

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
August 31, 2023**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, August 31, 2023 in the County Board Room of the Chisago County Government Center.

Staff Present: Beth Gervais, Land Services Coordinator; and, Nikki Garner, Office Support Specialist.

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, John Sutcliffe, Becky Strand, and Chip Yeager. Absent: None. A quorum was established with all members present.

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

APPROVAL OF MINUTES – Motion to approve the July 27, 2023, meeting minutes as presented by Sutcliffe; second by Greene. The **motion passed** and carried unanimously.

RECEIVE ALL MATERIALS AND SUBMITTALS INTO THE RECOD – Motion to receive all applications, submittals, reports, and other materials, including written comments received from four individuals, into the record by Strand; second by Sutcliffe. 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 written comments from four individuals. 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

Terry & Jennifer Pekula – Coordinator Gervais provided background information on Terry & Jennifer Pekula’s Variance request for property located at 12133 285th Street in Chisago Lake Township (PID 02.01799.10), explaining that the property owners were proposing to exceed the maximum allowable amount of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. Gervais reviewed details about the subject site and surrounding areas, explaining that the site was considered legal non-conforming as it was platted in 1910 and did not meet current minimum dimensional requirements.

Gervais explained that the Pekulas were proposing to construct a 30’ x 40’ (1,200 sf) detached accessory structure in a location which met all required setbacks. The proposed structure would result in a total of 2,439 sf of accessory storage space where the maximum amount allowed was 2,000 sf. The application materials suggested that the proposed structure would reduce the need for outdoor storage, improve the appearance of the property from the street and lake, and would provide a similar look to a neighboring property immediately east of the subject site.

The Technical Review Committee met with property owners Terry & Jennifer Pekula on August 9, 2023. The Committee discussed the need for a septic compliance inspection but did not identify any other concerns. The Chisago Lake Town Board considered the request on August 15, 2023 and recommended approval noting that the “garage mirrors neighborhood garage, fits on site, meets DNR setbacks”. The State mandated 60-day review period was scheduled to expire on October 2, 2023.

Gervais noted that staff had a number of concerns with the request, including that the stated justification seemed to be based on personal preferences and personal circumstances rather than special conditions or unique circumstances related to the property; staff believed the property owners had other reasonable options to utilize their available 761 sf of accessory storage space; and, staff did not believe that the application materials fully or satisfactorily addressed the State mandated practical difficulty standard in terms of reasonableness and uniqueness.

Gervais concluded by offering a recommendation of denial with Findings of Fact to support denial, and, if the Board determined that the request satisfied the practical difficulty standard, staff provided alternate Findings of Fact and recommended conditions of approval for the Board's consideration. Gervais reviewed options available to the Board.

Chair Carlson invited the property owners to address the Board. Property owners Terry & Jennifer Pekula stepped forward. T. Pekula stated that the proposed 30' x 40' (1,200 sf) detached accessory structure would provide centrally located storage, match the existing house, and clean up yard space. J. Pekula added that since their property was on a hill, the location of the proposed structure would make that space more manageable to use as they aged.

Greene asked if the proposed structure was a two-story structure. T. Pekula clarified that it would be a one-story structure with 13' tall walls with no overhead storage. Chair Carlson asked if the property owners had considered a smaller structure. T. Pekula replied that he didn't believe a 761 sf building would be sufficient for the storage of their boat and other belongings.

Chair Carlson opened the public hearing and sought public comment.

Gervais read one written comment into the public record:

Paul & KaTrina Wentzel of 12081 285th Street, Chisago Lake Township:

Dear Chisago County Board of Adjustment and Appeals,

We received notice regarding a variance to zoning ordinance section 4.08.2 request from Terry and Jennifer Pekula at 12133 285th Street.

