

Minutes of the Todd County Board of Adjustment Meeting

January 26th, 2023

Completed by: Sue Bertrand P&Z Staff

Site visit conducted by: Adam Ossefoort and Rick Johnson on 12/12/2022 on the Gallagher site.

Kevin McKelvey and Rick Johnson on 11/8/2022 on the Sedey Site.

Adam Ossefoort and Bill Berscheit on 1/19/2023 on the Fuchs, Green Barn, and Sedey Sites.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheit, Danny Payton, Russ Vandenheuvel, Planning Commission Liaison Ken Hovet and alternate 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 called to approve the agenda when Adam stated the fourth applicant requested to table again, in light of survey results.

Russ motioned to have the agenda amended and approved as presented, seconded by Dan, voice vote, no dissent heard. Motion carried.

Ken motioned to have the January 12th, 2023 meeting minutes approved. Larry seconded the motion. Voice vote, no dissent heard. Motion carried.

Introduction of the meeting process and etiquette by Rick.

AGENDA ITEM 1: Patrick & Caryn Gallagher– PID 11-0055500 – Grey Eagle Township

Request:

1. Variance request to reduce the road right-of-way setback from 20' to 15' for proposed garage in Recreational Development Shoreland Zoning.

Patrick 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.

Patrick confirmed the staff report was accurate, and stated Adam did a great job.

Rick went over his site review notes and these may be viewed in full, upon request, in the Planning and Zoning Office.

Correspondence received: None

Public comment: None.

Board discussion:

Russ asked how far the well was from the proposed structure site to which Pat pointed out exactly on the overhead. He stated the practical difficulty is if it was another five feet closer (out of the ROW), they could not get a well repair truck between the proposed structure and the house deck. He stated they have a lot of iron in the water and have considered going down another thirty feet. Tried to make it as aesthetically pleasing as possible.

Russ also inquired If Patrick were to build it where proposed, how far from the road would the cars be parked from the road if parked outside of the garage.

He again, pointed to the overhead and explained where parking space is available on the drive and in the yard, for about five cars.

Larry stated the request is for a 24' x 30' garage, and inquired if there would be a difficulty with a 24' x 25'.

Pat stated they will be using this as a permanent dwelling in the future and would like to have room for two cars with the additional room for storage. He stated when Kevin was out, he calculated 30' x 24' would be the max he could build.

Larry added he could go smaller if he had to.

Patrick said he was thinking two cars and a side by side to get down the hill to the beach. He stated he was trying to maximize his opportunity.

Rick clarified that figure from Kevin was in reference to the maximum impervious surface available to work with.

Ken asked how far from the South side of the garage to the North side of the house. Pat pointed out on the overhead it is 22', to which Ken said that should be plenty of room for a well truck.

Patrick pointed out the Northern most corner of the deck and the stake to the proposed garage, and stated if it were 5' closer, he could hardly get a 4 x 4 through there.

Ken added, if the deck stays there to which Patrick agreed.

Bill asked about getting a well truck in along the property line near the propane tank.

Pat explained the property line is in the hedge, so no.

Ken, asked if the garage could be positioned further East to which Patrick pointed out the steep ridge to the road.

Rick asked why the home was built at that location, creating such a limited space on the lot.

Patrick explained the house was built in 1927 when Pat’s grandfather was developing the beach. It was a 150’ lot, and the cabin was built in the middle. In 1979 the lot was split into two 75’ lots for his mother and uncle. There is a 16% grade down to the lake limiting any closer that direction. The cabin has actually been moved unto a different foundation to where it sits now, on the flat spot.

Bill asked if there were any other variances on this property, to which Adam said no.

Dan asked about the 24’ x 30’ if it could be 30’ x 24’, repositioned, and Pat explained they need the space to approach and avoid difficulties in making the turn into the garage.

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.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes. Believes we have to balance the variances with the purpose & intent of the ordinance. ROW setbacks are primarily for public safety purposes and believes they are achieving that balance.
Larry Bebus	Yes.
Ken Hovet	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	No. The stated practical difficulty is a desire of the land owner to go larger, may be achieved with a two-stall garage size.
Danny Peyton	Yes
Russ Vandenhuevel	Yes.
Rick Johnson	Yes
Larry Bebus	Yes
Ken Hovet	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	Yes.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes. Not unreasonable to request a garage in residential shoreland.

