

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

**September 22, 2022**

Completed by: Sue Bertrand, P&Z Staff

Site Visits conducted by Adam Ossefoort and Mike Soukup on September 16<sup>th</sup>, 2022.

Meeting attended by board members: Chair Rick Johnson, Mike Soukup, Danny Payton, Russ Vandenheuvel, alternate Larry Bebus and Planning Commission Liaison Ken Hovet.

Staff members: Adam Ossefoort, Sue Bertrand and Kevin McKelvey

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 asked for Agenda approval to which Ken made the motion and Russ seconded it.

Voice vote, with no dissention heard, to approve the agenda.

Danny Peyton motioned to have the August 25<sup>th</sup>, 2022 BOA meeting minutes approved, Mike Soukup seconded the motion. Voice vote to approve, no dissent heard. Motion carried.

Introduction of the meeting process and etiquette by Rick.

### **AGENDA ITEM 1: Rohde's Midway Gas Bar & Grill (Bruce Rohde): – PID 21-0020901 – Round Prairie Township in Commercial Zoning.**

Request:

1. To reduce the 100' right-of-way setback from Hwy 71 to 80' for building addition in Commercial zoning.

Bruce 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. None.

Bruce confirmed the staff report was accurate and stated he was in the process of going with Marathon Gas, a brand that is one of the "top" in the Nation. He will have new pumps, redo the canopy and put LED lights up. To go along with a sharper look and the updates, he would like to separate the bar and grill from the "C" (convenience) store. He does plan to expand the off sale, however, he stated it's been brutal trying to find and keep help, and hopes to lease the bar out, and still run the gas station for income.

Mike went through his onsite observations. These can be found on file, and available for review in the Planning and Zoning Office, upon request.

Correspondence received: Yes, the DOT had reviewed the application and had four questions.

1. Will there be any changes to the driveway access? (None)
2. Will the variance measurement be from the East ROW line of Hwy. 71? (Yes)
3. Is the canopy included in the setback distance or will it be affected or moved with the building expansion? (will remain as exists with no changes)
4. Will there be any change to the existing ditch grass area to the West of the canopy and pumps? (No)

DOT thanked us for the quick turn-around and did not see any issues from MN-DOT.

Public comment: None and no one on the zoom call.

Board discussion:

Russ had two questions: He asked of Bruce, if the canopy will be changing at all, to which Bruce answered, no, only with the name change and a new look. Russ also asked of staff if there were any impervious surface issues for this business to which Adam informed him there are none required in Commercial Zoning.

Ken inquired how big the addition will be, and Bruce answered fourteen feet to the South, and the length of the building which is 70' feet or 980 sq. ft. all together.

Ken clarified that only the West 20' will be in the setback area.

Bruce mentioned the part encroaching is only 400 some square feet.

Rick asked for clarity on the "minimum request", and questioned Bruce if he was not able to go to the East with his addition or if it was not practical, and what his reasoning was.

Bruce mentioned there is a possibility, however he is going for a more uniform or square look to go with the Marathon floorplan, and is trying to separate the C-store from the off sale. He may have one main entrance but must have a separate door for the off sale and a separate for the C-store and that is where he needs more room, thus the need for the variance.

Ken added that it is fair to say it becomes much more valuable to make the addition towards the front, as you need retail space with visibility, and Bruce agreed. Bruce added his goal is a U-shaped counter where two people could run it.

Danny needed clarification on the expansion, and recapped it is the "C" store expansion to which Bruce agreed. Bruce added one main door to come in, C-store to the left and the off sale to the right.

Bruce stated he must figure out extra freezer space for the bar so he can rent that out, and put a couple more people in business. Bruce also stated he would be available to supervise, yet concentrate on running the C-store.

Rick questioned staff about the ROW of Hwy 71, if it had changed to create these non-conformities.

Adam said the building was built in 1970 and Zoning regulation didn't expand outside of shoreland until after 1976 and very likely, in 1977 there were new regulations, so this has become a legal non-conformity.

