

## **Minutes of the Todd County Board of Adjustment Meeting**

**May 26, 2022**

Completed by: Jamie Christenson & Sue Bertrand, P&Z Staff

Site Visits conducted by Adam Ossefoort and Bill Berscheit March 14, 2022 on the Ahlers site.  
Site visit conducted by Adam Ossefoort and Rick Johnson April 21, 2022 on the Mundahl site.  
Site visits conducted by Adam Ossefoort and Russ Vandenheuvel on May 17, 2022 on the Hollerman, Donabauer, and Faber sites.

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

Staff members: Adam Ossefoort, Sue Bertrand, 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 and etiquette.

Adam noted Item #2 on the agenda should be edited to state a 24' 3 3/8" peak height.

Applicant #1 tabled

Applicant #4 withdrawn

Russ motioned to approve the amended May 26, 2022 agenda.

Bill seconded.

Rick took a voice vote and no dissent was heard, so motioned carried.

Rick noted on page 3 of 7 in the 5<sup>th</sup> paragraph, a sentence was in-complete.

Ken motioned to have the April 28<sup>th</sup>, 2022 meeting minutes with the amendment noted above. Larry seconded the motion. Voice vote, no dissent heard. Motion carried.

### **AGENDA ITEM 1: Thomas Ahlers – PID 14-0034400 – Kandota Township**

Request(s):

1. Request to increase the total allowable roofed impervious surfaces from 15% to 17.2% to allow for a 560 square foot double garage.
2. Request to reduce the road right of way setback from 35' to 5' to allow a double garage to be built.

Thomas Ahlers requested his application be table to allow more time to gather additional information.

### **AGENDA ITEM 2: Cynthia Mundahl – PID 11-0062800 – Grey Eagle Township**

Request(s):

1. Request to reduce the ordinary high water level setback from 100' to 50' in Shoreland-RD zoning (Big Birch Lake) for a new dwelling and attached garage.

2. Request to increase the maximum dwelling height for structures not meeting all setbacks from 18' to 24' 3 3/8" in Shoreland-RD zoning (Big Birch Lake) for a new dwelling and attached garage.
3. Request to reduce the road right of way setback from 35' to 23' in Shoreland – RD zoning (Big Birch Lake) for a new dwelling and attached garage.

Cynthia Mundahl was present as the applicant.

Staff Findings: Adam read the updated request and information change since the April 28<sup>th</sup> meeting. The staff report is available for viewing upon request in the Planning & Zoning Office.

Proposed Condition(s) if approved:

1. Establishment of a 10' vegetated buffer along the shoreline. A path for dock access shall be allowed to be maintained.
2. Establishment of a stormwater retention system to account for 1,188 square feet of impervious surface based on a 10 year/24 hour rainfall.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
4. Applicant must obtain additional permitting as necessary from other governmental agencies.

Cynthia confirmed the staff report was accurate.

Adam noted, although not mentioned in the staff report, he would like to add the deviations from the standards, which Rick allowed. Adam stated the setback to the lake would be from 100' to the requested 50' which is a 50% deviation, the peak height from 18' to 24' 3 3/8ths inches would be a deviation of 34.9% and road right of way set back from 35' to 23' is a deviation of 34.3%.

Correspondence received: None.

Public comment: None.

Board discussion:

Rick stated Adam's updates addressed his concerns and questions, therefore, opened it up for the board.

Russ inquired how many cabins were beyond her, on that road, and Cynthia replied it was a semi-private road which ends at the peninsula and most cabins are way closer to the road than what she is asking. She said the lots are very shallow.

Rick noted his immediate sense upon visiting the site was overcrowding. Bill mentioned the point used to be a resort. Russ inquired about plowing in the winter to which Cynthia said the residents themselves take care of it. Mike needed to clarify if the road was private or a township road. Adam noted it is a public road privately maintained. Mike asked if it is platted and Adam stated the road was dedicated to the public in 1946. Mike asked if the government can lay claim to the road after it has been dedicated. Adam stated the township could choose to take over and maintain the road if they wanted to and Russ mentioned it would have to be brought up to township road standards.

Rick discussed how to proceed with the criteria questions, and Adam said to either address them individually or collectively as it's the boards' choice as long as the criteria questions are being addressed. The way it is set

up follows the business rules. Each person has to voice their vote on it and a majority must be met for it to be a “yes”. The board decided to address them collectively.

<b>Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Ken	Abstain
Bill	No – The primary reason is due to the placement next to shore impact zone and gives no latitude for anything in the future.
Larry	Yes – Since setbacks can’t be met due to the size of the lot.
Mike	Yes
Russ	No – Due to structure placement at the shore impact zone and too close to the road.
Rick	No – The deviations are extreme and the lot size isn’t conducive to support year-round structure. Laws allow to replace exact for exact.

