an accessory structure up to five feet from the side property line, 100 feet from centerline of the road, and adjusting the size of the accessory structure to fit within these setbacks based the following findings of fact, staff report, site plan and narrative of record as presented. Second by Chip Yeager and stated he would like added the Board of Adjustment is keeping consistency with the road setback in previous application requests. ***Motion*** by Gregg Carlson to approve the amended motion to approve the variance to allow an accessory structure up to five feet from the side property line, 100 feet from centerline of the road, and adjusting the size of the accessory structure to fit within these setbacks based the following findings of fact, keeping consistency with previous application requests on road setbacks, staff report, site plan and narrative of record as presented.

Findings of Fact:

1. The Variance application as proposed is consistent with the zoning regulations and Comprehensive Plan for Chisago County.
2. The Variance application as presented meets the threshold for Practical Difficulty as required by MN State Statute 394 and County Ordinance 8.06.D because the request as viewed by the Board of Adjustment and Appeals is not due to circumstances created by the landowners but rather than out of a unique characteristic of the property (prominent wetlands and irregular shape) which is thereby preventing a reasonable use that would otherwise be allowed by code.
3. The Variance application as proposed has demonstrated an inability to comply with the regulations of Section 4.08.1 for Accessory Structures in the AG District for which are beyond the control of the landowner.

Second by Chip Yeager. Roll call vote was taken and motion carried unanimously.

Joseph Stein – Mr. Stein was present at the hearing to request a variance to be exempted from the 300 feet of road frontage requirement for platted lots in the Agricultural Zoning District. The property is located at 495 Herberg Road, Shafer Township; Sec. 35, T. 34, R. 19, (PID# 08.00370.10). Manager Perreault presented background information on Mr. Stein's application. The property is 44 acres and located in the Agricultural (Ag) Zoning District. Approximately 30 acres is covered with a commercial solar garden. The solar array's Conditional Use Permit (CUP) was approved in 2015. The parcel is unique since the Swedish Immigrant Regional Trail is located on the North and West sides. During the CUP application process there were

discussions with the applicant and solar developer about the wooded area on the parcel. Discussions included if it could be cut and developed into solar. Staff had concerns and supported preserving the woodland area. Shafer Township recommended approval with no conditions on September 9, 2021. Technical review was held on September 8, 2021 and there were no other identified impacts.

Mr. Stein was available to address questions and concerns. Mr. Stein indicated the staff report was the most negative staff report he has received. Mr. Stein provided background on how the solar array project developed with concerns from staff to preserve the wooded area and wetland, habitat of the long ear bat, and the solar company's inability to fight to develop the wooded area, and the county trail on two sides of the property. Mr. Stein continued the County and bat created the hardship for this application. He pays taxes with no purpose, but allowing a buildable lot will allow it to be someone's home instead of just sitting there with no purpose. Gregg Carlson had clarifying questions on the tillable area and road access while bringing up different scenarios to access the wooded area. Mr. Stein indicated he was under contract with the solar company and would not be able to do the different scenarios as proposed. Lengthy discussion followed on frontage, access, combining parcels between the township and City of Taylors Falls. Chair Strand inquired if the solar CUP was for the entire parcel or just the solar array area. One condition of the CUP was care shall be used to preserve the natural landscape, minimize tree removal and prevent any unnecessary destruction of the natural surroundings in the vicinity of the project during construction and maintenance. The permittee shall leave the wooded wetland undeveloped for purposes for the solar energy generation associated with the CUP. Chair Strand and Chip Yeager agreed they could not make a decision without having all the facts on the CUP. Chair Strand opened the public hearing and sought comment.

Angie Houman – 11939 Stacy Trail, I am the potential buyer and would like to build a house on the property. Joe has outlined the history of the property and hardship working with the solar company. He wouldn't be here and keep paying taxes, for my families love for this property. Joe has a soft spot for family and our hopes and visions. It is a travesty to have this wooded parcel just sit there with nothing being done with it. Let it thrive and be our forever home. What is the harm in granting approval, Shafer Township did. Please find agreement with the township.