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

Larry Bebus	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
Bill Berscheit	No. Stated we could achieve a two-stall garage with downsizing and allowing access to the well, and meet the road setback.
Danny Peyton	No. A 30-foot-wide request is by the land owner.
Russ Vandenhuevel	Yes.
Rick Johnson	No. The design preference and family needs do not make it unique to the property itself.
Larry Bebus	No. I believe it could achieve everything as smaller structure.
Ken Hovet	No. It is the garage size that is creating the difficulty, and still feels part of the deck could be removed for well access.

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. The area is over developed so it fits in.
Russ Vandenhuevel	Yes
Rick Johnson	Yes
Larry Bebus	Yes
Ken Hovet	Yes, it would fit right into the neighborhood.

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, doesn't see cost enter into this.
Danny Peyton	Yes, trying to pick up the best location.
Russ Vandenhuevel	Yes
Rick Johnson	Yes
Ken Hovet	Yes
Larry Bebus	Yes

Majority response- Yes

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

Board Member	Vote and Comments
Bill Berscheit	(Yes.)No, we are maximizing the impervious surface, should we grant this, and feels we should have some sort of water infiltration/mitigation plan included. Should be easily achieved on this lot, but has not been proposed.
Danny Peyton	No, approaching the road right of way is a safety issue.
Russ Vandenhuevel	Yes
Rick Johnson	Yes
Ken Hovet	Yes
Larry Bebus	Yes

Majority response- Yes

Pat explained his mitigated water plan and the natural run-off toward the road.

Bill changed #7 question to “yes” providing they attach mitigating conditions for the water.

Summary of criteria question majority responses as follows:

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

Dan motioned to deny, due to the one criteria question majority being “No”. Ken seconded.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Danny Peyton	Yes
Bill Berscheit	Yes
Ken Hovet	Yes
Larry Bebus	Yes
Russ Vandenhuevel	Yes
Rick Johnson	Yes

Motion carried, the variance has been denied.

Patrick asked for clarification on why the variance was denied and Ken explained the board felt there was an alternative. A smaller garage will meet all setbacks.

Rick agreed and said the board will be looking for an alternate site or an alternate design instead of granting a variance.

Adam stated the decision has been made and Pat was welcome to come back to the Planning & Zoning Office tomorrow, to discuss other options.

AGENDA ITEM 2: Steven Fuchs– PID 08-007660 – Fawn Lake Township

Request:

1. Variance request to reduce the Ordinary High Watermark setback from 100’ to 70’ for proposed dwelling in Recreational Development Lakeshore Zoning.
2. Variance request to reduce the Height restriction from 18’ to 26’ for proposed same dwelling in Natural Environment Shoreland Zoning.
3. Variance request to reduce the Ordinary High Watermark setback from 100’ to 75’ for proposed garage in Recreational Development Lakeshore Zoning.

Steven 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. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
2. Installation of a runoff water retention system to collect a minimum of 50% of the roof water from the proposed structures.
3. There shall be no maintenance or removal of vegetation on the severe steep slopes along the lake frontage except to allow for placement of stairs for shoreline access.
4. Applicant must abide by all other applicable Federal, State, and Local standards.

Patrick confirmed the staff report was accurate.

The board member onsite report was communicated by Bill. These notes are on file, and may be viewed upon request in the Planning and Zoning Office.

Steve responded to Bill in reference to the water directed to the ditch and that the township had ok'd it.

Correspondence received: None.

Public comment: None.

Board discussion:

Bill stated when looking at the slope on the lot, he questioned if Steve could achieve directing the roof water to run-off into the road ditch. Bill stated he would like to see some sort of elevation plans to show it can be done.

Steve explained where all of the drainage routes were according to his site sketch.

Dan asked how close to the road right of way this is.

Bill answered Dan's question and said the structure would sit right up against the ROW setback.

Rick stated what he immediately saw, was a very small lot with a modest structure, however, there are three variances of significant amounts requested. After seeing the photos, it had given him some relief with plenty of screening and vegetative cover. Did have concerns on how it will affect the neighbors.

Patrick stated he had to go up, as it is a three-bedroom house, and the neighbor has a two-story house, just like this. Not a lot of room.

Rick recognized Steve's attempt to do all possible trying to get a home built on this lot.

Rick asked what the buildable space dimensions were.

Steve handed out a larger copy of a plot plan that reflected the lot size and structure measurements, setback lines and color-coded drainage routes. This copy is also on file for the record.

Dan pointed out how the road right of way is being encroached on, as well.

Russ pointed the drawing we were looking at is not for what he is asking.

Ken stated he agreed with Rick, how he thought the house should be scaled down to better fit the lot size.

Steve said this was his retirement house. He still has a wife and two boys at home.

Rick acknowledged Steve’s attempt to do all he could, to make the house fit in the allowed area.