While we cannot make Thursdays meeting, we did want to write to express some concern. We support the Pekulas and all who are looking to make enhancements to their properties and homes, and we are not directly impacted by this request. However, our concern in this particular matter is two-fold:

- 1. We are unclear on how much larger the accessory storage space is going to be, but especially because it is being built toward the shore (vs towards the road), this feels important. We are worried about the precedent on the lake; it is the responsibility of lakefront owners to find a way to live carefully within these natural surroundings. We believe lake residents can have the dwelling and accessory units we need and want while still minimizing the disruption of the natural environment we have all chosen to embrace and protect. If the Pakula request is for more than 10% above the maximum allowable amount of accessory storage space allowed in the RRI/Shoreland management district, we have serious concerns about precedent and the ongoing overbuilding along our lakes. It seems to us a larger or taller (more than single story) structure should require a larger setback from the shoreline.*
- 2. We are two doors down from 12133 285th Street and not directly impacted by the space the Pekula's are looking to build. However, they have direct neighbors on both sides of them and whether supportive or*

concerned, we hope those voices will be amplified in this process. These neighbors may be impacted by sightlines, change in micro-environments, and more.

Living on a lake and the additional responsibilities and care required make any variance request important to all of us. Thank you for soliciting feedback.

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

Because the application materials had stated that the Pekula's next door neighbor had a similar 30' x 40' detached accessory structure, Yeager commented that it was unknown whether the neighbor's accessory structure was approved by Variance or if the total amount of accessory storage space was in compliance and this should not go against the applicants. In response to Yeager's comments, Gervais stated that, when the Board toured the subject site on August 30, 2023, the group visualized that the subject site had a four-stall attached garage whereas the neighboring property had a three-stall attached garage and it was therefore unknown if the neighboring property would have needed a Variance as they may have been under the 2,000 sf threshold.

Motion by Chair Carlson to adopt Resolution No. BOAA2023-0801, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance to exceed the maximum allowable amount of accessory storage space on property located at 12133 285th Street in Chisago Lake Township, as presented; second by Yeager. Greene and Strand both expressed concern for the proposed size of the structure in relation to past approvals and the surrounding area. The **motion failed** (Ayes: Carlson and Yeager; Nays: Strand, Sutcliffe and Greene).

Motion by Strand to adopt Resolution No. BOAA2023-0801, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, denying a Variance to exceed the maximum allowable amount of accessory storage space on property located at 12133 285th Street in Chisago Lake Township, with Findings of Fact as presented; second by Sutcliffe. Following discussion and clarification from Gervais about the applicants' ability to modify their request to decrease the amount of Variance requested, the **motion was withdrawn** by Strand and the second was withdrawn by Sutcliffe.

Terry & Jennifer Pekula verbally amended their request to exceed the maximum allowable amount of accessory storage space with a total of 2,239 sf rather than 2,439 sf (a decrease of 200 sf). Gervais restated that the amended request was a Variance to allow a total of 2,239 sf of accessory storage space where the maximum allowed was 2,000 sf.

Motion by Sutcliffe to adopt Resolution No. BOAA2023-0801, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance to exceed the maximum allowable amount of accessory storage space on property located at 12133 285th Street in Chisago Lake Township, as amended by the applicants and with the Findings of Fact as presented; second by Yeager. The **motion passed** and carried unanimously.

Conditions:

1. This approval grants a ~~439 square foot~~ 239 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the property to have a total of ~~2,439 square feet~~ 2,239 square feet of accessory storage space in the Rural Residential I (RRI) District / Shoreland Management District. In addition to the existing 1,239 square foot attached garage, this approval allows the construction of a detached accessory structure up to ~~1,200 sf~~ 1,000 sf in size. The detached accessory structure shall meet all required setbacks.
2. The detached accessory structure shall be constructed in general conformance with the application

materials, including site plan, dated received July 28, 2023, except as required herein. 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 permit holder shall obtain a building permit prior to construction and, further, the accessory structure shall comply with all applicable codes and regulations except as permitted by this Variance.
4. The permit holder shall apply for and ensure completion of a septic compliance inspection prior to or in conjunction with the building permit application process for the approved detached accessory structure.
5. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Robert & Jill Ross – Coordinator Gervais provided background information on Robert & Jill Ross' Variance request for property located at 49755 Afton Avenue in Nessel Township (PID 06.00748.00), explaining that the property owners were requesting a Variance to construct a detached accessory structure with reduced township Right-of-Way (R-O-W) and Ordinary High Water Level (OHWL) setbacks than required in the Rural Residential I (RRI) District / Shoreland Management District. Gervais reviewed details about the subject site and surrounding areas, explaining that the site was considered legal non-conforming as it was platted in 1954 and did not meet current minimum dimensional requirements.