Submitted Pubic Correspondence Prior to Meeting:

Debra Scott – 1195 Fox Glen Drive, I would like to note my support for staff's denial. As a neighbor, I have seen and experienced considerable disruption in wildlife movement as the direct result of his solar development. The wooded area has become an important habitat for wildlife movement and shelter. The variance request is Mr. Stein's own doing for placement of the solar field and after he was denied to ability to develop the wooded acres in solar and chosen to fill the roadway frontage with solar. He devised a plan to develop the remainder of the parcel for residential use.

No one was present to testify in the matter. With no additional person wishing to speak, ***motion*** by Chip Yeager to close the public hearing. Second by Gregg Carlson. Roll call vote was taken and motion carried unanimously. Each board member was asked for additional questions and comments.

Discussion followed on the solar CUP. Mr. Stein verbally agreed for further review of the CUP and requested a time extension to allow for additional time for staff and the board to review the solar arrays CUP. ***Motion*** by John Sutcliffe to approve a time extension for review of additional documentation and CUP conditions for PID#08.00370.10. Second by Chip Yeager. Roll call vote was taken and motion carried unanimously.

Keith Johnson – Johnson CSG2, LLC/Gordian Energy Systems on behalf of Keith Johnson were present at the hearing to request a variance to install a Community Solar Garden closer to the roads than the required setback. The property is located west of Oasis Road/County Road 9 and south of 375th Street, Sunrise Township; Sec. 28, T. 35, R. 20, (PID# 09.00303.10). Manager Perreault presented background information on the Johnson application. The property is currently developed with two individual Community Solar Gardens.

One solar array is along the west property line and another along the south property line. The remaining 16+ acres of the property is predominately tillable field except for an estimated two-acre cluster of coniferous trees. The property is located in the Agricultural (Ag) Zoning District near the corner of County Road 9 and County Road 11. In 2017 an administrative permit was issued for the first solar array on the west property line and was built. In 2019 a second solar array was proposed for an Interim Use Permit (IUP) due to the proximity of the existing solar array being within ¼ mile. The second solar array was proposed to be approximately eight acres directly east of the first/westerly solar array. The second/easterly solar array was approved in April 2019. The second solar array was not acted on within one year and in April 2020 the permit status became null and void pursuant to county ordinance. A third solar array was proposed along the south property line and placed 250 to 300 feet from County Road 9. In November 2019 approval for the third/southerly solar array IUP was approved and built. In June of 2020 the Solar Ordinance was amended and adopted new standards that included an increased setback from roads. Any second or successive solar array on an individual property had to adhere to a 735 foot setback from the road. In 2021 a request for the second/easterly solar array (currently null and void) presented a minimal modified application of the original 2019 proposal. Both the Planning Commission and County Board denied the IUP request due to not meeting current 735-foot setbacks from County Road 9 and County Road 11. The applicant/owner are requesting a variance from the newly adopted Solar Ordinance 735 foot road setback. If the variance is granted, the Planning Commission will consider the IUP request for the third time for the second/easterly solar array. The variance request proposes a variable setback range due to the angled property line of the parcel with the County Road. The setback is approximately 380 to 455 feet from County Road 9 and 135 feet from County Road 11. Sunrise Township recommended denial due to the proposed road setbacks were far removed from the 735-foot road setback from state and county roads and decommission security is far too short of 125% of the decommissioning cost on September 9, 2021. Technical review was held on September 8, 2021.

Mr. Johnson and Mike Bufalini, Gordian Energy Systems were available to address questions and concerns. Mr. Bufalini read his comment sent previously to clarify the application and concern for setting a precedent for future applications. The board can grant the variance based on narrowly crafted circumstances that would not apply to future requests. The solar array site plan was minimized in order not to remove vegetation between the first and second solar arrays. It is unfortunate, due to utility delays, the second/easterly solar array has nowhere to go since the first/westerly and third/southern solar arrays have been built. Mr. Bufalini explained the variance request does meet all criteria set forth in the Zoning Ordinance and Minnesota Law. This proposal will not set precedent. The second/easterly solar array has been here, Gordian Energy Systems did not go out looking for a new project area, it was always here and the utility delays also delayed the rest of the project. During that time, the puzzle changed with the adoption of the Solar Ordinance. Mr. Johnson indicated the parcel had trees and waterway was installed for the conservation reserve program (CRP). It washed out near the end of the trees. Mr. Johnson indicated he was looking to clean up the water and reminded the Board the solar array had been approved on the first application. Mr. Johnson indicated work had been done since a wetland delineation had been completed. Aaron Knoll, Attorney from Greene Espel PLLP law firm that represent solar companies was present to address concerns of the variance request. Mr. Knoll reviewed the criteria and staff report, the amended Solar Ordinance and adoption of the 735-foot road setback is ultimately why Gordian Energy Systems is here. The variance should be granted as requested for the following reasons:

