

Minutes of the Todd County Board of Adjustment Meeting

July 28, 2022

Completed by: Sue Bertrand, P&Z Staff

Site Visits conducted by Adam Ossefoort and Danny Peyton on July 21st, 2022.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheit, Mike Soukup, Danny Payton and Larry Bebus.

Staff members: Adam Ossefoort and Sue Bertrand

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.

Rick started with the first order of business, which was accepting the agenda for the evening, and Adam pointed out the 4th applicant, Cindy Mundahl requested to be tabled for the time being.

Dan Peyton motioned to approve the amended agenda, Larry seconded the motion, voice vote, no dissent, motion carried, agenda approved.

Dan motioned to have the May 26th, 2022 meeting minutes approved. Mike seconded the motion, voice vote, no dissent heard. Motion carried to approve minutes.

AGENDA ITEM 1: Buell Consulting, Inc. – PID 12-0020805 – Hartford Township

Request(s):

1. Variance request to reduce the right of way setback to approximately 230' from 235th Ave. for the construction of a 400' wireless telecommunications facility in R-2 zoning.

Adam read the staff report which is on file in the Planning and Zoning Office and available upon request.

Karl Gerber and Christian Olson were present from Buell as the applicants on behalf of Parallel Towers and the property owners Aksamits.

Christian stated the provided plans were not correct, as the top of the tower is 409' tall and the distance from the edge of the right of way is 218' and 10".

Rick addressed all, and recapped how the meeting will be run and what is expected.

Danny Payton was the onsite board member for this application. Danny's onsite review report was presented to the board and is available upon request.

Written correspondence received: three.

First: Ken Hovet, chairman from Hartford Township, sent in a letter recommending denial of the variance request. As the road authority for 235th Ave., they feel the safety of the road is more important than the removal of the trees. He also included, in the correspondence, a copy of the twp. board meeting minutes when this was discussed.

Second correspondence: Mike Aksamit, the landowners where the tower will be placed, submitted a letter of support for the variance, as they do not want to remove a significant amount of the Maple trees, which they use for harvesting Maple Syrup.

Third correspondence: Josh Gosiak, design engineer, wrote they have designed the tower according to set standards, and in the highly unlikely event it should fail under high winds, it will bend first, at a designated spot, then, should it increase to failure, it would result in buckling of the legs leading to a collapse to the ground (like an accordion) and that radius does not exceed 202.5 feet at the ground level.

Public comment:

Mike Jagush 30251 235th Ave., Browerville, if it does fail, it could possibly go across the road, and we do not really want it there.

Eric Dahl, 30060 235th Ave., Browerville, this is R-2 zoning and asked if the tower was considered residential, to which Adam responded that it is an "allowed use" in residential zoning with an approved Conditional Use Permit. Eric pointed out the Aksamits first started the maple syrup harvesting last year, and won't affect the tree production, it will really affect the horse and the ATV trail they have (why move the fence?) He also had other questions directed at the board.

Bill asked Mr. Chairman permission to interject, and stated he was troubled by the approach of the public. He reconfirmed it was the public's job to show up to the meeting and present facts to either support the tower or not. It is not the time to ask questions of the board or for discovery. It is a findings-of-fact opportunity.

Rick added, if facts and data are presented, they will be addressed, and the five board members will make the decisions at the end of the process.

Mike Jagush again spoke and said he wanted to bring the boards' attention to the facts presented in reference to neighboring houses to the proposed tower placement. Felt it is misrepresented in the staff report photos, as the trees hide the closer homes. He asked for clarification on the township's correspondence.

Adam addressed Mike's request and recapped the township's request for denial due to safety issues.

Allan Parish, supervisor for Hartford township, stated they did discuss houses coming up from 235th Street, one consideration not thought of, the land owners may want to plat into lots as it is zoned residential along 235th and on 300th. It makes more sense to put this tower on the North end of property. He stated the setback of 218' 10" is a far cry from the 409' required setback to the road. Not saying any tower has crashed across the road, but one will someday.

Board discussion:

Bill stated Allen Parish and Danny made a good point, and addressed Christian why this site was chosen, as opposed to, alternate sites on the property, as well as other sites within the County?

Christian pointed out how this location worked best for the property owner, being opposed to taking out the trees that produced Maple syrup. He said they usually apply for a Variance as a last resort, as there are several locations to put towers. However, when dealing with cellular locations, whenever you move a tower you change the coverage. This is a unique location and height. It has extremely good coverage for the area especially for the city of Browerville, with maximum benefit capabilities. This was the best location for this purpose.

Danny questioned, mathematically if a ½ mile makes that much of a difference, and was answered yes, a significant difference. Dan asked how many miles of coverage will it provide? At least a couple miles, in answer from Christian, however, it varies. Different technologies, frequencies, hills, trees, height all make a difference.

Rick asked if tower companies approach the landowner with the idea.

Christian answered yes, the tower companies contact Buell, with a specific location in mind, with recommended carriers. In this case, it is First Net and AT&T and Buell picks a specific area and height.

Bill thanked Christian and added he has a cell tower on his own property and is familiar with the work, the process and all of the research and homework that is put forth before approaching a land owner.

There was discussion in reference to our Todd County Ordinance having a 1:1 setback for a tower when the engineering standards have far exceeded such a requirement, having a failure radius of 202.5 ft. for this tower height. All board members agreed it was not the right decision to grant variances because our Ordinance information is outdated. They will look at an ordinance update, and take the proper steps to update in the future, and through the right channels, however it is the 405' setback to take into consideration.

Mike Soukup wondered if there were any tower failures beyond 202'. Christian replied he did not have that data, but the standards set forth prevent that from happening.

