

Minutes of the Todd County Board of Adjustment Meeting

November 17th, 2022

Completed by: Sue Bertrand, P&Z Staff

Site Visits conducted by Kevin McKelvey and Rick Johnson on November 08, 2022.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheid, Mike Soukup, Dan Payton and Planning Commission Liaison Ken Hovet.

Staff members: Kevin McKelvey, Sue Bertrand and on the zoom call, Adam Ossefoort.

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 made a motion to approve the agenda and Mike seconded. Voice vote. No dissent heard. Motion carried.

Rick abstained from voting on the minutes as he was not there at the Oct. 27th mtg.

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

Introduction of the meeting process and etiquette by Rick.

AGENDA ITEM 1: George Sutton – PID 24-0000100 – Turtle Creek Township

Request:

1. Variance request to reduce the ordinary high-water mark setback from 150' to 102' for dwelling addition in Natural Environment Shoreland Zoning.

George was present as the applicant.

Staff Findings: Kevin 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 a 15' vegetated buffer along the shoreline of the lake downslope from the structure.
2. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.

George confirmed the staff report was accurate, and did not want to add anything.

Rick read the onsite report which is available upon request in the Planning & Zoning Office.

Correspondence received: None.

Public comment: None.

George mentioned he tried to mark it accurately, and apologized for not being present for the site visit. He added they lost a lot of trees the year before last, by a tornado and have done extensive work trying to replant and build it back up. Very different landscape now than what it used to be. George stated he wanted to point out, he was not able to build one of the previous variance structures, the 264 square foot structure as that was the year of the storm and he didn't get to it.

Board discussion:

Ken asked for clarification where the screen porch will be, as he noticed there was a space between the house and the covered garage area as shown in the sketch provided by applicant.

George explained right off the house, on top of the existing underground grass covered garage.

Ken asked how big the screen porch is supposed to be, to which George stated 200 sq. ft., and Ken asked specifically, what dimensions for the structure, to which George did not give him, stating he was going to try and re-use part of the structure that was damaged in the storm.

Bill stated he was on the board for the 2005 Variance request for the garage, and the earthen roof was a significant feature to appeal to the board at that time, as the roof would eliminate any run off for the used surface area. Bill stated we are being asked to take a step back from that, and stated he struggles with this approach.

Rick commented with the application before us, we do not have the same measurement as the request.

George said he measured from right off the corner of the structure to the lake and doesn't understand how it can be off 10' but stated he could have made a mistake; however, it was not his intention.

Rick stated that it is still a concern of his.

Kevin asked to comment and stated that Adam, George and himself measured from the lake through the rough and came up with the 102 feet prior to George applying.

Adam offered a couple options: to move forward with 102 feet, as requested, and Mr. Sutton would be restricted to that 102 feet and adjust his plans accordingly or the item can be tabled and we can go measure, once again, more accurately, get in on the December meeting and notice it appropriately, because the only decision that can be made tonight is on the 102-foot request that was noticed for the application.

Rick asked what George would like to do.

George stated he thought he was confirming what was originally established. The sod roof was a good roof idea and solution. He also stated he wouldn't be here if it wasn't for the tornado as it affected his whole site and how to approach it now. They would like to have a screen porch back. When he asked staff to come out,

he was wondering where the most reasonable place to put a screen porch would be. He stated this seemed to be the least intrusive place to propose to do it.

Rick suggested this be tabled.

Dan explained to George the 200 square foot structure can be varied in different ways, without an exact measurement of the dimensions of the structure to measure from. It would be restricted to 102-foot from the ordinary high-water level.

Rick said he was comfortable moving forward now. All he wanted to say is he could not validate the 102 feet when they were out there. He came up with 94 feet and he cannot explain the discrepancy.

Mike said he has a hard time moving forward as we do not have the facts.

Ken stated, we are looking at no more than 200 sq. ft. structure, no closer than 102 feet from the ordinary high-water mark.

Rick confirmed, if we put it to a vote, that is what it would be.

George offered to present a better sketch on what he would propose to do with more specifics and remeasure. He stated he would rather get it right, than be mistaken.

Rick confirmed with Adam that the board could just table the item.

Adam said if George agrees, we can have him sign an extension form to grant the board more time, if it is tabled.

Adam said both staff and a board member will go out again and remeasure.

Motion to table by Ken seconded by Dan. Voice vote. No dissent heard. Motion carried.

Rick wanted to make it clear what his expectations were. That he will leave it up to staff to work with George and make a final determination on what the setback is going to be.

Kevin pointed out the responsibility is of the applicant, if they want to have a Surveyor come that is always an option, or Hydrologist, DNR or a third party to establish the ordinary high, and stated there may be less discrepancy.

AGENDA ITEM 2: David D. Worden Jr. – PID 25-0012200 – Villard Township

Request:

1. Variance request to reduce the road right-of-way setback from 100' to 43' for shop/pole barn addition in Commercial Zoning.

David was present as the applicant.

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

Proposed Condition(s): None

David confirmed the staff report was accurate, the property is long and skinny
The 100' ROW setback nearly overlaps the rear yard setbacks.

Rick read the onsite report and this is available for viewing upon request in the Planning & Zoning Office.

Correspondence received: None.

Public comment: None

Board discussion:

Dan and Bill requested clarification on setbacks.

Kevin pulled up the Todd County GIS and demonstrated the Zoning district of Commercial area and how it pertains to the 100' setbacks from Sunset Loop and showed, using the measuring tool, the distance of the setbacks (side/rear yard setbacks are 50' if adjacent to residential). He reminded all, the disclaimer: these measurements are not 100% accurate.