Rick moved to the criteria questions 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
Mike Soukup	Yes
Ken Hovet	Yes
Rick Johnson	Yes
Danny Peyton	Yes
Russ Vandenhuevel	Yes
Larry Bebus	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 Bebus	Yes
Mike Soukup	Yes
Ken Hovet	Yes
Danny Peyton	Yes
Russ Vandenhuevel	Yes
Rick Johnson	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 Hovet	Yes
Rick Johnson	Yes, not unreasonable considering the facts and circumstances.
Mike Soukup	Yes
Danny Peyton	Yes
Russ Vandenhuevel	Yes, very reasonable
Larry Bebus	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
Danny Peyton	Not created by the landowner as it was built around 1070, requesting the addition to be even with the existing building and it would create a difficulty in controlling the pumps if the addition was not where requested, so Yes.
Rick Johnson	Yes, situation was created due to ordinances being adopted after the building was built and also a reasonable request for several good reasons stated.
Russ Vandenhuevel	Yes, since the building was already there.
Larry Bebus	Yes, since the building was built in the 1970's.
Ken Hovet	Yes, for the same reason.
Mike Soukup	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>
Rick Johnson	Yes
Danny Peyton	Yes, upgrades only, will not change character overall.
Russ Vandenhuevel	Yes, will maintain the essential character.
Larry Bebus	Yes
Ken Hovet	Yes
Mike Soukup	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>
Russ Vandenhuevel	Yes, not for economic reasons.
Larry Bebus	Yes
Rick Johnson	Yes, much more than economic reasons
Danny Peyton	Yes
Mike Soukup	Yes
Ken Hovet	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>
Mike Soukup	Yes
Ken Hovet	Yes
Rick Johnson	Yes, especially after consideration from MN-DOT they've been addressed.
Danny Peyton	Yes, Commercial area, no additional run-off creating any erosion issue and with all considered.
Russ Vandenhuevel	Yes
Larry Bebus	Yes, reviewed and blessed by the DOT.

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

Rick asked for a motion from the board.

Ken motioned to approve, Russ seconded with no conditions as presented.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Larry Bebus	Yes
Ken Hovet	Yes

Danny Peyton	Yes
Russ Vandenhuevel	Yes
Mike Soukup	Yes
Rick Johnson	Yes

Motion carried, your appeal for the variance has been granted. Thank you.

**AGENDA ITEM 2: William and Renee Lieder: – PID 11-0028900 – Grey Eagle Township in RD shoreland Zoning.**

Request:

1. To increase the maximum impervious surface for roof coverage from 15% to 20% in Recreational Development 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):

1. Removal of 753 square feet of gravel surface as proposed in the application.
2. Installation of a rain garden or similar water retention structure to collect 101 cubic feet (755 gallons) of storm water.

William was present as the applicant confirmed the staff report was accurate, however, he stated a little deceiving on parts of it. Total requested is a 24' x 28' garage, so the impervious surface goes down from 33% to 31% coverage.

Adam confirmed the request for 20% is accurate, for max roof coverage.

William mentioned they were full time residence and thanked the board for their consideration, and stated the whole time they have lived there, they have not owned a garage, and they appreciated Adam and Kevin coming out to help them with this.

Mike went through his onsite observations and this report is available upon request in the Planning and Zoning Office, for review.

Correspondence received: Yes, Adam read the e-mail sent by Steven Thill. This letter may be read on file in the Planning and Zoning Office.

Public comment: None

Board discussion:

Russ asked about the septic system placement and William mentioned there is a design on file, to which Adam confirmed there was an Administrative Variance design submitted, in preparation for this application, that he approved.

Russ also asked if the area of gravel to be taken out could be pointed out to which William pointed to the area from the staff report photos.

Ken noticed the driveway to be removed, and asked about access to the propane tank at the house and was assured by William they have hoses long enough so LP fill will not be a problem.

Rick needed clarification, as he noticed the garage will be on a slope away from the lake and asked William about the proposed rain garden to which William confirmed it would only help infiltrate any run-off.

Ken asked to see the corrected percentages of impervious surface coverage.

Rick asked Adam to clarify the actual request.