Mike Soukup inquired about the possibility of future extension. Christian said it is very unusual to extend a tower once it is up.

Mike Soukup wanted to clarify emergency use, and Christian confirmed it will service AT&T, which is carrier friendly, First Net and that includes First Responders if they are First Net contracted.

Rick called for Criteria Questions, individually, by request.

Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?	
Board Member	Vote and Comments
Bill Berscheit	Yes, set back is not accurately set at 1:1
Rick Johnson	No, primarily the safety factor. May need to address ordinance.
Danny Peyton	yes

Larry Bebus	yes
Mike Soukup	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
Bill Berscheit	Yes, our ordinance is old
Rick Johnson	No- granting variance that significant is not an orderly way to proceed
Danny Peyton	yes
Larry Bebus	No
Mike Soukup	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
Bill Berscheit	No there are alternative sites to the North or the East
Rick Johnson	No, established to protect adjacent properties, unreasonable request
Danny Peyton	Yes, I don’t see any other way to use this tower
Larry Bebus	No
Mike Soukup	Yes

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
Bill Berscheit	No surprised by the property owner’s request
Rick Johnson	No, not convinced this is a practical difficulty, it is more economic.
Danny Peyton	No
Larry Bebus	No
Mike Soukup	No

Majority response- “No”.

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

Board Member	Vote and Comments
Bill Berscheit	Yes
Danny Peyton	Yes, we have about 7 towers in the area.
Rick Johnson	Yes, it is not unusual to see towers
Larry Bebus	No
Mike Soukup	No

Majority response- “Yes”.

Criteria Question #6: Does the need for the variance involve more than just economic considerations?

Board Member	Vote and Comments
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Bill Berscheit	Yes, there were the trees, however, it is about preference of location, and a lot of data
Rick Johnson	No, no evidence to support the tree issue
Danny Peyton	No
Larry Bebus	Yes
Mike Soukup	No

Majority response- "No".

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	Vote and Comments
Bill Berscheit	Yes
Rick Johnson	Yes
Danny Peyton	Yes, nothing heard on what effect it has on the surrounding habitat. Distances to neighboring properties mentioned.
Larry Bebus	No because of the Variance distance request.
Mike Soukup	Yes

Majority response- "yes".

Summary of criteria question majority responses as follows:

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

Due to criteria #'s 3, 4 and 6 being no, Danny motioned to deny, Larry seconded to deny as presented.

Roll call vote commenced to deny the application is as follows:

Board member	Vote (yes or no)
Bill Berscheit	yes
Rick Johnson	yes
Danny Peyton	yes
Larry Bebus	yes
Mike Soukup	yes

Motion carried to deny the variance.

The Board took a five-minute recess until 7:26 p.m.

Rick reconvened the meeting and introduced the next agenda item.

AGENDA ITEM 2: Ernest Huhta – PID 18-0050800 – Long Prairie Township

Request(s):

1. Variance request to reduce the 50' right-of-way setback from Hwy 71 to 21' for an after the fact building addition in Shoreland zoning.

Janelle Lake, stated she is a business partner and employee representing Ernest.

Adam said the appropriate step to take would be to table the application for a signature from Ernest for Janelle to represent him on this application, as we should have his authorized signature to proceed, and do not have that.

Motion by Bill to table until August 25th so we may obtain a signature, seconded by Mike, voice vote, no dissent heard.

Motion carried.

AGENDA ITEM 3: – Jeffrey & Michelle Anderson - PID 24-0043400 & 24-0043300 – Turtle Creek Township

1. Variance request to reduce the 35' road right-of-way setback to 30' for new cabin construction in Shoreland zoning.

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

Proposed Condition(s): None.

Rick asked the Andersons if the staff report was accurate and they said yes.

Applicant asked about the road and what it is, and Adam replied a privately maintained road.

Danny Peyton was the onsite board member for this application. Danny presented his onsite report to the board. The report is available for review upon request.

Written Correspondence: none

Public comments: none

Board discussion:

Rick allowed the applicants to reveal a set of house plans to clarify house placement, to which Rick thanked them.

Rick commended their efforts to remove non-conformities and make the lake setback a priority.

Bill questioned if they should put "combining lots" as a condition and any further erosion control measures needed to which Adam responded it is already in progress for combining lots and explained environmental

concerns have been met as far as erosion control measures, only the road right of way setback should be addressed.

The Andersons added they plan on replacing trees on the lot.

Rick said a good reference for shoreland best practices is to talk to County staff and found the DNR's website helpful.

Bill made a motion to grant the variance without going through the criteria questions. Seconded by Danny, as he saw 100% positive results on site.

Roll call vote as follows:

Mike Soukup - yes
Danny Peyton -yes
Larry Bebus -yes
Bill Berscheit -yes
Rick Johnson -yes

Rick announced to the Anderson's their variance request has been granted, and he wished them good luck.

Mike Soukup asked if we should address an update to the ordinance that refers to the tower setback distance and notify the proper departments with Bill supporting the direction.

Adam said there is a process for amending ordinances, and we may certainly have a discussion and post it on the agenda.

Rick inquired who initiates the discussion, and Adam responded with the three ways to amend an ordinance.

It may be initiated by:

1. County Board
2. Planning Commission
3. By application from the public

It could be brought up to a work session to have a discussion on it and Rick could share it with the Board to see if it is something they would like to pursue, then, go through the normal process.

Rick requested to have it added to the agenda there be discussion around the communication towers' setbacks to the road right of ways.

Motion by Larry to adjourn the meeting, seconded by Bill, voice vote, no dissent heard, motioned carried.

Meeting was adjourned at 8:00 pm.