Majority response- “No”.

<b>Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill	No – The comprehensive plan and state ordinances lay out clearly the substandard lots have a lack of capacity for four season homes, and that lots laid out in the 20’s and 30’s should remain three season homes or combine lots to gain the square footage needed to put a four season home on.
Rick	No – The ordinance does allow for replacement, betterment and improvement but not expansion. This variance, with the max in deviations, goes against the spirit and intent of why the laws were passed to begin with. The thought is with prohibiting expansion the non-conforming lots will hopefully disappear, someday.
Mike	No – Due to lot size being awful small.
Larry	No – Due to lot size, are you in the same foot print? Is it a three season cabin? The expansion is not being feasible.
Ken	No – This request infringes on 3 our comprehensive plans specific standards.
Russ	No – asking too much for the lot size.

Majority response- “No”.

<b>Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Larry	No
Rick	No
Russ	No
Mike	No
Ken	Yes – Being it is a cabin and living quarters, it is a reasonable use.
Bill	No – Increasing the use from seasonal to year round.

Majority response- “No”.

**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
Mike	Yes - Lot size
Russ	Yes - Lot size
Rick	Yes
Larry	Yes - Agrees with previous statements
Bill	Yes - With current standards and changing the use, I'm not sure we could even accomplish seasonal on there, let alone changing the use to year round.
Ken	Yes – with reference to lot size.

Majority response- "Yes".

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

Board Member	Vote and Comments
Rick	Yes
Russ	Yes
Mike	Yes
Ken	No – significant change in appearance
Bill	No
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
Bill	Yes – I don't see anything in regards to economics about the variance request.
Larry	Yes
Rick	Yes
Russ	Yes
Mike	Yes
Ken	Yes

Majority response- "Yes".

**Criteria Question #7: Have safety and environmental concerns been adequately addressed?**

Board Member	Vote and Comments
Russ	No – It will affect the lake and make it more crowded affect the environmental concerns of the lake.
Mike	Yes
Ken	Yes
Bill	No – Safety and environmental concerns have not been met. Water quality and preservation of the lake.
Larry	Yes
Rick	No – Same as Bill stated.

Majority response- "No".

Summary of criteria question majority responses as follows:

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

Bill motioned to deny on the motion of findings of fact, Ken seconded.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no) for the denial of the requests.</b>
Mike	Yes
Bill	Yes
Larry	Yes
Ken	Yes
Russ	Yes
Rick	Yes

Motion carried.

Rick apologized to Cynthia and stated her motion has been denied. Cynthia thanked the board.

**AGENDA ITEM 3: Dennis Hollermann – PID 06-0050700 – Burnhamville Township**

Request(s):

1. Request to reduce the ordinary high water setback from 100’ to 82’ for the construction of a three season porch.

Dennis 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) if approved:

1. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
2. Establishment of a 10’ vegetated buffer (no mow zone) along the lake frontage.

Dennis confirmed the staff report was accurate. Discussion of the meaning of the vegetative screening definition. Dennis stated they have an established no-mow zone.

Site Visit Report:

Russ was the on-site board member. The high water setback was measured at 84’ instead of 82’. Didn’t notice any erosion or run-off channel. Home owner confirmed the no mow zone area.

Russ stated it looked like it will maintain the character of the locality. No unique circumstances from the home owner. Fairly open to the north and the neighbor to the south shouldn't be affected. Didn't really have any concerns. Noted there may have been some pooling by the septic area.

Correspondence received: None.

Public comment: None.

Board discussion:

Ken inquired if the current cabin is within the 100' setback already. Ken inquired if the ground is level towards the lake and inquired if the space could be used for a raingarden to help offset impervious surface of the roof. Dennis stated it could.

Rick confirmed the proposed conditions are agreed upon by the applicant.

Russ asked if the tree next to the house would have to be removed. Dennis stated the tree in question is on the property line and would be free and clear, so no.

Rick noted the lot is extremely narrow and the cabin is within the setback currently. Rick noted if setbacks were to be met, the porch would have to be behind the building and thought it was a reasonable request to prefer the view of the lake. Rick noted it is, however, encroaching on the 100' setback and encouraged the consideration of the proposed conditions with how the raingarden, the no-mow buffer zone to protect the water quality and the 50% screening from the view of the lake can help keep it natural and pristine, to offset the impacts of the request.

Bill asked to review an aerial view of the parcel for an alternative location. Adam noted the space behind the cabin is not a significant buildable area, due to the setback from the road right of way.

Rick agreed it was a good point, as it presents the practical difficulty unique to this land.

Mike inquired what the % deviation change was. Adam noted the request was an 82' foot setback at 18% deviation, however, at the site visit, it was measured at 84' making it a 16% deviation.