Gervais explained that the Ross' desired to construct a 16' x 30' two-level detached garage situated 10' from township R-O-W and 68.7' from the OHWL of Rush Lake. The proposed garage would not be located any closer to R-O-W or OHWL than the existing dwelling. The application materials explained that there were currently no detached accessory structures on the subject site; the lot dimensions did not allow for a new structure to meet both the required township R-O-W and OHWL setbacks and the only option to alleviate this circumstance was Variance approval; the proposed garage would not be any closer to the township R-O-W or OHWL than the existing dwelling and deck; most properties on Afton Avenue had garages with similar setbacks, with some or all of those properties having been granted Variances; the proposed garage was similar to and in keeping with other properties / setbacks on Afton Avenue; and, having a garage is viewed as a necessity in Minnesota.

The Technical Review Committee met with property owners Robert & Jill Ross on August 9, 2023. Given the distance between the existing dwelling and proposed detached accessory structure, the Building Official stated that the north wall of the accessory structure would need to be fire rated. The Committee also discussed that the accessory structure could not be taller than the dwelling and a septic compliance inspection would be required. The Nessel Town Board considered the request on August 8, 2023 and recommended denial. Gervais noted that the Town Board did not provide details or legal findings to support the recommendation; however, the Town Board had expressed concern with and/or recommended denial of similar Variance requests on Afton Avenue in the recent past. The State mandated 60-day review period was scheduled to expire on October 2, 2023.

Gervais concluded by offering a recommendation of approval with five conditions and reviewed options available to the Board.

Chair Carlson invited the property owners to address the Board. Property owners Robert & Jill Ross stepped forward. Chair Carlson asked if the existing slab on the south side of dwelling was going to be removed. R. Ross clarified that the slab would be removed during construction.

Chair Carlson opened the public hearing and sought public comment.

Brad Resch of 49750 Afton Avenue, Nessel Township – Resch shared that he lived across the street from the

Ross'. Resch's family had owned the home for over 50 years and he had lived there for more than 30 years. He explained that the previous owners tried to obtain a similar Variance to build a garage and it was turned down. He felt that the current proposal should also be turned down. He believed the property was too small and it would change the view from his property. Resch lived there year-round and felt the Ross' didn't use the property enough to justify building a garage. Resch also believed that the Ross' survey was inaccurate.

Gervais read two written comments into the public record:

Wendy Foss-Graves of 49765 Afton Avenue, Nessel Township:

I wanted to respond to the variance request notice that we received from our neighbors Bob and Jill Ross at 49755 Afton Ave in Stanchfield.

My husband Joe and I fully support approving this variance. The garage will allow our neighbors to store tools and yard equipment in a tidy and secure manner. This would only be an asset to our little road neighborhood. In addition, almost everyone on the road has either a garage, pole barn, or permanent boat covering on their property, I cannot think of a reason to deny this request which will only make their property more appealing and functional.

Please approve this variance so that our wonderful neighbors can add this to their property.

Joe Graves of 49765 Afton Avenue, Nessel Township:

Just wanted to follow up to my wife's comments. The Ross' have been ideal and caring neighbors, the garage will be an improvement to their property and the neighborhood.

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

Motion by Sutcliffe to adopt No. BOAA2023-0802, 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 49755 Afton Avenue in Nessel Township, as presented; second by Strand with the added condition that the property owners address water mitigation through the use of gutters with water diverted away from the road. Sutcliffe accepted the amendment. The **motion passed** and carried unanimously.

Condition(s):

1. This approval grants the following Variances:
 - a. A 30' variance to the township Right-of-Way setback requirement allowing the proposed detached accessory structure to be no closer than 10' from the Afton Avenue Right-of-Way. This Variance will allow the proposed structure to be located no closer to the township Right-of-Way than the existing dwelling.
 - b. A 6.3' variance to the Ordinary High-Water Level (OHWL) setback requirement allowing the proposed detached accessory structure to be no closer than 68.7' from the OHWL of Rush Lake.
2. Except as specifically required herein, the detached accessory structure shall be constructed in general conformance with the application materials dated received August 1, 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. The property owner shall install gutters on the detached accessory structure and drainage shall be directed

away from the township Right-of-Way.

4. The permit holder shall obtain a building permit prior to construction and, further, the structure 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.

