

Minutes of the Todd County Board of Adjustment Meeting

February 24, 2022

Completed by: Jamie Christenson, P&Z Staff

Site Visits conducted by Adam Ossefoort and Mike Soukup on February 15, 2022.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheit, Mike Soukup, Larry Bebus, and Planning Commission Liaison Ken Hovet.

Staff members: Adam Ossefoort and Jamie Christenson

Other members of the public: Sign-in Sheet is available for viewing upon request.

Rick called the meeting to order at 6:00 p.m. Each board member introduced themselves and Rick explained the process for those attending.

Ken motioned to approve the February 24th, 2022 agenda, Mike seconded and voice vote commenced. No dissension heard and motion carried.

Bill motioned to have the January 27th, 2022 meeting minutes approved. Ken seconded the motion. Voice vote, no dissent heard. Motion carried.

AGENDA ITEM 1: Richard and Terese Margl – PID 25-0024000 – Villard Township

Request:

1. Request to reduce the ordinary high water level setback from 75 feet in Shoreland NE Zoning (Long Prairie River) to 60 feet for a water oriented accessory structure (WOAS).

Richard Margl (Rick M.) was present as the applicant.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Proposed Condition(s):

1. Structure placement must comply with parts I, iii, iv, and v of section 7.05(E) of the Todd County Planning and Zoning Ordinance.
2. Must maintain a minimum of 50% screening as viewed from the river during leaf on conditions.
3. Must comply with all other applicable federal, state, and local standards including FEMA Floodplain Regulations.

Rick M. confirmed the staff report was accurate. Rick M. shared their efforts to minimize their impact on the parcel with a woodland stewardship plan and undergrowth clearing. Rick M. stated the encroachment is closer to 12 feet instead of 15 feet. Rick M. prepared a demonstration with sting and cones to show the actual area of the structure he is requesting to be within the shore impact zone.

On-site board member report: Mike stated the parcel is flat from the house to the river. There is a 15 to 20 foot drop to the river. There are mature trees on the property. Mike reported a little more than half the structure would be inside the setback.

Correspondence received: None.

Public comment: None.

Board discussion:

Bill asked to clarify that all the structures are within the floodplain. Adam stated the structures are within the floodplain and the applicant had received a letter of map amendment before the construction of the house.

Bill asked what assurance is available to prove that current tree coverage will be maintained. Rick M. stated to the west of the property the undergrowth has been cleaned out to create denser tree growth. Rick M shared personal education with a forestry degree and efforts to maintain the wooded lot by planting 1,500 trees.

Bill asked if the applicant is willing to increase the screening from 50% to 70-80%. The applicant stated they are willing to work with the staff. Adam stated he believes the current leaf off coverage is 70%.

Bill stated the practical difficulty is sight of the river and he doesn't have enough information to support a practical difficulty for the request. Rick M. explained the dense growth of the parcel and repositioning issues.

Rick J. reviewed the difficulties of repositioning the structure and noted there isn't any supporting evidence of the claims. Rick J. asked the on-site board member if the sight line was observed and if there was any alternative locations with a sight line.

Mike stated there was a poplar tree stand that could be removed which was dying off at the top. Mike said the building could then be moved back. Adam looked up an image and pointed out the poplar trees Mike noted with the river in the backdrop.

Larry stated he is questioning how much view of the river is available with the amount of trees present with the location. Rick M. stated the foliage is up higher and the view is of the tree trunks. Rick M. stated he reviewed his property for the best sight line and this location had it.

Mike asked if there is an ordinance section available to allow tree clearing for a sight line. Adam stated there is a shoreland management section in the ordinance that does allow section to be cleared for a sight line, allowable by permit. Adam also noted trees four inches in diameter or smaller are removable without a permit.

Ken stated the aerial image appeared to have a sightline available north of the patio and inquired if it was possible for the applicant to place it in that area. Rick M. stated it was possible, however, it would require removing additional trees.

Rick called for Criteria Questions.

Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?