<b>Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Mike	Yes
Ken	Yes
Bill	Yes – Minimal encroachment.
Rick	Yes – I see this as a minor deviation that can be mitigated with conditions.
Larry	Yes
Russ	Yes – Very minimal.

Majority response- "Yes".

<b>Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Russ	Yes
Mike	Yes
Ken	Yes
Bill	Yes – Any conditions proposed will mitigate any negative impact from the variance request.
Larry	Yes
Rick	Yes – with proposed conditions.

Majority response- “Yes”.

<b>Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Rick	Yes – very reasonable
Russ	Yes – very reasonable
Mike	Yes
Ken	Yes
Bill	Yes
Larry	Yes

Majority response- “Yes”.

<b>Criteria Question #4: Is the need for a variance due to the circumstances unique to the property not created by the landowner?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Larry	Yes
Rick	Yes
Russ	Yes – Not created by landowner
Mike	Yes
Bill	Yes
Ken	Yes

Majority response- “Yes”.

<b>Criteria Question #5: Will the variance maintain the essential character of the locality?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill	Yes –It is a low density area and this will certainly not change that.
Larry	Yes
Rick	Yes – By adding a screen porch, it isn’t going to change a whole lot.
Russ	Yes
Mike	Yes
Ken	Yes – Minimal change to appearance and use.

Majority response- “Yes”.

<b>Criteria Question #6: Does the need for the variance involve more than just economic considerations?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Russ	Yes – no economics involved
Mike	Yes

Ken	Yes
Bill	Yes
Larry	Yes
Rick	Yes -

Majority response- “Yes”.

<b>Criteria Question #7: Have safety and environmental concerns been adequately addressed?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Ken	Yes – with a third condition
Bill	Yes
Larry	Yes
Rick	Yes - With conditions
Russ	Yes – No concerns about the safety
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

Majority response –“Yes”

Mike suggested adding a condition for roof runoff from the proposed screen porch into a raingarden.

Rick noted the conditions have to be relevant to the adverse impact of that part of the house and to keep it to a minimum of capturing the rainwater for the additional screen porch area only.

Mike agreed, especially being on the lake side, the runoff from the roof would keep going.

Adam noted he added a third condition for the board to review. The proposed structure is 240 sq. ft., so it’s similar to other conditions to account for that square footage of impervious surface based on a ten year, twenty-four hour rainfall.

Mike said that’s what he would have suggested, as well.

Roll call vote commenced as follows:

Russ motioned to approve, Bill seconded with the three conditions as presented.

Conditions:

1. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
2. Establishment of a 10’ vegetated buffer (no mow zone) along the lake frontage.
3. Establishment of a water retention structure to account for 240 square feet of impervious surface based on a 10 year/ 24 hour rainfall.



<b>Board member</b>	<b>Vote (yes or no)</b>
Larry	Yes w/conditions
Ken	Yes w/conditions
Mike	Yes w/conditions
Bill	Yes w/conditions
Russ	Yes
Rick	Yes w/three conditions

Motion is carried. Variance has been granted with three conditions.

Rick extended a “Good luck with your project” to Dennis.

Dennis inquired if he will be getting something in the mail and Adam instructed Dennis that, yes, he will get a follow up from PZ on the Variance piece, and the land use permit is already submitted, so we will take care of that part on our end.

Dennis confirmed and thanked everyone.

**AGENDA ITEM 4: Jennifer Donabauer – PID 06-0050700 –Burnhanville Township**

Withdrew application.

**AGENDA ITEM 5: Jenny Faber – PID 10-0006000 –Gordon Township**

Request:

1. Request to reduce the 20' right of way setback to 14' for a water orientated accessory structure.

Jenny 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. Applicant must obtain all additional FEMA Floodplain approvals.
2. Applicant must abide by all other applicable standards including but not limited to the Minnesota Department of Natural Resources and the Sauk River Watershed District.

Jenny confirmed the staff report was accurate.

Site Report:

Russ was the onsite board member.

There was a survey, so they did not have to measure anything.

Erosion was hard to review due to high water.

There was vegetation next to the road, the rest was under water.

Will the variance maintain essential character of the locality, he thought yes.

Fairly unique, as it is mostly underwater.  
Affect the neighbors, no.  
Other concerns of increased non-conformities, some.

Correspondence received:

Public works engineer Loren Fellbaum submitted correspondence that is available upon request in the Planning & Zoning Office.

Public comment: None.

Board discussion:

Ken asked to review the image of the stakes standing in the water. He also asked if the flooded ground appears frequently. Jenny stated they live near the area, and have rarely seen it flood like that. Obviously this has been the worst year on display, so far, as there is water in the ditches all around it.

Adam mentioned the photos were taken last Tuesday, after the five inch rain we just had.

