

Minutes of the Todd County Board of Adjustment Meeting

October 27th, 2022

Completed by: Sue Bertrand, P&Z Staff

Site Visits conducted by Adam Ossefoort and Russ Vandenhuevel on 10-19-2022.

Meeting attended by board members: Vice Chair Bill Berscheid, Mike Soukup, Russ Vandenhuevel, Larry Bebus, Danny Peyton and Planning Commission Liaison Ken Hovet.

Staff members: Adam Ossefoort and Sue Bertrand

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

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

Russ motioned to have the September 22, 2022 meeting minutes approved. Ken seconded the motion. Voice vote, no dissent heard. Motion carried.

Bill asked for approval of the agenda.

Motion from Danny to approve the agenda and Mike seconded. Voice vote, no dissent heard. Motion carried.

AGENDA ITEM 1: Bruce Brotten – PID 15-0077600 – Leslie Township

Request:

1. After the fact variance request to reduce the 75' ordinary high-water setback to 64' for building addition in General 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 Conditions:

1. Unpermitted structure must be permitted and paid at after-the-fact rates of 2 times the permitting fee.
2. Establishment of a 10' vegetated buffer (no mow zone) along the lake frontage.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions

Bruce and Patricia were present as the applicant. Bruce stated the staff report was a very good job, very thorough, and confirmed it was accurate.

Russ went over his site visit findings and these may be reviewed upon request in the Planning and zoning office.

Public comment: None

Correspondence received: Yes, Adam read an e-mail from Bob & Peg Fortmann and also from John R. with SRWD. These letters may be viewed in full, in the Planning Zoning Office, upon request.

Bill said he appreciated the SRWD comments.

Board discussion: Danny inquired if there were any rain gutters to which Russ said not on the addition, however, he didn't feel the water would run toward the lake. Also, Danny pointed out they, as a board, have lost ground with trying to protect the lake and really wanted to push with #2 condition of the ten-foot no mow buffer down by the lake.

Mike asked what Variance was applied for in the past, both Bruce and Patricia explained the past variance.

Larry asked if there were any conditions back then and Bruce said yes, however the requested rain gutters were being torn up from the nearby tree branches, so instead, they planted extra plants (tall grasses and Hosta's) to catch roof run-off and have rain containers (buckets) to collect water.

Bill pointed out the patio was denied on the first Variance (2017).

Ken asked for clarification on the size of the addition (28' x 16'), a little less than.

Bruce stated he thought it would be small enough that he would not need a permit, and apologized.

Russ asked about the tall grass, as he couldn't tell where it was. Bruce and Patricia pointed out the area on the overhead, said the hostas go all around the cabin and didn't doubt it is hard to tell because of the fall season and the leaves dying already.

Mike asked if the roof run-off hits the cement, and Bruce answered that it does, then goes back to the tall grasses by the house. Mike also asked if any excess water runs in any certain direction and Bruce answered it is flat around there so it doesn't run anywhere, just sits there.

Russ asked staff, if the conditions were not met the last Variance granted, were we even be able to address a new Variance?

Adam responded it would not halt their considering this Variance request, however, more conditions may be added if this one was to be granted, that address the old conditions.

Bill pointed out the effort for controlling water runoff.

Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?	
Board Member	Vote and Comments
Dan	Yes, the look on site is OK.
Ken	No, the official control is not being followed.
Russ	Yes, looks good in that spot and water runs away from the lake.
Mike	Yes
Larry	Yes

Bill	No, I am looking at the numbered conditions, and explained over the years they have had to see 3-season cabins turning into all season cabins and felt instead of combining small lots to make them more conforming, we are moving away from the intent.
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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
Mike	Yes.
Russ	No. Supports the watershed letter from Jon.
Larry	Yes
Bill	No.
Dan	Yes
Ken	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	Yes
Dan	Yes
Ken	Yes
Russ	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
Larry	No,
Bill	No, here we are, adding another addition.
Dan	No, the only thing he sees is created by the landowner.
Ken	No
Russ	No, I think it was created by the landowner.
Mike	No

Majority response- "No".

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

Majority response- "Yes".

Criteria Question #6: Does the need for the variance involve more than just economic considerations?	
Board Member	Vote and Comments
Ken	Yes
Russ	Yes
Ike	Yes
Larry	Yes
Bill	Yes
Dan	Yes

Majority response- "Yes".

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	Vote and Comments
Russ	Yes
Mike	No, due to the close proximity of the lake.
Larry	No
Bill	No, the conditions from the last Variance are not being met.
Dan	No, rain gutters are missing for protecting the water.
Ken	No, we could make this a rain garden, designed to be effective.

Majority response- "No".