Board Member	Vote and Comments
Rick	Yes – He feels this footprint is small within the impact zone and doesn't see a lot of adverse effects.
Bill	Yes – His biggest concern is to maintain what we have going forward.
Mike	Yes – Agreeing with Bill's comment.
Larry	Yes
Ken	Yes – Doesn't see there will be a big impact.

Majority response- "Yes".

Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?

Board Member	Vote and Comments
Bill	No – It is in the floodplain and the practical difficulty is weak.
Mike	No
Larry	No – Agree with Bill
Ken	No
Rick J.	Yes – The variance has a small impact zone and minimizing tree removal.

Majority response- "No".

Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Board Member	Vote and Comments
Mike	Yes
Larry	Yes
Ken	Yes
Rick J.	Yes
Bill	Yes – Everything else is within the floodplain.

Majority response- "Yes".

Criteria Question #4: Is the need for a variance due to the circumstances unique to the property not created by the landowner?

Board Member	Vote and Comments
Larry	No – Not created by the property. It is created by an owner.
Ken	No
Rick J.	Yes – Variance is center around the limited line of sight which is unique to the land.
Bill	Yes – The bend in the river is a line of sight in two directions.
Mike	No

Majority response- "No".

Criteria Question #5: Will the variance maintain the essential character of the locality?

Board Member	Vote and Comments
Ken	Yes
Rick J.	Yes
Bill	Yes

Criteria Question #5: Will the variance maintain the essential character of the locality?	
Board Member	Vote and Comments
Mike	Yes
Larry	Yes

Majority response- "Yes".

Criteria Question #6: Does the need for the variance involve more than just economic considerations?	
Board Member	Vote and Comments
Rick J.	Yes – The need is around obtaining a sightline and minimizing removal of trees.
Bill	Yes – Economics doesn't factor into the sightline practical difficulty.
Mike	Yes
Larry	Yes
Ken	Yes

Majority response- "Yes".

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	Vote and Comments
Bill	Yes – Doesn't see any safety concerns and environmental concerns will be checked by the floodplain criteria.
Mike	Yes – Agree with bill.
Larry	Yes – For the reason stated.
Ken	Yes – No safety concerns and environmental concerns are hardly measureable.
Rick J.	Yes – Same as Ken stated.

Majority response- "Yes".

Summary of criteria question majority responses as follows:

#1	Yes
#2	No
#3	Yes
#4	No
#5	Yes
#6	Yes
#7	Yes

Ken made a motion to deny request, seconded by Mike.

Rick requested a roll call vote to the motion to deny.

Board Member	Vote to the motion to deny the request
Mike Soukup	Yes
Larry Bebus	Yes
Ken Hovet	Yes
Bill Berscheit	No
Rick Johnson	No

Motion carries by majority to deny the appeal for a variance based on failure to meet the criteria necessary for granting of a variance and failure to establish a practical difficulty.

AGENDA ITEM 2: Joseph Kauffman – PID 07-0026200 – Eagle Valley Township

Request:

1. Request to amend previous variance #V-2008122772 condition #4 “Site be limited to 75 Animal Units” (AU) in R-10 zoning.

Joseph Kauffman was present as the applicant with Toby Kauffman the applicant’s father.

Staff Findings: Adam & Dylan Pratt (Todd County Soil and Water Conservation District - SWCD) read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Proposed Condition(s):

1. Not applicable.

Joseph confirmed the staff report was accurate. Joseph stated he plans to build a roof over the current outside lot.

On-site Board Member Report: The farm sits on top of a hill and there is nothing to stop the water from flowing into the wetland area by road 201st Ave.

Correspondence received: None.

Public comment: None.

Board discussion:

Ken asked what animal the animal units (AU) consist of. Ken asked Joseph if was allowed to have 240 AU if he could fill up his farm. Joseph said he would never be able to maintain that many AU. Ken inquired what his desired AU would be. Joseph stated he was hoping to get to 150 animal units on the property in 5 years. Bill inquired if that was consistent with what was discussed with staff. Dylan stated that is what was discussed with SWCD.

Bill stated this request is consistent with the comprehensive plan to support, promote, and preserve agriculture.