Bill clarified, if measuring from the center-line, the setback is closer to 135'; 100' from the edge of the road right-of-way.

Rick also pointed out the septic system is between the rear property line and the rear of the proposed structure.

Dan stated the existing structure is not quite parallel to the road, so the proposed would be a little closer than the existing, and asked how much he was adding on to the existing.

There was in depth discussion by all, on the dimensions of the proposed structure and how it will sit in relation to the existing structure and the road.

Ken asked how far from the N. W. corner of the addition to the North property line.

Adam said he was the one who put the flag in, taking into consideration the angle towards the road and the measured addition and stated he was quite sure the 43' is accurate.

All were comfortable with Adams statement regarding the measurement distance.

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, we obviously have a lot that is designed to be residential, and the commercial zoning eliminates the buildable space on the lot, creating a setback situation for a current residential use.
Ken Hovet	Yes
Rick Johnson	Yes, for the exact same reasons as Bill.
Dan Peyton	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
Ken Hovet	Yes
Rick Johnson	Yes
Dan Peyton	Yes
Mike Soukup	Yes
Bill Berscheit	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
Rick Johnson	Yes, believe this direction is reasonable.
Dan Peyton	Yes
Mike Soukup	Yes
Bill Berscheit	Yes
Ken Hovet	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
Dan Peyton	Yes
Mike Soukup	Yes
Bill Berscheit	Yes, dual setbacks
Ken Hovet	Yes, due to setbacks
Rick Johnson	Yes

Majority response- "Yes"

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

Board Member	Vote and Comments
Mike Soukup	Yes
Dan Peyton	Yes
Rick Johnson	Yes
Ken Hovet	Yes
Bill Berscheit	Yes, when we scrolled down and looked at the area it is consistent.

Majority response- "Yes"

Criteria Question #6: Does the need for the variance involve more than just economic considerations?	
Board Member	Vote and Comments
Bill Berscheit	Yes, need for structure may not be articulated but the variance need has been.
Ken Hovet	Yes
Rick Johnson	Yes
Dan Peyton	Yes
Mike Soukup	Yes

Majority response- "Yes"

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	Vote and Comments
Bill Berscheit	Yes, the primary safety issue is Hwy. 10
Ken Hovet	Yes, minimal.
Rick Johnson	Yes
Dan Peyton	Yes, flat area
Mike Soukup	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

Dan made a motion to grant request, seconded by Bill.

Rick requested a roll call vote for the motion to grant the variance request with the no conditions, as presented.

Conditions: None

Roll call vote commenced as follows:

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

Motion carried.

AGENDA ITEM 3: Robin & Scott Sedey – PID 11-0073000 – Grey Eagle Township

Request:

1. Variance request to reduce the road right-of-way setback from 20' to 11' for an after-the-fact storage shed in Recreational Development Shoreland.

Scott 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.

Additional notes: Although this structure does meet the size requirements of a Water-Oriented Accessory Structure, it could not be permitted as such. WOAS can not be placed in moderate or severe steep slopes and the slope of this property is approximately 20% which exceeds the slope requirement.

Proposed Condition:

1. Completion of a property line survey prior to application for a land use permit.

Scott confirmed the staff report was accurate, and wanted to express there is no other place on the lot.

Rick read the onsite report which is available for viewing upon request in the Planning & Zoning Office.

Correspondence received: None.

Public comment: Bob Lanners (Anita's father), 33909 Breezy Drive, Burtrum, MN 56318 and Anita Walker, 8581 Azalais Road, Pillager, MN. We are the land owners across where you found the t-posts. Cottontail Dr. right-of-way is a 66' ROW and have had discussions numerous times since this spring, and nobody knows where it is. Contacted a surveyor and meeting with him tomorrow. She had photos, however, she did not have copies. She stated she had a video on her phone she offered to share. She stated she talked to Robin earlier this spring before the structure was built and Robin mentioned building a guest cabin, and Anita reminded her about needing permits, etc. Anita stated she agreed the pile of rocks was kind of odd. The one question she had was how they measure to the shed. Was it from the foundation or the building, as it is almost a foot difference, and measured 7.5 feet. She measured from the post for the ROW and did measure 66'. She stated the surveyor said he was finding oddities, as well. Because of the questionable points, Anita hired a surveyor.

Board discussion:

Rick agreed with the 66' Road right-of-way, but cannot get comfortable with the measurement and how to proceed from here. Rick thought they should table and ask staff to work with the home owner and use whatever resources available to achieve a comfort level of 11' (or whatever) with a high degree of certainty, as Rick had measured 8'.

Dan asked if we were expecting a survey by next meeting, because he needs more of an accurate figure.

Rick stated no, we need to establish the actual facts and circumstances, then we can run it through our after-the-fact processes.

Bill, stated he will assume the monument is marking the ROW but also the property line, as well, and would assume the ROW measurement and the property line are incorrect on the application, and needs to be substantiated. He stated he could not move forward tonight, as he feels they may be dealing with two variances, possibly, not one.

Rick agreed.

Ken, stated it is fair to say, we don't have the facts.

Rick mentioned tabling this application as well, and asked for a motion.

Adam explained the process of tabling to Scott and Scott agreed to table.

Ken motioned to table for more information and Dan seconded. Voice vote, no dissent heard, motion carried.

Dan motioned to adjourn and Ken seconded. Voice vote. No dissention heard. Motion carried and meeting adjourned at 7:40 PM.