Neal & Donna Deneen and Adam Brown – Coordinator Gervais provided background information on current owners Neal & Donna Deneen’s and prospective buyer Adam Brown’s Variance request for property located at 12480 Melody Lane in Chisago Lake Township (PIDs 02.01029.00 and 02.01030.00), explaining that the applicant was requesting the Variance in order to build a dwelling, deck, and detached accessory structure closer to the township Right-of-Way than required in the Rural Residential I (RRI) District / Shoreland Management District. Gervais reviewed details about the subject site and surrounding areas, explaining that the site was considered legal non-conforming as it was platted in 1917 and did not meet current minimum dimensional requirements.

Gervais shared that Brown was seeking Variance approval in order to construct a 35’ x 40’ dwelling, 40’ x 8’ deck, and 24’ x 24’ garage 10’ from platted township Right-of-Way where the required setback was 40’. Gervais added that the original request included reduced setbacks from two township Rights-of-Way but Brown had revised his request after shifting the location of the septic system and shifting the structures westerly. The application materials explained that the applicant was proposing to construct a single family dwelling on a site which was challenging to develop due to its 60’ width, the required 40’ Right-of-Way setbacks on two sides, and topography. The narrative also stated that several neighboring properties had significantly reduced Right-of-Way setbacks, which meant that the proposed structures would conform to the character of the neighborhood.

The Technical Review Committee met on August 9, 2023. The Sanitarian expressed concern about the proposed location of the septic system and, based on that concern, the applicant revised his site plan which resulted in an amended (reduced) Variance request (as noted above). The Chisago Lake Town Board considered the amended request on August 15, 2023 and recommended approval, commenting that there was “no room for error - very tight fit”. The State mandated 60-day review period was scheduled to expire on October 2, 2023.

Gervais concluded by offering a recommendation of approval with six conditions and reviewed options available to the Board.

Chair Carlson invited the property owners and/or applicant to address the Board. Applicant Adam Brown stepped forward. Brown shared that he considered several options to develop the property and he believed that he had presented the best option.

Sutcliffe inquired about the existing septic system. Brown responded that it was a sealed system. Gervais clarified that the property was previously developed with a dwelling and septic system; the house had been demolished roughly 20 years ago but the non-compliant septic system remained. Chair Carlson asked if the non-compliant septic system would need to be removed. Sutcliffe responded that it would need to be abandoned. Chair Carlson asked Brown about the existing 14’ x 18’ structure located on the subject site and his intentions for that structure. Brown responded that it would be used for storage purposes but not as a dwelling. Chair Carlson briefly reviewed differences between the original and amended requests.

Chair Carlson opened the public hearing and sought public comment.

Gervais read two written comments into the public record:

Chester Boike of 12500 Melody Lane, Chisago Lake Township:

This hearing is to discuss a single request for a variance to the setback ordinance section 5.15 from 40 feet down to 15 feet on a non-buildable lot.

This is an amended request. I would like to know what was removed from the original application and why.

The reason being given is a setback of 15 feet would allow for building a dwelling that would supposedly conform to the character of the neighborhood. A dwelling halfway down a hill, built sideways and a 40' wide septic mound parallel to Melody Lane conforms to a first impression of a neighborhood character?

I am apposed to granting variances to requests from owners of non-buildable lots in violation of set ordinances to simply makes changes to bring them into compliance with buildable lots.

I'm sure Environmental Services/Zoning had a valid concern for writing Zoning Ordinance Section 5.15. To grant variances to these ordinances is something not to be taken lightly. The impact of the ordinance on the immediate neighbors and the neighborhood require foresight on the part of the board. Hindsight is 20/20.

This is designated a non-buildable lot and to grant variances to make it a buildable lot is not the solution. To me this does not pass the smell test.

Dana & Brenna Wojtowicz and Mike & Karla Krick of 12490 Melody Lane, Chisago Lake Township:

We Appreciate the opportunity to give feedback as neighbors on the request of variances to zoning ordinance section 5.15.

Our answer "respectively" is NO to variance, No to easement and No to vacate the road on Melody Lane either direction on that property.

The numbers just don't add up...

Chair Carlson invited members of the audience to provide comment.

