

**CHISAGO COUNTY
BOARD OF ADJUSTMENT
OFFICIAL PROCEEDINGS
OCTOBER 25 , 2018**

The Chisago County Board of Adjustment met in regular session at 7:00 p.m. on Thursday, October 25, 2018, in Room 150B of the Government Center with the following Board members present: John Sutcliffe, Donna Nowicki, Doug Greene, and Gregg Carlson.

Also Present: Tara Guy, Assistant Zoning Director

The Chair called the meeting to order and led the assembly in the Pledge of Allegiance. Roll call of Board members was taken and a quorum established, with all members present. (The Fourth Commissioner District remains unrepresented on the Board.)

Staff Reports on the application had been prepared and distributed in advance to the members, and made available to the audience as well, along with copies of the applicants' files.

APPROVAL OF AGENDA - On motion by Nowicki and second by Sutcliffe, the meeting agenda was approved as presented.

APPROVAL OF MINUTES - On motion by Sutcliffe and second by Nowicki, the minutes of the meeting of September 27, 2018 were approved as drafted.

ADOPTION OF MATERIALS AND SUBMITTALS INTO THE RECORD - Upon motion by Greene and second by Sutcliffe, all applications, submittals, reports and other materials were adopted into the record by reference. Staff Reports had been distributed in advance to the Board and the applicants, for their review. Copies of all applications, correspondence and Staff Reports were made available on a table at the entrance to the hearing room.

PUBLIC HEARINGS -

Al Carstensen - Mr. Carstensen was represented at the hearing by his son-in-law Lee Peterson, with his request for a variance to replace a three-season porch with an addition, closer to the lake and property lines than the required setback. This is located in Nessel Township, Rushmore, Lot 8, at 50925 Almond Avenue (PID #06.01236.00.) The Nessel Township Board had recommended approval with no conditions. Mr. Peterson gave a brief overview of the proposal. They are seeking a variance to remove an old rotting porch on the front of the cabin (sized 8 x 15) and replace it with a usable 10 x 30 foot addition, approximately 71 feet from the OHWM. The new addition will extend two feet closer to the lake than the existing porch. Mr. Peterson explained that the old porch was full of mold and mildew, which left it dangerous and unusable. They hoped to add a slightly larger addition across the front of the cabin to make it more practical to use for their large family. When he had concluded his overview, the Chair sought public comment on the variance. Marla Burger was present to testify against the proposal. She owns the lot to the south, and had a number of complaints about the variance request and the applicants, which she had forwarded to the Board as an email. She claimed there were a number of errors in the application, including measurements and assertions made by the applicant. A Staff reply had been prepared in response, to correct some of the misapprehensions in Ms. Burger's email. The reply was distributed to the members of the Board and Ms. Burger. The Staff analysis contained in the Staff Report determined that the proposal was consistent with many past variance requests and approvals, and approval of the request was recommended, failing any new, significant information being presented. The landowner to the north,

Jan Nelson, was also present to express concern with the existing septic system, which she believes encroaches over the line and

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limits her own options for well and septic. She stated that she was opposed to variance approval. Tara explained that County records do not reflect the encroachment she described, and added that the septic system was not relevant to the variance request in any case, since no further expansion or encroachment was proposed. She explained that the septic compliance inspection had been done, and the system was found to be compliant, except for a cracked tank which is slated to be replaced in association with this project. When there was no further testimony forthcoming, the Chair closed the hearing. After brief discussion, Donna Nowicki moved to adopt the Staff analysis in the Staff Report as findings of fact in support of approval, and to approve the variance as requested. John Sutcliffe seconded it and the motion to approve was carried unanimously.

John Keefe - Mr. Keefe was present at the meeting with his wife Marie, to request a number of variances to separate a substandard lake lot with an accessory structure from an abutting property, and to convert the accessory structure to a year round home, closer to road, lake, and property line than the required setbacks. This is located in Chisago Lake Township, Revised Herberg Beach 2nd Addition, Outlot A, at 13380 322nd St. (PID #02.01271.00.)

Mr. Keefe explained that he wished to sell his house, which is situated on the lot directly to the north, but to retain the garage that was built as an accessory structure to that house, and convert it to a year round dwelling. The proposal was in conflict with a number of provisions of the Zoning, Shoreland and SSTS Ordinances, which was outlined in the Staff Report presented to the Board and the applicant. Mr. Keefe presented an addendum to his original submittals outlining areas of disagreement he had identified with the Staff's position. Primarily, Mr. Keefe disputed the amount of area Staff had calculated as the lot size, asserting that the lot area was 19,800 square feet, which would render the lot larger than the minimum required 66% of the current lot size (in order to be eligible for separation from the abutting parcel). He explained that his septic designer had designated the OHWM in a different location, closer to the water line, than the Staff had asserted. This would also mean that the existing structure meets the lake setback, which conflicts with the Staff's opinion that the garage is 58 feet from OHWM. Mr. Keefe acknowledged only two of the variances identified by Staff as being necessary for this request: that the septic design was for a Type III system, rather than Type I as required by Statute and Ordinance, and also acknowledged that the structure was closer to the road than the required setback. When he had concluded his overview of the proposal, Tara reiterated that the number of variances Staff had identified as being necessary for this project was 14. She explained that the proposal was contrary to the most fundamental goals and purposes of the Zoning, Shoreland and SSTS Ordinances, as indicated in the Staff Report. When Mr. Keefe had concluded his overview, the Chair called for public comment, but there was no one present to testify. An emailed letter of opposition had been received from nearby landowner Tony Minnichsoffer, which was read into the record by Chairman Carlson. Mr. Minnichsoffer favored upholding the required setbacks and dimensional requirements versus allowing further substandard development to occur. When there was no further testimony forthcoming, the public comment was closed. After further brief discussion, Doug Green moved to adopt the Staff analysis contained in the Staff Report as findings of fact in support of denial, and to deny the variance request for those reasons. John Sutcliffe seconded it and the motion was carried unanimously, based upon the following findings:

1. Is there another feasible method to alleviate the need for a variance, and if not, is the variance requested the minimum variance which would alleviate the hardship? How substantial is the requested variation from the requirements of the zoning ordinance? No need has been established for this variance. The variance request is to take a conforming property and render it nonconforming. There is reasonable use of the property presently, with the structure in use as an associated accessory structure to the abutting residence. This request for multiple variances seeks a 100% variation from the requirements of the relevant regulations in that the requests are uniformly contrary to the intent of the Chisago County Zoning and Shoreland regulations, as well as Minnesota Statute and Rule.

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2. Would variance approval effect a substantial change in the character of the neighborhood or result in any significant detriment to neighboring properties? Yes, approval would result in a substantial change in the character of the immediately surrounding neighborhood. Variance approval would allow the conversion of an existing garage into a permanent year round home. The garage is situated on or over the north property line, is approximately 57 feet from the OHWM of North Center Lake (not counting the patio that is 45 feet from the OHWM) and 12 feet from the Township Road right-of-way. Variance approval would allow a significant intensification of the use of this building by conversion to a residence, which will bring all of the usual accompanying activity, full time residential occupancy, traffic to and from the property, parking of one or more cars, and almost certainly another future variance request for a garage.

3. Did this landowner, or a previous owner create the need for the variance? If so, does the need for a variance arise from an owner's actions under the current law? As stated in Item #1 above in this section, there has been no "need" established for this variance, rather, there is only the stated desire to create a new nonconformity out of a conforming property. Any variance approval would be a direct result of the actions of the owner under the existing regulations.

4. Were economic conditions or circumstances cited as reasons for the variance request? Are the economic circumstances the sole reason for seeking a variance? Financial reasons were not cited as any part of the rationale for seeking this variance.

5. Do exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant ordinance have had no control? There are no unique circumstances present in this scenario which would support rendering a now-conforming land use into a nonconforming use.

6. Would literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same district under the strictly applied terms of this Ordinance? No. Zoning Staff's literal interpretation of the Ordinance provisions doesn't deny the applicant any right that is provided to other similarly properties. Literal interpretation merely prohibits exempting this particular applicant from the relevant rules and regulations that all similarly situated property owners are required to follow. Similar past requests have been denied by Staff for all of the above described reasons, but in those cases, the landowners declined to pursue a variance when advised that a Staff recommendation of denial would be forthcoming. This applicant was advised of the same concerns in this case, but decided to pursue the variance. Literal interpretation of the

Ordinances serves to further the intent and goals of the County's and the State of Minnesota's regulations concerning nonconformities, accessory structures, and protection of public waters, and to prohibit further overdevelopment of substandard lakeshore properties.

7. Will granting the variance result in allowing a use otherwise not permitted in the same district?

Although single family residences are a permitted use in this Zoning District, it could be argued that variance approval would allow a use that is otherwise not allowed by Ordinance, in that the regulations specifically prohibit conversion of garages to houses, and the purposeful rendering of a conforming land use to a nonconformity.

8. Would variance approval be materially detrimental to the purposes of this Ordinance, or to property in the same zone?

Yes. Approval of this proposal would actually require more than a dozen separate variances from the customary Zoning and Shoreland requirements that similarly situated landowners are required to follow.

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The purpose of the Zoning and Shoreland regulations is specifically to prohibit the exact activity the applicant proposes to undertake: the conversion of an accessory structure to a residence, the separation of a substandard lake lot from an abutting lake lot, the further overcrowding and overdevelopment near public waters, and the creation of a nonconformity where a conforming land use exists. Approval of the multiple requested variances would be directly contrary - and therefore materially detrimental - to the purposes of the relevant Ordinances. It would also serve as a valid precedent for future similar variance requests.

9. Does reasonable use of the property exist under the terms of this Ordinance without variance approval? If not, define "reasonable use" in the context of the immediate area, and properties in the same zone.

Yes. This property was acquired by the previous owner of the associated residence in order to construct an additional garage to serve the house. A variance was granted in the late 1980s, to allow the garage to be built closer to lake, lot line and road than the required setbacks. That is considered to be a reasonable, low intensity accessory use. Conversion of that structure originally allowed by variance to a permanent year round residence, with the attendant intensification of use is not considered reasonable, or low impact.

10. Would variance approval permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for this particular area, or permit standards lower than those required by State law?

No.

11. In light of all of the above factors, would denying a variance serve the interests of justice?

Yes. Denial of the variance would be consistent with all previous administrative denials by Staff of similar proposals, which were never pursued to the Board of Adjustment. Approval of the variance would be contrary to the intent of MN Rules, the Chisago County Zoning, Shoreland and SSTS Ordinances, and would serve as a precedent that could be legitimately cited by future variance applicants seeking a similar suspension of the customary rules.

Tara asked Mr. Keefe to affirm that he had received a copy of the findings of fact supporting denial, as cited in the Staff Report, and he acknowledged receipt of same.

ADJOURNMENT - There being no further business, the meeting was adjourned at 7:55 p.m.