

**CHISAGO COUNTY
BOARD OF ADJUSTMENT & APPEALS
OFFICIAL PROCEEDINGS
September 28, 2023**

The Chisago County Board of Adjustment & Appeals met in regular session at 7:00 p.m. on Thursday, September 28, 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.

Vice Chair Sutcliffe 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, John Sutcliffe, Becky Strand, and Chip Yeager. Absent: Chair Gregg Carlson. A quorum was established.

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

APPROVAL OF MINUTES – Motion to approve the August 31, 2023 meeting minutes as presented by Yeager; second by Strand. 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 Matt & Megan Walsh for agenda item 6b, into the record by Strand; second by 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 written comments from Matt & Megan Walsh. 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

Kyle & Laura Beste – Coordinator Gervais provided background information on Kyle & Laura Beste’s after-the-fact Variance request for property located at 44050 Maple Lane in Fish Lake Township (PID 03.01315.00), explaining that the property owners recently constructed a deck which encroached on the required Ordinary High Water Level (OHWL) setback by 14’ and the total amount of impervious surface coverage exceeded the maximum allowable amount by 6.6%. Gervais shared that the Bestes were under the impression that the previous property owners were granted a Variance in 2017 for the deck and impervious surface coverage, however, Gervais added, a septic compliance inspection revealed a non-compliant system in 2017 and the 2017 Variance request was withdrawn. With a passing septic compliance inspection in 2022 and the Bestes believing that the 2017 Variance had been approved, they proceeded with the deck and additional impervious surface coverage. As part of a code enforcement effort to deal with work being completed without the necessary building permit, a stop work order was issued in June 2023 by the Department of Environmental Services (Department) and the property owners were instructed that work must stop until the necessary building permit was obtained. Once the building permit application was submitted and upon review of the application, it was determined by the Department that the deck did not meet the required OHWL setback and the deck would either need to be removed or an after-the-fact Variance could be requested.

Gervais provided details about the subject site and surrounding area, explaining that the property was considered legal non-conforming as it didn’t meet the County’s minimum dimensional requirements for the Rural Residential I (RRI) District / Shoreland Management District. Gervais then reviewed details of the request, again explaining that the property owners were seeking a 14’ OHWL setback Variance as well as a Variance to

exceed the maximum allowable amount of impervious surface coverage by 6.6%, and highlighted the property owners' written justifications.

The Technical Review Committee met with Kyle Beste on September 13, 2023. The committee did not identify any concerns. The Fish Lake Town Board considered the request on September 11, 2023 and recommended approval with no conditions. The State mandated review period was scheduled to expire on October 9, 2023.

Gervais identified staff concerns related to the request. The application materials explained that the property owners believed that the previous property owner had obtained Variance approval for the OHWL setback encroachment and they were acting on that approval given that the septic system had been brought into compliance. Gervais noted that this factor did not constitute an exceptional or extraordinary circumstance as it was the property owners' responsibility to verify setbacks and Variance status prior to construction. If the property owners had obtained a building permit prior to construction, they would have been made aware of the setback encroachment issue and status of the Variance which was requested and withdrawn in 2017. Gervais believed that the property owners had complete control over this circumstance. Regarding the amount of impervious surface coverage, the application materials explained that the total amount exceeded 25% when they purchased the property in 2022. Gervais noted that the application did not offer any exceptional or extraordinary circumstance relating to the new semi-circular patio (265 sf) added by the Bestes since they acquired the property.

Gervais concluded by offering a recommendation of approval for an after-the-fact Variance to encroach on the OHWL setback and denial of an after-the-fact Variance to exceed the maximum allowable amount of impervious surface coverage, and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Kyle Beste stepped forward and stated that he and his wife were unaware that a building permit had not been pulled by their hired contractor and work on the deck was completed before the stop work order was given. Strand, recalling observations from the Board's September 27, 2023 site visit, asked about a structure on the property which wasn't included in the impervious surface calculation worksheet. Beste explained that the structure was the previous owner's icehouse and Beste agreed to have it removed. Strand also sought clarification on what materials were used in the front of the boathouse. Beste confirmed that it was sand.