Summary of criteria question majority responses as follows:

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

After-the-Fact Question #1: Was there any attempt to comply with the applicable official controls?	
Board Member	Vote and Comments
Ken	No
Bill	No
Larry	No
Mike	No
Russ	No
Danny	No

Majority response- No

After-the-Fact Question #2: Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?	
Board Member	Vote and Comments
Bill	No, as it relates to essential value, this is not a dollar amount.
Russ	Yes
Mike	Yes
Larry	Yes

Danny	Yes
Ken	Yes

Majority response- Yes

After-the Fact Question #3: Did the applicant complete the work before being informed of the violation of applicable official controls?

Board Member	Vote and Comments
Larry	No
Danny	Yes
Russ	Yes
Mike	Yes, but stated he did not have the exact dates of completion.
Ken	Can't answer.
Bill	No.

Majority response- Yes

After-the-Fact Question #4: Are there similar structures in the area?

Board Member	Vote and Comments
Mike	Yes
Russ	Yes
Ken	Yes
Larry	Yes
Danny	Yes, it is a heavily developed area.
Bill	Yes, lacking any evidence to the contrary.

Majority response-Yes

After-the Fact Question #5: Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?

Bill	No, he understood why they didn't go with the rain gutters, however, he felt it should have been communicated with staff on the past variance application, and to go ahead and construct after the fact addition, represents not acting in good faith.
Russ	No, as they knew they needed a permit and didn't get one.
Mike	No
Ken	No
Larry	No
Danny	No, lost my faith back in 2017, as the previous variance conditions have not been complete.

Majority response- No

After-the-fact Question #6: Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?

Board Member	Vote and Comments
Bill	No. I would agree with Ken; however, the building of the structure is a loss to the County. We have water treatment systems in place, when implemented, significantly improve the water quality of the lake.
Danny	No, there is no extreme issue if removed.
Ken	Yes, didn't understand the great County benefit to removing it, however on the applicant's side he understood it would be a lot

	more work. Thought maybe imposing more conditions to mitigate keeping it.
Russ	Yes, agreed with Ken, the County would not benefit.
Mike	No
Larry	No

Majority response- No

Summary of After-the-fact criteria questions majority responses as follows:

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

Bill asked if there was any further discussion.

Russ asked when this addition built, and was answered by Bruce, this summer, however, when Kevin came out and told him to stop working, Bruce said he complied and stopped working on it.

Ken added he would like to amend his comments regarding the applicants acting in good faith. He thinks they are trying to control the water, their eve-troughs failed, they didn't just give it up. Feels if they work with the county they can come to a solution and come up with a designed water garden that can work. Will take extra work, but thought it would get done.

Bill stated the board had a majority "no" on multiple questions in both the Criteria questions and the After-The Fact questions. Stated the State requires a denial if the State sees a majority "no", there would be a denial of the variance request, so we have to choose a path forward.

Dan asked for Adam's input as to seeing majority "No's" does this mean an absolute removal, or is there leeway to granting this with heavy conditions to further protecting the water.

Adam reminded all, there must be a majority "yes" to all Criteria questions and found #4 and #7 were not met. The After-the Fact questions are set forth to aid in the decision-making process, but the Criteria questions must be majority "yes".

Dan motioned to deny the variance request due to the questions answered, Larry seconded.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Mike	Yes
Bill	Yes
Larry	Yes
Ken	Yes
Russ	Yes

Danny	Yes
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Bill stated the motion carried to deny the variance request and apologized to Bruce and Patricia, and hoped they understood the boards position. He suggested to work with Staff, and clarified they are to meet outside of tonight's meeting to go over their next steps, and thanked them.

Patricia asked for clarification on whether or not they had to tear down the addition, to which Adam suggested they make an appointment to discuss their options outside of tonight's meeting, and handed Patricia his P & Z card and told her to call to set that up during normal business hours.

Bruce thanked everyone for their time and said he realized it was very stressful for all involved and thanked the board again, for coming to do their job.

Bill asked for a short break and all agreed.

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

Request(s):

1. Variance request to reduce the ordinary high-water setback from 100' to 73' for an attached garage in Recreational Development Shoreland Zoning
2. Variance request to reduce the road right-of-way setback from 35' to 28' for an attached garage in Recreational Development Shoreland zoning.

Cynthia 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:

1. Collection of 197 cubic feet of storm water run-off based on a 10 year – 24 hours rainfall event.
2. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.

Bill pointed out a miscalculation in the staff report that Adam noticed, as well, and amended the percentage from 7% deviation to 20% deviation from the standard ROW setback, and corrected it in his staff report.

Cynthia confirmed the staff report was accurate.

Russ went over his site visit findings. These findings may be viewed in full upon request in the Planning & Zoning Office.

Correspondence received: One piece, and Adam read the e-mail letter from SRWD that was addressed to Cynthia's project. This letter is on file and may be reviewed in full on file in the Planning and Zoning office.