Adam stated what they have is a legal non-conformity with over impervious surface coverage, however, the total impervious surface coverage is going down after the proposed changes of removing the driveway and adding the new garage. Only the roof surface total, including proposed garage is the area for the variance request as it is exceeding the allowed 15%. One does not need a Variance if they are coming more into conformance from a legal nonconformity which they are, as far as total impervious surface coverage goes.

Rick asked the board to go through the criteria questions.

<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 Soukup	Yes
Ken Hovet	Yes
Rick Johnson	Yes, because of the mitigating conditions the applicants are willing to do.
Danny Peyton	Yes
Russ Vandenhuevel	Yes, reducing the total, so yes.
Larry Bebus	Yes, reducing the total.

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>
Mike Soukup	Yes
Ken Hovet	Yes
Rick Johnson	Yes
Danny Peyton	Protecting the water... on his plan there is a reduction, so yes.
Larry Bebus	Yes
Russ Vandenhuevel	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>
Ken Hovet	Yes, building a garage is a reasonable use.

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

Rick Johnson	Yes, the size is not unusually large and having a garage on a residence is a reasonable request.
Danny Peyton	Yes, not oversized.
Russ Vandenhuevel	Yes, very reasonable request.
Larry Bebus	Yes
Mike Soukup	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
Danny Peyton	Yes – he did not create his undersized lot
Rick Johnson	Yes – We have a non-conforming lake lot that is just simply small, it is not an unreasonable request. It is very well thought out and very well planned.
Ken Hovet	Yes, same reasons.
Mike Soukup	Yes
Russ Vandenhuevel	Yes
Larry Bebus	Yes

Majority response- "Yes".

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

Board Member	Vote and Comments
Danny Peyton	Yes-way overbuilt and wish we could make the lots wider.
Rick Johnson	Yes, familiar with that stretch of road
Mike Soukup	Yes
Ken Hovet	Yes – Very little of new construction will be visible.
Russ Vandenhuevel	Yes
Larry Bebus	Yes

Majority response- "Yes".

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

Board Member	Vote and Comments
Russ Vandenhuevel	Yes
Larry Bebus	Yes
Mike Soukup	Yes
Ken Hovet	Yes
Rick Johnson	Yes
Danny Peyton	Yes

Majority response- "Yes".

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

Board Member	Vote and Comments
Larry Bebus	Yes – With the rain garden and garage draining away from the lake
Rick Johnson	Yes-for the same reasons.

Danny Peyton	Yes- We didn't go far, but a reduction percentage here, a percentage there in the right direction is a yes.
Russ Vandenhuevel	Yes
Mike Soukup	Yes
Ken Hovet	Yes

Majority response- "Yes".

Adam asked the board if he could adjust his proposed conditions to reflect the impervious percentage correction and the board agreed. Mike Soukup motioned to approve, Ken seconded with the two conditions as corrected.

Conditions:

1. Removal of 753 square feet of gravel surface as proposed in the application.
2. Installation of a rain garden or similar water retention structure to collect 5% impervious surface runoff.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Russ Vandenhuevel	Yes
Ken Hovet	Yes
Larry Bebus	Yes
Rick Johnson	Yes
Mike Soukup	Yes
Danny Peyton	Yes

Rick announced the motion carried and the variance request has been granted. He wished the applicants good luck with their project. They, in turn, thanked the board.

Rick shared his experience at the past training session, where he took away a lot of good information. Rick highlighting two points of interest. One criteria question, in particular, being the plight of the landowner must be unique to the property not created by the landowner... which he explained means "self-imposed" runs with the land, and includes prior land owners. Ken agreed with that, adding, when you buy a piece of land you can be buying an accumulation of self-imposed hardships that are now the current land owners.

Rick's other point he shared was the Board of Adjustment has the right to define the "Character of the Locality"

Ken mentioned an example of a case where there were different codes for different associations around a large lake and each code had its' own "character", so you may have to narrow it down to a smaller locality, not the whole lake.

Ken agreed it was a good session.

Russ motioned to adjourn the meeting with a second from Danny, so Rick adjourned the meeting at 7:09 PM.