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

Motion by Yeager to adopt resolution No. BOAA2023-0901, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving an after-the-fact Variance to encroach on the required Ordinary High Water Level setback and denying an after-the-fact Variance to exceed the maximum allowable amount of impervious surface coverage on property located at 44050 Maple Lane in Fish Lake Township, as presented; second by Strand. The ***motion passed*** and carried unanimously.

Conditions:

1. The after-the-fact Variance request to encroach on the required Ordinary High Water Level (OHWL) setback by 14' is approved, allowing for a recently constructed deck to be situated 61' from the OHWL of Horseshoe Lake.

2. The after-the-fact Variance request to exceed the maximum allowable amount of impervious surface coverage by 6.6% is denied, requiring that the property owners reduce the total amount of impervious surface to an amount no greater than 3,484.75 sf (lot area of 13,939 sf x 25% = 3,484.75 sf) through elimination of existing impervious surfaces or replacement of existing impervious materials with new pervious materials. Further, reduction of impervious surface coverage to an amount no greater than 3,484.75 sf shall be complete within one year from the date of this resolution (September 28, 2024).
3. The subject site shall be developed in general conformance with the updated application materials dated received August 14, 2023, except as specifically conditioned herein (specifically in relation to condition no. 2 above). 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 owner's expense.
4. The property owner shall obtain an after-the-fact building permit for construction of the deck.

John & Marie Keefe – Coordinator Gervais provided background information on John & Marie Keefe's Variance request for property located at 32442 Northshire Court in Chisago Lake Township (PID 02.01316.03), explaining that the request was for a Variance to construct a 6' tall fence along nearly the full length of their southerly property boundary (side yard) where the maximum allowable height was 4'. Gervais noted that the length of the southerly property boundary, as platted, was 368.58' and, after excluding 40' for the front non-buildable setback area where the fence regulations differed, the length of the fence was estimated by staff to be as much as 328.58'. Gervais reviewed details about the subject site and surrounding areas, explaining that the subject site was located in the Rural Residential I (RRI) District and at the north end of the Northshire Court cul-de-sac in the Imperial Estates subdivision which was platted in 1980.

Gervais reviewed details of the proposed fence, explaining that it would start at an identified tree in the front yard and potentially run westerly for the full distance of the southerly property boundary to the point where that boundary met the westerly property boundary. Gervais shared that the application materials explained that the allowable 4' tall fence would keep the neighboring property owner from parking vehicles and storing miscellaneous equipment and supplies on the Keefe property but a 6' fence would help keep the neighboring Pitbull dog from entering the Keefe property. The property owners believed this to be a reasonable request so that they could enjoy their land with a reasonable level of security from harm; that the situation was unique and not of their doing; and, that the proposed 6' tall fence would not detract from the essential character of the neighborhood given that the proposed fence location was heavily wooded, screened by structures, and located at the end of a cul-de-sac.

The Technical Review Committee met with property owners John & Marie Keefe on September 13, 2023 and no concerns were identified. The Chisago Lake Town Board considered the request on September 19, 2023 and recommended approval with the notation of "very reasonable request". The State mandated review period was scheduled to expire on October 27, 2023.

Gervais identified staff concerns related to the request. The application materials cited issues with a neighboring property owner and the neighboring property owner's dog as exceptional or extraordinary circumstances. Gervais noted that these issues did not relate to the property itself and related instead to personal circumstances between neighbors. The proposed fence height was primarily intended to prevent a neighboring dog from entering the subject site; however, the fence provisions within the Zoning Ordinance were not intended to address or prevent issues / disputes between neighbors. Variances were intended to provide relief from unique circumstances relating to the property itself. Staff did not believe that the Variance would necessarily be detrimental to other properties in the RRI District but did believe that the Variance would be

contrary and detrimental to the purposes and intent of the Zoning Ordinance.