1. Practical Difficulty – The solar array could not be reconfigured while still complying with the 735-foot setback of the existing solar arrays that have been built.
2. Character of the Neighborhood – The solar array will not have a negative impact on the neighborhood and no negative impacts are present. The solar array will not increase congestion, impact public safety and will not have a negative impact on school or the surrounding community.

3. Setting a Precedence – Granting approval of the variance will not set a precedence. This is the first consideration for this project and would not be applied to other solar array development projects in the county.
 - a. Two existing solar arrays are present and built under the old solar ordinance; a unique request.
 - b. The Solar Ordinance was changed during the development of the second solar project.
 - c. County notified Gordian Energy Systems the IUP had lapsed. Gordian Energy Systems worked with the previous Land Services Coordinator on how to best move ahead. The Land Services Coordinator indicated not to apply for a new IUP but request a variance instead. The question is, “Who created the hardship?”
 - d. Record demonstrate the circumstances are on narrow ground but will not set precedent.

John Sutcliffe asked staff if there was an extension available. Manager Perreault reported there is no extension, but if IUP was approved by County Board, there would be an extension available. Mr. Bufalini indicated Xcel Energy has a “queue” which is a list with different projects and all necessary solar information. There was a delay on Xcel’s queue and where the Johnson project was ranked in the queue. Mr. Knoll added that projects apply for the interconnection with Xcel Energy. There is a process with reviewing the project, coming to an agreement, and then entering the queue. The delay with Xcel Energy is not with just Gordian Energy Systems, but all solar developers in the state. Gregg Carlson stated the project was denied by the Township, Planning Commission, and County Board. How could it not set precedence in this case? Mr. Johnson questioned why the wetland delineation and survey did not count for acting on the permit? Manager Perreault reported wetland delineation and survey is information needed for the IUP application, which is prior to the building permit. Mr. Knoll reiterated the variance request was not setting precedence due to:

1. Previous denial by Planning Commission and County Board where based under different standards or procedural vehicle. The previous application was to be considered and reviewed on a case by case base with flexibility. The variance request is different in time and different action.
2. If a variance request came to the board without any history and apply it to other solar projects on the same land, it would be different scenario. This variance request has a history, dealing with Excel Energy delays, and being applied for one solar project. The variance can be granted without establishing precedence.

Doug Greene asked why the parcel was not developed as one large solar project. In his opinion, the applicant/solar company is taking the gamble with the project and delays, not the county since it was an approved project and Xcel’s delays should not be a consideration. Discussion followed on what constituted as acting on the permit. Manger Perreault indicated acting on the IUP could include, applying for the building permit, installing the driveway or planting trees for screening. Mr. Knoll addressed why the parcel has three different developers instead of one large project. Mr. Knoll stated the Solar Ordinance increased from 135-foot setback to 735-foot setback within four years, it is frustrating. Questions continued from the board regarding no work being done on the project. John Sutcliffe stated the first/westerly and second/easterly solar projects would have similar setbacks and the second project was an approved project at one time. It can be difficult to get projects completed while dealing with expiring deadlines and factors beyond the applicant’s control. John Sutcliffe added he supported the variance request based on a previously approved project and factors beyond the applicant’s control. Discussion was held on what the process would be if the variance was approved or denied.

Chair Strand opened the public hearing and sought comment. No one was present to testify in the matter. With no additional person wishing to speak, ***motion*** by John Sutcliffe to close the public hearing. Second by Chip Yeager. Roll call vote was taken and motion carried unanimously. Each board member was asked for additional questions and comments.