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	No. Minimal space on the lot and not sure a year-round home with an attached garage may not be in line with the official controls.
Danny Peyton	No.
Russ Vandenhuevel	No. Alot for a small lot. It will be taxing on a small lot like that.
Rick Johnson	No.
Ken Hovet	No.
Larry Bebus	Yes.

Majority response- No

Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?	
Board Member	Vote and Comments
Bill Berscheit	No. Agreeing with others, three variances is too much when starting with a clean slate.
Danny Peyton	No. Too much, all the way around.
Russ Vandenhuevel	No. Our comprehensive plan states development in a fair and common-sense manner and this is not a fair and common-sense manner.
Rick Johnson	No. Variance 30% and 40% is not common sense.
Ken Hovet	No. Encroaching too much on the setbacks.
Larry Bebus	No. In agreement with the others.

Majority response- No.

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.
Danny Peyton	No. Pushing the environmental limits on this lot.
Russ Vandenhuevel	No.
Rick Johnson	No. Use of the property is shoreland residential and significant variance requests are not reasonable.

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

Ken Hovet	No.
Larry Bebus	No.

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	Yes. I think the area to build along the frontage road is due to the frontage road being built too close to the lake.
Danny Peyton	No. Asking too much for a small lot.
Russ Vandenhuevel	Yes. Agreed with Bill.
Rick Johnson	Yes. Simply a very small non-conforming legal lot, nothing created by the land owner.
Ken Hovet	No.
Larry Bebus	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. Distance to the lake is, height is similar to other structures, definitely are a number of large structures.
Danny Peyton	Yes. I have been out to the locality.
Russ Vandenhuevel	Yes. It would look good and you can't tell where the property lines are.
Rick Johnson	No. Simply because you are stretching the requirements significantly.
Ken Hovet	No. For the same reasons as Rick.
Larry Bebus	No. The lot is small and you are putting an awful lot of building on and think it will change the character.

Majority response- No.

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

Board Member	Vote and Comments
Bill Berscheit	Yes.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes. Involves more than economic considerations.
Rick Johnson	Yes.
Ken Hovet	Yes. What the applicant needs is space.
Larry Bebus	Yes.

Majority response- Yes.

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

Board Member	Vote and Comments
Bill Berscheit	No. The proposed plan for water drainage not 100% sure. Incredibly steep slopes, with this size of the proposal, did not see any measures to protect that, for my satisfaction.
Danny Peyton	No. With roof run-off to the ditch, yes, set off the road for safety, yes, but the lake setback is 100' so environmental concerns no. Too much.
Russ Vandenhuevel	No, pushing the environmental concerns on a small lot.

Rick Johnson	Yes, for the same reasons as Ken.
Ken Hovet	Yes. The safety concerns from road have been met with the setback and the environmental concerns met with the drainage plan.
Larry Bebus	Yes. Run-off is addressed and silt fences are proposed.

Majority response- No.

Summary of criteria question majority responses as follows:

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

Ken motioned to deny all three requests, Russ seconded the motion.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Ken Hovet	Yes
Danny Peyton	Yes
Russ Vandenhuevel	Yes
Bill Berscheit	Yes
Larry Bebus	Yes
Rick Johnson	Yes

Motion carried. The variances are denied.

AGENDA ITEM 3: Green Barn, LLC– PID-11-0002001– Grey Eagle Township

Request:

1. After-The-Fact Variance request to reduce the rear yard property line setback from 20’ to 10’ for attached garage in non-riparian Recreational Development Shoreland Zoning.

Ben Manning was present as the applicant, with his daughter.

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. Installation of a boundary fence along the rear property line.

Ben confirmed the staff report was accurate.

Rick requested the site review report from Bill. These details are on file and may be reviewed upon request in the Planning and Zoning Office.

Correspondence received: None.

Public comment: None.

Board discussion:

Rick asked for clarification of what the addition is.

Ben stated above the new garage space is loft space. They converted the existing garage space of cabin into bedrooms. The original structure sits closer to the lot line than the new addition. Ben explained the stakes in the pictures were incorrectly placed by someone else. Ben said his surveyor has established the property lines and he does need a variance. He stated they honestly thought the rear yard setback was only 10' and had the survey done prior to building. Upon interpreting our ordinance, he did not think he needed a permit to build if he was doing all the work himself.

Rick asked for clarification on each zoning district's rear yard setback.

Adam read aloud from our ordinance the rear yard setback was 20' in all districts.

Dan asked when did it go from 10' to 20'.

Adam stated the 10' setback is for the side property lines. Rear property line is opposite the road, however on riparian lots opposite the road is a lake setback. There was discussion on how the road curves around this lot and where the rear property line is.