Gervais concluded by offering a recommendation of denial and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owners John & Marie Keefe stepped forward. J. Keefe explained that the hardship that they faced was that they could not enjoy their yard space because the neighbor's dog continued to trespass and cause harm to them and their dog. They believed that the 6' fence would be tall enough to keep the dog from jumping over it and increase the level of safety for themselves and their family. Keefe explained that his neighbor was willing to share in the cost of the proposed fence so it wasn't an issue of warring neighbors as stated in the staff report. Greene sought clarification on whether the fence would be installed around the whole yard or only along one property boundary. Keefe stated that they didn't plan to fence the whole lot. Greene, referencing written comments received from Matt & Megan Walsh of 32439 Northshire Court, asked where the Walshes lived in comparison to the Keefes. Keefe explained that the Walshes were located northwest of his property.

Vice Chair Sutcliffe opened the public hearing and sought public comment.

Megan Walsh of 32439 Northshire Court, Chisago Lake Township offered her support for the proposed Variance, sharing that she didn't know what else could be done about the neighboring dog given that the Sheriff's Office had already been called twice. The neighbors had all talked to the dog owner with no action.

Bob Murphy of 32340 Northshire Court, Chisago Lake Township offered support for the Variance request, commenting that the neighboring dog had been aggressive before and he would hate to have the dog be able to jump over a 4' fence and attack a child.

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

Greene asked staff if the fence had to be set back 40' from the front property boundary. Gervais stated that fences in the front non-buildable setback area could not exceed 36" in height except that chain link fences could be up to 5' in height. Greene commented that, if the fence was only located on one property boundary, the neighboring dog could walk around it and enter the Keefe property. J. Keefe explained that, due to topography, he didn't think the dog would walk around the fence.

Strand voiced her concern that the neighbor was parking vehicles and equipment right up to the shared property line already, speculating that this would continue even if a fence was installed which would allow the neighboring dog to climb up and over the fence. Strand stated that there were other remedies for the situation, such as contacting the Sheriff's Office, and that the Board could not act as law enforcement. Strand encouraged the applicants and their neighbors to continue reporting the issue to the Sheriff's Office, and commented that a 6' fence would not remedy the problem.

Yeager noted that guidance on the State mandated practical difficulty standard advised that uniqueness related to physical characteristics of the property in question, such as topography. If the Board granted the Variance and the 6' tall fence was built and then the neighbor and dog moved away, the rationale for the fence Variance would also go away. Yeager commented that this was not what Variances were intended for.

Motion by Strand to adopt Resolution No. BOAA2023-0902, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, denying a Variance to exceed the maximum allowable fence height on

property located at 32442 Northshire Court in Chisago Lake Township, as presented; second by Yeager. The **motion passed** and carried unanimously.

Garrett & Carrie Mueller – Coordinator Gervais provided background information on Garrett & Carrie Mueller’s Variance request for property located at 30583 Lofton Avenue / CSAH 24 in Chisago Lake Township (PID 02.00848.10), explaining that the property owners were requesting the Variance in order to construct a 54’ x 64’ (3,456 sf) detached accessory structure in addition to their 1,396 sf attached garage – for a total of 4,852 sf of accessory storage space – where the maximum allowable amount of accessory storage space was 2,000 sf.

Gervais shared details about the subject site and surrounding area, explaining that the subject site was slightly less than 8 acres in size and zoned Rural Residential II (RRII) District. Despite being located adjacent to water, the body of water was classified as a pond and the site was, therefore, not in the Shoreland Management District or subject to additional Shoreland setbacks. Gervais then reviewed details about the request. The proposed 54’ x 64’ (3,456 sf) detached accessory structure would be situated south of the driveway, north of the septic system, and 135’ east of the centerline of Lofton Avenue / CSAH 24. The height of the proposed structure was unknown but, per the County’s Zoning Ordinance, it would not be allowed to exceed the height of the dwelling. The property owners described the structure as having a stone wainscoting front, windows, and color to match the dwelling. As justification for the Variance, the application materials explained that the property owners would like the proposed structure to keep their belongings and the property safe, clean, neat, and secure from theft and the elements for as long as possible. The written narrative stated that the subject site was unique in that it was 7.99 acres in size and almost totally surrounded by water and marshland, and that the subject area was not a typical RRII District neighborhood in that many of the surrounding properties were five acres or larger in size. The property owners believed that the proposed structure was similar to and in keeping with detached accessory structures in the area. Gervais noted that the written narrative did not include any indication that the property owners had considered reducing the size of the proposed accessory structure to reduce the Variance needed or eliminate the need for Variance altogether, explaining that with an existing 1,396 sf attached garage, the property owners could construct up to 604 sf of accessory storage space without need for Variance. For reference, Gervais added that, this amount of available space would have allowed for a 20’ x 30’ structure without need for Variance. Gervais also noted for the Board that the requested amount of accessory storage space was 240% more than the maximum allowed.