Motion by John Sutcliffe to approve the variance to install a Community Solar Garden as requested closer to the roads than the required setbacks at (PID# 09.00303.10), property is located west of Oasis Road/County Road 9 and south of 375th Street, Sunrise Township; Sec. 28, T. 35, R. 20. The motion is based on the project was previously approved, findings of fact provided by Attorney Knoll, site plan and narrative of record as presented.

Findings of Fact:

1. Practical Difficulty – The solar array could not be reconfigured while still complying with the 735-foot setback of the existing solar arrays that have been built. Previous denial by Planning Commission and County Board where based under different standards or procedural vehicle. The previous application was to be considered and reviewed on a case by case base with flexibility.
2. Character of the Neighborhood – The solar array will not have a negative impact on the neighborhood and no negative impacts are present. The solar array will not increase congestion, impact public safety and will not have a negative impact on school or the surrounding community.
3. Setting Precedence – Variance will not set a precedent. This is the first consideration for this project and would not be applied to other solar array developments. The proposed project has a history and has worked with staff on how to best move ahead with the project.
 - a. Two existing solar arrays are present and built under the old solar ordinance; a unique request.
 - b. The Solar Ordinance was changed during the development of the second solar project.
 - c. County notified Gordian Energy Systems the IUP had lapsed. Gordian Energy Systems worked with the previous Land Services Coordinator on how to best move ahead. The Land Services Coordinator indicated not to apply for a new IUP but request a variance instead.
 - d. Record demonstrate the circumstances are on narrow ground but will not set precedent.

Second by Doug Greene. The motion was approved 4-1 with a roll call vote. Ayes: Greene, Carlson, Sutcliffe, and Strand. Nays: Yeager.

Old Business

John and Ana Bivans – John and Ava Bivans are requesting a variance to install a holding tank closer to the road than the required setback. The property is located at 52295 Azalea Avenue, Nessel Township; Sec. 9, T. 37, R. 22, (PID# 06.01284.00). Mr. and Mrs. Bivans were present at the hearing to request further review of their variance request to install a 1500 gallon holding tank closer to road and side property line than the required setbacks. Manager Perreault presented the updated site plan and refreshed the board on the original application. Nessel Township reviewed the application again. The first review was held on June 8, 2021 with the holding tank near the lake which the board had approved. The second review was held on September 14, 2021 with the holding tank near the road which the board approved with no conditions. Technical review was held on September 8, 2021 and recommended fencing/protection of the holding tank area from people driving or parking on the tank.

Chair Strand opened the public hearing and sought comment. No one was present to testify in the matter. With no additional person wishing to speak, **motion** by Gregg Carlson to close the public hearing. Second by John Sutcliffe. Roll call vote was taken and motion carried unanimously. Each board member was asked for additional questions and comments. Short discussion followed on concerns on the distance from the road and the possibility to drive on the tank. Manager Perreault indicated the lake lot did not have a lot of room to work with. **Motion** by John Sutcliffe to approve the variance for placement of a septic holding tank to be located no less than 13 feet from the edge of road, at least 50 feet to any well, and up to 5 feet from the side property line at 52295 Azalea Avenue (PID#06.01284.00) based on findings of fact, staff report, site plan and narrative of record as presented with the following condition:

Condition:

1. Install markers or fencing to protect/prevent people from driving or parking on the holding tank.

Findings of Fact:

1. The Variance request is not created by the Landowner and is due to pre-existing development that is viewed as the contributing factor in meeting today's required minimum stands in zoning and adopted shoreland controls.
2. The Variance does not change the character of the neighborhood and is consistent with previous approvals on substandard lake lots.
3. The Variance as presented by the Applicant has demonstrated the least impactful design that seeks the minimalist degree of variance that still allows for expansion of the non-conforming structure in a reasonable manner and maintains a reasonable use of the property within this zoning district.

Second by Gregg Carlson. Roll call vote was taken and motion carried unanimously.

Motion by Chip Yeager to adjourn. Second by John Sutcliffe. Roll call vote was taken and motion carried unanimously. With no further business the meeting was adjourned at 9:37 p.m.