Bill thanked Adam and Jon from SRWD for submitting his correspondence.

Public comment: No.

Board discussion:

Cynthia added details on how limited the lot was for any other placement of the garage without encroaching on the septic system and also explained the retention tank for water run-off, she was still researching.

Dan, questioned if Jon was in the meeting. Adam informed.

Bill was wondering if the buildable area was laid out in any of the pictures or on paper and invited board discussion.

Adam said, there is no other place to build meeting all setbacks and clarified the setbacks overlap.

Dan asked for clarification on the garage size and Cynthia stated 16' x 22'.

Ken asked for clarification on the 50' distance and Cynthia explained she placed it where is placing it so as to not block any view. Would rather remove the shed and alleviate the storage problem. She stated she is trying to do the best with what she has to work with.

Ken asked what the difference was from the last Variance request and Cynthia stated she is now under the impervious max, and the height max, as the garage plan is no longer under the house it is placed on the road side of the house.

Bill addressed Staff and asked for clarification on what is being proposed. We are removing everything and starting over is how he understands it, to which Adam confirmed he was right.

Adam quoted the ordinance states it has the ability to remain as a legal non-conformity and may be replaced exact for exact.

Danny said he was trying to grasp the idea of water control offsetting. With this application, he is asking if this is improving the situation.

Cynthia said no more impervious is being added, and she is trying to improve the look of it as a lot of her things could be stored inside instead of all about the lot, she will not be building the driveway up, the ground is mostly clay and they will just continue to drive on the grass to get to the garage. She will be adding gutters around the whole house and directing it to the underground collection tank.

Adam explained his condition of #1 and said his 197 Cubic feet is based on a 10 year – 24 hours rainfall event.

Mike asked about the water when collected, how she is going to maintain the system.

Cynthia said she is still researching, she could install one that slowly leaches into the ground or she could pump it out of the collection tank and water her lawn during the dry season, or let her neighbors use it. She wanted

to make sure the board knew she is working on mitigating for the lack of rain gardens as she said she thought the gardens would not be enough.

Russ said a 16' x 22' garage would be a little more than double than the shed being removed.

Ken said it is pretty straight forward.

Danny said he was good.

Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?	
Board Member	Vote and Comments
Ken	Yes, the official control deals with water run-off to the lake and felt this has been mitigated with the conditions.
Bill	Yes
Danny	Yes
Mike	Yes
Russ	Yes
Larry	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	No, if you look at all the setbacks, they overlap, and we are adding to the exact for exact.
Russ	Yes, Russ, she is going to try to improve her lot.
Mike	Yes
Larry	Yes
Ken	Yes
Danny	No, there is no square foot of buildable space, and have a hard time granting a request to put two pounds of apples in a bushel basket that doesn't exist, too much stuff in a small lot.

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
Larry	Yes
Danny	Yes
Russ	Yes
Mike	Yes
Ken	Yes, it is reasonable to have a garage.
Bill	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
Mike	Yes
Russ	Yes
Ken	Yes
Larry	No.
Bill	No, he is not sure this an overriding practical difficulty.
Danny	No, unique in setbacks but asking for too much for no space.

Majority response-Yes

Criteria Question #5: Will the variance maintain the essential character of the locality?	
Board Member	Vote and Comments
Danny	No, for the same reasons, overall, too much.
Russ	Yes
Mike	Yes
Ken	Yes
Larry	Yes
Bill	Yes, small and reasonable and people are coming up with creative ways to have a garage in this area.

Majority response- Yes

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

Majority response- Yes

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	Vote and Comments
Russ	Yes, not over impervious, and has covered the run-off issue.
Mike	Yes
Danny	No, too much building on a small lot.
Ken	Ken
Larry	Yes, with the holding pond measures to catch run-off water.
Bill	No, even though the BOA may only address the application at hand, feels the environmental concerns on the entire lot have not been addressed.

Majority response- Yes

Ken made a motion to approve with the conditions in Staff report, seconded by Russ.

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

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Mike	Yes
Bill	No
Larry	Yes
Ken	Yes
Russ	Yes
Danny	No

Bill congratulated Cynthia that the motion carried to approve variance application with conditions:

1. Collection of 197 cubic feet of storm water run-off based on a 10 year – 24 hours rainfall event.
2. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
3. Applicant must obtain additional permitting as required from other agencies including but not limited to the Sauk River Watershed District.

Ken asked about the next BOA meeting, and Adam said it will be held the Thursday before Thanksgiving, and the Christmas month will be back to normal.

Adam also mentioned there is another opportunity for more training in December if anyone is interested to which Bill said if it is in December, it will not work for him.

Dan motioned to adjourn the meeting, Mike seconded, with a voice vote, no dissent, motion carried to adjourn at 7:39 pm.