The Technical Review Committee met with Garrett Mueller on September 13, 2023. Mueller shared that the lean-to, shown in the rendering of the proposed structure, was not included in the Variance request and it would therefore be eliminated. He also was unsure of the overall structure height but acknowledged that it could not exceed the height of dwelling. The committee did not identify any other concerns. The Chisago Lake Town Board considered the request on September 19, 2023 and recommended approval with notation of “very reasonable - all adjacent lots have large barns”. The State mandated review period was scheduled to expire on October 30, 2023.

Gervais identified staff concerns related to the request. The property was platted as Lot 1, Block 1, Mueller Addition in 2021. The site, along with three other parcels directly north, were platted by Mueller Properties, LLC / Garrett Mueller. When Mueller Addition was platted, the parcel immediately north of the subject site was already developed and considered to be legal non-conforming because the combined square footage of the attached and detached accessory structures exceeded the total amount of accessory storage space allowed in RRII District. The staff report prepared for the Preliminary Plat clearly explained that the pre-existing development was allowed to remain, but the amount of accessory storage space could not be expanded and the three newly created parcels – including the subject site – would be subject to the RRII District regulations in effect at the time of development, which included the maximum allowable amount of accessory storage space.

This meant that the Muellers were made aware at the time of platting that the subject site would be limited to 2,000 sf of accessory storage space. Gervais suggested that it could be said that the property owners created their own “hardship” by creating parcels more compatible with the Agricultural (AG) District in terms of lot area, which was cited by the property owners as being part of the reason for seeking the Variance. Gervais explained that the minimum lot size in the RRII District was two acres, whereas the minimum lot size in the AG District was five acres. Gervais added that the circumstance of lot size did not only apply to Mueller Addition; there were several RRII parcels greater than two acres in size in the immediate vicinity and throughout the County.

Gervais concluded by offering a recommendation of denial and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Garrett Mueller stepped forward and stated that he believed that the proposed structure conformed with everything else on surrounding properties. He felt that he wasn’t asking for anything unreasonable because there were large barns across the street. The area was zoned RRII District before the subject site was platted but he wanted to keep the agricultural feel and therefore platted the lots with five or more acres. With the house being on a peninsula and so far off the road, he felt that the proposed structure would keep his property and belongings safer than just leaving them set out. Mueller concluded by sharing that the proposed structure would be made to match the dwelling.

Greene stated that the Board had recently approved a similar Variance request in the immediate vicinity but the approval was far less than 240% over the maximum allowed. Greene added that, if the Board set a precedent by approving such a significant Variance, it would make it more difficult for the people that didn’t have large properties like the applicants. Mueller pointed out that there were multiple big barns in the area. Strand commented that those barns had been there for decades and were considered legal non-conforming structures.

Vice Chair Sutcliffe opened the public hearing and sought public hearing.

Nick Angeloni of 30450 Wallmark Lake Drive, Chisago Lake Township offered his support for the requested Variance, sharing that, up to this point, everyone in the area had been denied a Variance for this type of project and most people who wanted more storage space moved out of the area.

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

The Board discussed details of a 2022 Variance granted to a neighboring property for a similar request (the example introduced by Board member Greene earlier in the meeting). Understanding the Board’s concerns with the proposed structure size and the amount of Variance requested, Mueller verbally amended the request to allow for a total of 3,124 sf of accessory storage space rather than a total of 4,852 sf (a 1,728 sf reduction), with this amendment allowing the property owners to construct a detached accessory structure of up to 1,728 sf in size.