Rick noted the previous applicants were adamant that the land rarely flooded. Rick inquired as to the purpose of the request and structure that will be placed there. He stated he'd have a hard time not voting against this, like he did in 2008, if she is planning on setting it on the ground in the water. Ken noted there are images of the proposed structure, but can't imagine what would convince him to give permission to put it in the water, as this could be an every year occurrence and flooding may be even more frequent. He said flood plain areas are there for a reason.

Rick inquired if the proposed structure is within the 100 year flood plain. Adam stated it is.

Discussion on the proposed base she plans to set it on.

Rick noted the struggle with the request is that most of the lot is under water at the moment.

Adam recapped our ordinance for water oriented accessory structure: is limited to 250 sq. ft. or less with than a ten foot or less peak height, cannot have living quarters, strictly for storage. Placement may be at a reduced setback of half the distance of the regular lake setback which she meets all requirements for the structure. The board is only to consider the road right-of-way of the County road for a reduction from 20' to 14' as structures in a floodplain and FEMA area require additional measures.

Russ inquired if fill would have to be brought in. Jenny indicated yes they would, and had meetings with the DNR and also, they would need a surveyor involved for elevations.

Adam confirmed all stakes out there are from the surveyor, with additional approvals, from submitted elevation documents to the county, from the surveyor, that the base will be one foot above the floodplain level.

Jenny reviewed the survey submitted and pointed out the fill and markings on the drawing for the base.

Russ inquired what the normal water level is. Jenny noted the location of the typical water level on the images. She explained a much lower water level.

Bill noted the current conditions of the county are excessively wet and it may be hasty to judge just by the picture and the DNR is going to address the floodplain side of the requirements.

Ken said we will have to deal with an island being built for a shed.

Rick noted the purpose is to grant variances for the ordinance and he noted his concerns will fall out elsewhere, however, it's hard to get past the current conditions on the parcel.

Bill and Rick agreed to hold their focus on the road setback request.

Jenny said this is a portable, prefabricated shed.

Ken noted the request is 6' and inquired if there is a possibility to move it towards the lake. Jenny stated it is not, as it would be moving into the shore impact zone.

Ken inquired what the line was on the survey, and Jenny explained it was the ordinary high watermark setback line, and brought attention to the very limited space to put the structure, to which Ken was good with it.

<b>Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Rick	Yes – Focusing on the setback for the road, based on correspondence and where the other buildings are.
Russ	Yes – given the county engineer agreed and other sheds are closer.
Mike	Yes
Ken	Yes
Bill	Yes
Larry	Yes

Majority response- "Yes".

<b>Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill	Yes – looking at the road right of way setback
Larry	Yes – Looking at the road right of way setback
Rick	Yes – looking at safety concerns and all discussions
Russ	Yes – It will help Keep the lot clean
Mike	Yes
Ken	Yes

Majority response- "Yes".

<b>Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Mike	Yes
Ken	Yes
Bill	Yes
Larry	Yes
Rick	Yes
Russ	Yes – It's only a small shed

Majority response- "Yes".

<b>Criteria Question #4: Is the need for a variance due to the circumstances unique to the property not created by the landowner?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Bill	Yes
Larry	Yes
Rick	Yes
Russ	Yes
Mike	Yes
Ken	Yes

Majority response- "Yes".

<b>Criteria Question #5: Will the variance maintain the essential character of the locality?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Ken	Yes
Rick	Yes
Bill	Yes – there are others that are closer
Mike	Yes
Russ	Yes – other sheds are closer
Larry	Yes

Majority response- "Yes".

<b>Criteria Question #6: Does the need for the variance involve more than just economic considerations?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Mike	Yes
Russ	Yes
Rick	Yes
Larry	Yes
Bill	Yes
Ken	Yes

Majority response- "Yes".

<b>Criteria Question #7: Have safety and environmental concerns been adequately addressed?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Larry	Yes -
Rick	Yes – primarily to the written correspondence.
Russ	No – Lot is small
Mike	Yes – focusing on the road setback piece.

Ken	Yes
Bill	Yes – all environmental issues and concerns are taken out of our hands by the FEMA floodplain.

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

Ken motioned to approve, Larry seconded with the two conditions as presented.

Conditions:

1. Applicant must obtain all additional FEMA Floodplain approvals.
2. Applicant must abide by all other applicable standards including but not limited to the Minnesota Department of Natural Resources and the Sauk River Watershed District.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Mike	Yes
Russ	Yes
Bill	Yes
Larry	Yes
Ken	Yes
Rick	Yes

Motion carried.

Jenny thanked the board, and Rick told her she was free to go.

Ken motioned to adjourn and Mike seconded. Voice vote to adjourn. No dissention heard. Motion carried and meeting adjourn 7:29 PM.