Bob Vance of 14862 Oak Hill Road N., Scandia – Vance voiced concerns on behalf of his mother-in-law who resided at 12460 Melody Lane. Vance inquired about the required distance between the septic system and neighboring wells. Chair Carlson asked Gervais to respond. Gervais was not certain of the required distance but noted that it would be reviewed at time of septic permit application. Vance inquired about the ability of his mother-in-law to expand her structures in the future and if the current request would impact that ability. Gervais commented that her structures would be evaluated against her own property boundaries and not surrounding structures.

Steve Kidrowski of 5017 W. 98th Street, Bloomington – Kidrowski explained that he owned property at the intersection of Melody Lane and Mentzer Trail. He requested that the Board table the request because he wasn't notified by the township before the Town Board meeting. Strand responded by explaining that townships were not required to send out notices when considering Variance requests, only the County. Kidrowski questioned whether the applicant had a topographical survey prepared to verify location of the Ordinary High Water Level and also questioned why the applicant did not need to identify an alternate septic system location. Chair Carlson requested that Gervais respond. Gervais stated that she believed, as a legal lot of record, the applicant only needed to show that the site could accommodate a Type I septic system. Kidrowski commented

that he was making these inquiries because he was looking to build on his property and wanted to make sure he understood what would be required.

Brenna Wojtowicz of 12490 Melody Lane, Chisago Lake Township – Wojtowicz explained that she lived immediately north of the subject site and commented that the parking and winter plowing made travel on Melody Lane difficult. She was concerned that emergency vehicles may not be able to get through with added congestion on Melody Lane. Wojtowicz shared that the subject site became very wet every spring; expressed concern with the physical size of the proposed septic system and other septic systems in the immediate area; expressed concern about ability to install a well on the subject site; reiterated her concern with snow plowing; and, expressed concern with proposed travel on the unnamed township Right-of-Way.

Chester Boike of 12500 Melody Lane, Chisago Lake Township – Boike shared that there was a petition seven years prior to Vacate the unnamed township Right-of-Way and the township denied that request. Boike shared that he was upset that the township didn't provide notice to residents before considering the request. Gervais explained that the township did not conduct public hearings for Variance requests and was not required to provide notice to residents and was only responsible for providing a recommendation. Gervais added that it was the County's Board of Adjustment and Appeals that was responsible for conducting the public hearing and property owners were notified in compliance with Minnesota statute. Boike also expressed concern about snowplowing and maintenance of the roadway. Chair Carlson informed audience members that maintenance and plowing of the roadway was managed by Chisago Lake Township.

Nick Kirvida of 28175 Lamar Avenue, Chisago Lake Township – Kirvida asked clarifying questions about the original proposal and inquired why the original location of the septic system wasn't adequate.

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

Yeager reviewed details from the Technical Review Committee meeting. Strand inquired if the two subject properties would need to be combined. Gervais responded that the draft resolution presented to the Board included a condition requiring a lot combination prior to submitting a building permit application and/or septic permit application.

Motion by Yeager to adopt No. BOAA2023-0803, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance allowing reduced Right-of-Way setbacks on property located at 12480 Melody Lane in Chisago Lake Township, as presented; second by Strand. The **motion passed** and carried unanimously.

Condition(s):

1. This approval grants a 25' variance allowing a dwelling, deck, and detached accessory structure (garage) to be no closer than 15' from the north property boundary / Right-of-Way.
2. The subject site shall be developed in general conformance with the application materials dated received August 10, 2023, and the updated impervious surface calculation worksheet dated received August 23, 2023 and kept on file with the Department of Environmental Services. 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 applicant's expense.
3. The permit holder shall submit request to the Chisago County Auditor-Treasurer's Office for the combination of the two subject parcels (PIDs 02.01029.00 and 02.01030.00) prior to submitting application for building and/or septic permits. Said permits will not be issued until such time that the lot combination is complete.

4. The permit holder shall obtain a building permit prior to construction and, further, the structures shall comply with all applicable codes and regulations.
5. The permit holder shall obtain a septic permit prior to installation of the septic system and, further, the system shall comply with all applicable codes and regulations.
6. 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 Strand; second by Yeager. The **motion passed** and carried unanimously. With no further business the meeting was adjourned at 8:35 p.m.



~~Gregg Carlson~~ **JOHN SUTCLIFFE**
~~Chair~~ **VICE CHAIR**

ATTEST: 

Beth Gervais
Land Services Coordinator