Motion by Vice Chair Sutcliffe to adopt Resolution No. BOAA2023-0903, 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 30583 Lofton Avenue / CSAH 24 in Chisago Lake Township, based on the property owner’s amended request; second by Yeager. The **motion passed** and carried unanimously.

Conditions as Amended:

1. This approval grants a ~~2,852~~ 1,124 square foot Variance to Zoning Ordinance Section 4.08.2, F, allowing the subject site to have a total of ~~4,852~~ 3,124 square feet of accessory storage space in the Rural Residential II (RRII) District. In addition to the existing 1,396 square foot attached garage, this approval allows for the construction of a detached accessory structure up to ~~3,456~~ 1,728 sf in size.
2. The detached accessory structure shall meet all required setbacks, shall be constructed so that the exterior matches the appearance and color of the dwelling, and shall not exceed the height of the dwelling.
3. The detached accessory structure shall be constructed in general conformance with the application materials, including site plan, dated received August 29, 2023. 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.
4. 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.
5. Future subdivision of the subject site must occur in a manner in which the parent parcel (the parcel which includes the existing dwelling and proposed detached accessory structure) remains no less than the minimum lot size in the Agricultural (AG) District in effect at the time of subdivision or, conversely, the parent parcel must be brought into compliance with the regulations for accessory structures in the Rural Residential II (RRII) District at the time of subdivision.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Floyd & Cindy Petty and Bear Roofing & Exteriors – Gervais shared that property owners Floyd & Cindy Petty of 3400 Stark Road / CSAH 10 and applicant Bear Roofing & Exteriors were proposing to expand the Petty's non-conforming dwelling by extending / constructing a roof over the existing non-conforming deck, explaining that the existing dwelling and deck were considered non-conforming being that they encroached on the required 135' setback as measured from the centerline of Stark Road / CSAH 10. Gervais noted that, while the proposed roof would extend approximately 1' closer to the centerline of Stark Road / CSAH 10 than the deck, the setback would be measured from the deck – and not the roof – which meant that the proposed roof would not exacerbate the non-conforming setback.

Gervais shared details about the subject site and surrounding area, explaining that the site was located in the Rural Residential I (RRI) District / Shoreland Management District and was developed with a dwelling and one detached garage. The dwelling encroached on the required CSAH setback but was believed to be legal non-conforming. The original deck was believed by staff to have been constructed in approximately 1985. Gervais then reviewed details about the request. The property owners and applicant were requesting the Variance to expand the legal non-conforming dwelling by extending / constructing a roof over the deck. The dwelling appeared to be situated approximately 90' from the centerline of Stark Road / CSAH 10 and the deck was situated approximately 82' from the centerline where the required setback was 135'. Historical records from the Assessor's Office showed that the deck, likely constructed around 1985, was 12' x 20'; however, the current application materials showed the deck as being 12' x 24'. Staff was not aware of when the deck was expanded or by whom, but the current property owners did receive a building permit in June 2023 to replace the deck. The building permit application included the proposed dimensions of 12' x 24' and it was approved with a notation that it was "ok if same as one removed", meaning that the property owners had a statutory right to replace exactly what was there but not expand the deck. The building permit application also included notation that the property owners removed the former deck the month prior in May 2023, which meant that the former size likely could not be verified by County staff. Ultimately, staff was unable to determine if the existing deck was a legal non-conforming structure or an illegal non-conforming structure due to expansion. Gervais added that, even though the roofline was proposed to extend closer to the centerline of Stark Road / CSAH 10, this would not be

considered an exacerbation of the existing setback encroachment as the Zoning Ordinance provided an exception to such features as the roof so long as it did not extend more than 3' from the structure.

In an effort to address the State mandated practical difficulty standard, the application materials explained that the property owners were proposing to add a roof over the deck to provide shade following the removal of diseased shade trees. They believed that the request was reasonable in that the roof would not expand the footprint of the dwelling or deck. The Petty's felt that the dwelling was unique in that it was situated at an intersection of two County roads (CSAH 10 and CR 60) and faced a lake. The shade provided by the proposed roof would allow the property owners to enjoy the view of the lake and that the addition of a roof would make the dwelling more visually appealing and make the space more usable.