Rick stated to his knowledge, there is no 10' rear yard property line setback. Rick questioned Ben's reasoning for having the wrong year yard setback.

Ben stated his surveyor also believed the 10' setback to that property line was correct and validated Ben's misinterpretation of the ordinance. Ben also stated it was not an intentional mistake, it was an honest mistake.

Ben gave a history of the lot and how long it has been in the family.

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.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes
Rick Johnson	Yes.
Ken Hovet	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
Bill Berscheit	Yes. With the logic of why 10' would be an acceptable distance in this case.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes
Rick Johnson	Yes. To prevent encroachment and we try to balance the needs of the applicant.
Ken Hovet	Yes.
Larry Bebus	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	Yes.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes. Didn't see anything unwise.
Ken Hovet	Yes.
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
Bill Berscheit	No.
Danny Peyton	No. Created by the land owner.
Russ Vandenhuevel	Yes.
Rick Johnson	No.
Ken Hovet	No.
Larry Bebus	No. Created by the land owner.

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.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes.
Ken Hovet	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
Bill Berscheit	No.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	No.
Ken Hovet	Yes.

Larry Bebus	Yes.
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Majority response- Yes.

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	Vote and Comments
Bill Berscheit	Yes.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes.
Ken Hovet	Yes.
Larry Bebus	Yes.

Majority response- Yes.

Summary of criteria question majority responses as follows:

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

Rick proceeded with the After-the-Fact Variance Considerations:

After-the-Fact Question #1: Was there any attempt to comply with the applicable official controls?	
Board Member	Vote and Comments
Bill Berscheit	Yes. His understanding, since this issue has come up with the County, he has cooperated fully and correctly.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes. It was not his intent. He misinterpreted the official controls.
Ken Hovet	Yes.
Larry Bebus	Yes.

Majority response- Yes.

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 Berscheit	Yes. Application was made for the building permit, paid for and then it was discovered there was a lot line issue, the variance was paid for, so everything was done as correct as humanly possible.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes.
Ken Hovet	Yes.
Larry Bebus	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
Bill Berscheit	Yes.

After-the-Fact Question #3: Did the applicant complete the work before being informed of the violation of applicable official controls?	
Danny Peyton	No. The work is not completed.
Russ Vandenhuevel	Yes.
Rick Johnson	No. Same reasons as Ken.
Ken Hovet	No. By looking at the pictures, it did not look finished.
Larry Bebus	Yes.

Majority response-No.

After-the-Fact Question #4: Are there similar structures in the area?	
Board Member	Vote and Comments
Bill Berscheit	Yes.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes. The original house is still ten feet from the line.
Rick Johnson	Yes.
Ken Hovet	Yes.
Larry Bebus	Yes.

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?	
Board Member	Vote and Comments
Bill Berscheit	Yes. The existing structure is every bit as close to the lot line.
Danny Peyton	Yes.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes.
Ken Hovet	Yes.
Larry Bebus	Yes.

Majority response- Yes

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 Berscheit	Yes. No advantage to the county in removing this, and certainly a detriment to the applicant.
Danny Peyton	Yes. For the same reason as Bill.
Russ Vandenhuevel	Yes.
Rick Johnson	Yes. Absolutely.
Ken Hovet	Yes. Absolutely.
Larry Bebus	Yes.

Majority response- Yes.

Summary of criteria question majority responses as follows:

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

Bill made a motion to grant the variance request with no conditions. He stated although there was one majority "no" to one of the criteria questions, the decision is ultimately up to the quasi-judicial board to decide

in this case. He stated the board has that authority to make its' own decisions. Bill stated the decision for a property line fence should be up to the property owner and the South property neighbor. Ken seconded, with no conditions.

Roll call vote commenced as follows:

Board member	Vote (yes or no)
Larry Bebus	Yes
Ken Hovet	Yes
Danny Peyton	Yes
Bill Berscheit	Yes
Russ Vandenhuevel	Yes
Rick Johnson	Yes

Motion carried. Appeal for a variance has been granted.

AGENDA ITEM 4: Robin & Scott Sedey– PID-11-0073000– Grey Eagle Township

Request:

1. After-the-Fact Variance request to reduce the road right-of-way setback from 20' to 11' for a storage shed in Recreational Development Shoreland Zoning.

Adam stated the applicants have signed the extended time application and requested to be on the March BOA agenda.

Ken motioned to adjourn and Russ seconded. Voice vote, no dissention heard. Motion carried. Meeting adjourned at 8:22 PM.