Rick asked if the condition was removed what kind of regulations the property would be subject to. Bill stated he was on the board when the original variance was presented. Bill stated the use level needed and requested was 75 AU at the time of the original variance. Adam further clarified there are different rules for different sizes of farms and different tools are used to calculate a compliance number for discharge.

Adam noted from the Comprehensive Plan - Economic Guiding Principal #1 “Educate and inform the public that agricultural businesses have the same, if not greater potential, than other industries” and Economic Guiding Principal #4 “Promote, protect and support existing business and agriculture”.

Bill asked to clarify what options the board has for this applicant. Adam noted that the application is to amend the condition, not eliminate. Bill clarified the proposed increase is 150 AU.

Discussion on staff report.

Bill motioned to amend condition #4 as placed on the existing variance to change from 75 AU to 150 AU, Larry seconded.

Condition #4 amendment to state "Site be limited to 150 Animal Units."

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Larry Bebus	Yes
Bill Berscheit	Yes
Ken Hovet	Yes
Mike Soukup	Yes
Rick Johnson	Yes

Motion carried.

AGENDA ITEM 3: Dennis and Michele Friesen-Carper – PID 08-0076400 – Fawn Lake Township

Request:

2. Request to reduce the ordinary high water level setback from 100 feet in Shoreland RDL Zoning (Fawn Lake) to 84 feet for dwelling expansion.

Dennis & Michele were present as the applicants.

Staff Findings: Adam read the staff report. The staff report is available for viewing upon request in the Planning & Zoning Office.

Proposed Condition(s):

1. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
2. Storm water collected from the addition shall be directed away from the lake.

Dennis & Michele confirmed the staff report was accurate. Dennis shared the complication with the purchase of the property and inaccurate lot lines.

Correspondence received: None.

Public comment: None.

Board discussion:

Ken clarified the dimensions of the house and garage is 57" x 24" without a deck on the west side. Dennis confirmed and clarified the deck is not part of this application.

Ken asked for clarifications on the proposed addition is 18" x 29" and will not have a deck on the west end. Dennis confirmed. Ken inquired why the house addition extends past the existing house. Dennis explained it's to add a door to the future deck.

Ken inquired about moving the proposed addition outside the setback. The applicant explained the build design to allow for functionality of the home. Ken confirmed the deck is not part of the application. Adam clarified it will be a water oriented accessory structure as it meets the size and setback requirements.

Rick J. asked the year the applicants purchased the parcel. Applicants stated it was purchased last summer (2021). Dennis stated the structure was roughed out since 2003 and built in the wrong place. Rick J. stated we can only speculate the dwelling was built in the wrong place.

Dennis discussed neighboring structures are located across the property line.

Discussion on title insurance.

Rick J. inquired when the survey was conducted. Dennis clarified the survey was conducted after the purchase of the property. Dennis indicated the property owners to the north conducted a survey and notified them that they are in violation.

Discussion on altering the addition to go wider/closer to the sideline in order to reduce the setback request.

Rick J. stated the need for the proposed addition is reasonable, however, the addition could be pushed back from the high waterline. Rick J. reiterated the applicant submitted the request as present is a better design for usability than complying with the setback.

The applicant stated their concern with tree removal on the property and the view from the lake is not going to change.

Larry asked to clarify where the door to the deck is. Discussion ensued with different options for placement of the door.

Mike asked if the building was pushed back outside of the setback, would the applicants be able to stretch the deck across the entire front of the home. Adam stated the water oriented accessory structure has to remain unattached to the dwelling and 250 square feet or less. Discussion on options of repositioning.

Bill stated the board needs to work with the application as presented. Adam clarified the board can imposed greater setbacks as a condition.

Rick called for Criteria Questions.

Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?	
Board Member	Vote and Comments
Mike	Yes
Larry	Yes
Bill	Yes – Reasonable to expect to be able to put a living room on a structure with good flow into the existing structure. It is unreasonable to expect the property has delineated property lines.
Rick J.	Yes – Same reasons as Bill and thinks it's possible to mitigate
Ken	Yes

Majority response- "Yes".

Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?	
Board Member	Vote and Comments
Larry	Yes
Ken	Yes
Rick J.	Yes – Only if the adverse impacts are mitigated with the conditions.
Bill	Yes – Will have another proposed condition to discuss.
Mike	Yes

Majority response- "Yes".

Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?	
Board Member	Vote and Comments
Ken	Yes
Rick J.	Yes – Used as residential lakeshore use.
Bill	Yes
Mike	Yes
Larry	Yes

Majority response- "Yes".

Criteria Question #4: Is the need for a variance due to the circumstances unique to the property not created by the landowner?	
Board Member	Vote and Comments
Rick J.	No – Unfortunately the situation was created by a prior landowner.
Bill	Yes – In the last year courts have becoming more lenient on improper activities of previous property owners.
Mike	Yes – Same as Bill's statements.
Larry	Yes
Ken	Yes – Thinking of this landowner not previous ones.

Majority response- "Yes".

Criteria Question #5: Will the variance maintain the essential character of the locality?	
Board Member	Vote and Comments
Bill	Yes – The locality does have variances granted that are closer than this application and does not cause a change.
Mike	Yes

Criteria Question #5: Will the variance maintain the essential character of the locality?	
Board Member	Vote and Comments
Larry	Yes
Ken	Yes
Rick J.	Yes

Majority response- "Yes".

Criteria Question #6: Does the need for the variance involve more than just economic considerations?	
Board Member	Vote and Comments
Mike	Yes
Larry	Yes
Ken	Yes
Rick J.	Yes – The need is due to the location of the existing dwelling as improperly placed.
Bill	Yes – Economics is not a big consideration here.

Majority response- "Yes".

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	Vote and Comments
Larry	Yes
Ken	Yes – Not much for safety concerns and environmental concerns is the setback which is written as a one size fits all.
Rick J.	Yes – Doesn't foresee any safety issues only environmental issues which will be discussed with conditions.
Bill	Yes – With conditions to be placed. Recommended doing a discussion on condition prior to criteria questions.
Mike	Yes

Majority response- "Yes".

Summary of criteria question majority responses as follows:

#1	Yes
#2	Yes
#3	Yes
#4	Yes
#5	Yes
#6	Yes
#7	Yes

Bill suggested the board discuss conditions to adequately mitigate the impact of the building addition.

Adam review the two proposed conditions from the staff report. Adam explained the layout of the parcel and slope behind the bluff flows toward the road ditch. Bill asked where the water would flow once it gets to the ditch. Adam pulled up an elevations map to review on the screen.

Bill suggested a no mow zone for the bluff and inquired how much the applicants currently mow. The Dennis noted they currently don't mow. Bill explained historically the no mow zone is set 10 feet back from the bluff. Bill noted the conditions stay with the property not the current owner to ensure it is maintained moving forward.

Rick J. stated the biggest thing a shoreland property owner to maintain or restore the natural vegetation. Rick J. share information on Itasca County’s requirements on buffer zones. Discussion of the importance of buffer zones.

The board requested an addition of a no mow zone of 15’ from the top of the bluff. Discussion of tree removal in an adjacent property.

Ken asked how much screening is present. Adam stated more than 50%.

Discussion of the road ditch drainage flowing to the south. Discussion of sandy soil conditions.

Bill made a motion to grant request with the three conditions presented, seconded by Ken.

Conditions:

1. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
2. Storm water collected from the addition shall be directed away from the lake.
3. Establishment of a 15’ no mow zone landward from the top of bluff.

Rick requested a roll call vote to the motion to approve.

Board member	Vote (yes or no)
Ken Hovet	Yes
Larry Bebus	Yes
Mike Soukup	Yes
Bill Berscheit	Yes
Rick Johnson	Yes

Motion carries and appeal for a variance granted.

Adam noted on-site inspection checklist were passed out for review and adoption for the next meeting.

Rick J. shared he will be unable to attend the March meeting.

Ken motioned to adjourn and Larry seconded. Voice vote to adjourn. No dissention heard. Motion carried and meeting adjourn 7:56 PM.