The Technical Review Committee met with Floyd & Cindy Petty on September 13, 2023. The County Sanitarian stated that a septic compliance inspection would be required due to subject site being located in the Shoreland Management District. The County Engineer recommended that the property owners maintained at least a 50' setback from the centerline of Stark Road / CSAH 10. The committee did not identify any other concerns. The Fish Lake Town Board considered the request on September 11, 2023 and recommended approval with no conditions. The State mandated review period was scheduled to expire on October 30, 2023.

Gervais identified staff concerns related to the request. Staff did not believe that the application materials adequately demonstrated compliance with the County's stated purpose of the Variance process or the State mandated practical difficulty standard. Further, staff believed that the proposed Variance would be contrary and detrimental to the purposes and intent of the Zoning Ordinance. Gervais speculated that the proposed roof was the minimum size necessary to adequately create a covered deck and did not believe that the expansion would exacerbate the existing setback encroachment, but did not believe that the application materials adequately demonstrated that a hardship existed and therefore believed that any amount of roof / expansion was excessive. Further, the fact that the property owners were desiring to have shade while using their deck was a personal preference and staff believed that shade could be accomplished in other reasonable non-structural / non-permanent ways such as the use of a deck / patio umbrella, shade sail, retractable awning, or similar method.

Gervais concluded by offering a recommendation of denial and reviewed options available to the Board.

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Cindy Petty stepped forward and explained that they were required to take down a few very large diseased trees in the yard and, as a result, lost the shade they provided. Petty did not believe that an umbrella, shade sail or retractable awning were appropriate remedies in her case. She and her family would like to sit outside in the rain and be able to hang flower baskets from the covered roof and not hit their heads on the low-hanging shade. Petty shared pictures with the Board that showed where the new deck railing was compared to where it was previously as proof that she and her husband had not increased the size of the deck but had, in fact, decreased the size. Petty questioned the intent of the Variance law, asking if it was intended to determine what type of shade went over a deck or if it was to prevent encroachment on the road or lake.

Vice Chair Sutcliffe opened the public hearing and sought public comment. 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.

Strand asked staff if an arbor or pergola would be allowed without a Variance. Gervais speculated that either of those options would be allowed as they would be attached to the deck and the deck was already legal. Greene

suggested that the loss of shade trees was a unique circumstance related to the subject site and offered support for the request.

Motion by Greene to adopt Resolution No. BOAA2023-0904, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving a Variance to expand a legal non-conforming structure on property located at 3400 Stark Road / CSAH 10 in Fish Lake Township, as presented; second by Yeager. The **motion passed** and carried unanimously.

Conditions:

1. This Variance approval allows for the expansion of a legal non-conforming dwelling in the Residential I (RRI) District/ Shoreland Management District by allowing the expansion of the rural roof to cover the existing 12' x 24' deck located on the south side of the dwelling.
2. The roof expansion shall be constructed in general conformance with the application materials, including site plan and building plans, dated received August 29, 2023. Any significant deviation from the approved request and plans, as determined by Department of Environmental staff, shall require further review and approval from the Board of Adjustment and Appeals Services at the property owners' expense.
3. This Variance does not allow for the deck and expanded roof to be enclosed.
4. The permit holder shall obtain a building permit prior to construction and, further, the expansion shall comply with all applicable codes and regulations.
5. 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.
6. This Variance shall be made use of within one year of the date of approval or it shall become null and void.

Shaun Kane & Julie Keyes Kane – Coordinator Gervais explained that property owners Shaun Kane & Julie Keyes Kane of 51955 Belle Isle Drive, Nessel Township (PID 06.00991.00) were requesting a Variance in order to install a 6' tall privacy fence in the front (roadside) non-buildable setback area where the maximum allowable height was 36" / 3'. Gervais reviewed details about the subject site and surrounding area, explaining that the subject site was located at a point where the roadway transitioned from a north-south direction to a northeast-southwest direction. Gervais shared that the proposed fence would be 6' in height and 24' long and made of a brown composite material. The property owners had located their roadside property pins and estimated that the fence would be 9'2" from the Right-of-Way boundary. The application materials explained that the subject site sat lower than the roadway and the proposed fence would provide privacy on the front side of the dwelling. The written narrative further explained that the fence would create a wind block for snow during winter months and provide screening from headlight wash given that the property was situated near a curve in the road.

The Technical Review Committee met with Shaun Kane on September 13, 2023. The County Sanitarian commented that the property owners would be required to catch up on reporting for their Type IV septic system as part of the Variance process. Gervais explained for the Board that this type of septic system was not typical and required annual reporting. The committee did not identify any other concerns. The Nessel Town Board considered the request on September 12, 2023 and recommended approval with no conditions. The State mandated review period was scheduled to expire on November 5, 2023.

Gervais commented that staff did not believe that the cited reasons for the fence were necessarily exceptional or extraordinary circumstances only applying to the subject site; however, they may be factors that the Board wished to consider. And, if the Board considered these to be exceptional or extraordinary circumstances, staff did not believe that the allowable 36" / 3' tall fence would be sufficient for screening the subject site from

headlight wash even if the site and roadway were at the same elevation. Given that the site was at a lower elevation than the roadway, staff suspected that a 6' tall fence was necessary to accomplish this type of screening. Therefore, staff believed that the property owners had requested the minimum Variance needed to alleviate the hardship.

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

Vice Chair Sutcliffe invited the applicants to address the Board. Property owner Shaun Kane stepped forward and stated that he was in the process of getting all necessary paperwork together to bring the septic system into compliance, adding that, as a new owner of the property, he was not aware of the annual reporting requirement. Kane explained that the fence would be installed between the two rows of trees in his front yard and described the approximate location in relation to existing trees and structures. Strand asked staff if a septic certification was required as part of the Variance process. Gervais responded that septic compliance inspections were required for all properties in the Shoreland Management District when the property owners applied for Variances unless a septic compliance inspection had been completed within the past three years.

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

Motion by Yeager to adopt Resolution No. BOAA2023-0905, a resolution of the Board of Adjustment and Appeals of Chisago County, Minnesota, approving allowing a fence which exceeds the maximum allowable height in the front non-buildable setback area on property located at 51955 Belle Isle Drive in Nessel Township, as presented; second by Strand. The ***motion passed*** and carried unanimously.

Conditions:

1. This Variance approval allows for the installation of a 6' tall fence within the front non-buildable setback area in the Rural Residential I (RRI) District where the maximum allowable height is 36".
2. The approved fence shall be constructed in general conformance with application materials dated received August 31, 2023 and kept on file with the Department of Environmental Services, including that the fence shall be no greater than 6' in height as measured from the finished grade, 24' in length, and installed at least 9' from the north property boundary / Right-of-Way boundary. Any deviation from the approved request shall require further review and approval from the Board of Adjustment and Appeals at the property owners' expense.
3. Prior to installation of the fence, the property owners shall provide to the Department of Environmental Services monitoring report(s) and all other documentation required by the Department of Environmental Services demonstrating that the existing Type IV septic system is compliant.
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 BUSINESS

None

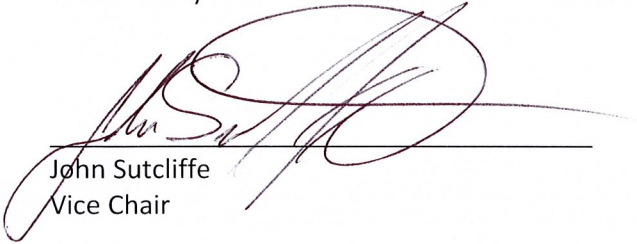
NEW BUISNESS

None

MISCELLANEOUS

None

ADJOURN MEETING – Motion to adjourn by Yeager; second by Strand. The **motion passed** and carried unanimously. With no further business the meeting was adjourned at 8:43 p.m.



John Sutcliffe
Vice Chair

ATTEST: 
Beth Gervais
Land Services Coordinator