

## Minutes of the Todd County Board of Adjustment Meeting

June 22, 2023

Completed by: Sue Bertrand P&Z Staff

Site Visits conducted by Adam Ossefoort and Mike Soukup on June 12th, 2023.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheid, Mike Soukup, Dan Payton and Russ Vandenheuvel.

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.

Russ made the motion to approve the agenda and Danny seconded, voice vote, no dissent heard, motion carried.

Danny motioned to have the April 27<sup>th</sup>, 2023 meeting minutes approved. Bill seconded the motion. Voice vote, no dissent heard, motion carried.

Introduction of the meeting process and etiquette.

### **AGENDA ITEM 1: Ryan Rengstorf – PID 22-0052500 – Staples Township**

Request(s):

1. After-the-Fact Variance request to reduce the road right-of-way setback from 100' to 22' for placement of mini-storage containers in Commercial Zoning.
2. After-the-Fact Variance request to reduce the side yard setback from 50' to 34' for placement of mini-storage containers in Commercial Zoning.

Ryan 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. There shall be no impacts to wetlands onsite unless impacts are replaced via State of Minnesota Standards.
2. Land use permitting fees shall be paid at 2x after the fact rates.

Ryan confirmed the staff report was accurate.

Mike Soukup went over his site visit notes. This report may be viewed, in full, at the Planning and Zoning office upon request.

Correspondence received: None.

Public comment: None

Board discussion:

Russ had three questions: When were the units placed there?

Ryan stated the fall of 2019, only two rows, for approximately six months.

Russ also asked, how did you decide where to put them. Did somebody help you?

Ryan stated he had a gentleman from Planning and Zoning come out and look at the site, and it was a major miscommunication about setbacks etc. He stated he just mapped it out and tried to maximize his space, that he designed it on his own.

Russ asked what the speed limit was along 2<sup>nd</sup> Ave. to which nobody knew.

Rick stated this is a critical question and asked Adam if he could do a search.

Bill asked Ryan how close to the City limits is his lot.

Adam showed, using the GIS map, how far away he was, approximately 1,000 ft.

Bill made the comment, even though the City limits end, in his opinion, it is truly the continuing development of the City. He also asked if the setback in the City is any different from the County?

Adam stated he would have to do some research.

Bill also asked if the wetland rules were any different in the City than the County, to which Adam stated no, and that the DNR rules governing wetlands are set the same for everyone. He added the County has an arrangement with the Cities, to perform the duties of that program within the City Limits, so all are the same.

Bill also asked to return to the GIS topography, showing elevation where the crane sits, on one of the photos.

Adam said he will bring that map up and also added, by using Google Earth, he could not find any speed limit signs along that stretch of road.

Ryan addressed the crane area and stated it may look like there is usable ground, but in his opinion, it is wet. He stated he had considered using it, however, thought he would have to bring in too much fill.

Rick asked where the containers sit now, was it usable prior to him filling it in?

Ryan stated to his understanding, the site was an old dump site, with concrete chunks and what not in there, so no.

Rick stated, for the record and the other board members, the way the Ordinances work, if Ryan can demonstrate a practical difficulty, they could grant a variance. He stated he didn't see a real practical difficulty, other than he has limited space, but more so, this is over a misunderstanding rather than a practical difficulty situation. He told Ryan he read his application and would like to give him the opportunity to articulate his side of the story and how he got his information and if he had understood what he could do. Rick stated he is limited in how many containers he can have, and could not have that many containers.

Ryan stated he thought he was doing everything right, and it was a complete misunderstanding on what he could use for land, and it did not come to light until he asked Adam about setback requirements, if he should purchase a larger piece of property. When Adam stated the setbacks Ryan said, "What?!" That is not what he thought it was, and that is not what he did. He stated he wished he could articulate that it was more involved than that, but he couldn't. It was just a major mistake he had made, to put him in this situation.

Rick pointed out the purpose and intent of the road setback is safety, and encroachment on neighboring properties for the side yard setbacks. He asked Ryan about the side property line request.

Ryan stated this was recently surveyed for his neighbor, along the western border. Way back in 2019, he went off a stake in the ground that obviously was not a property line stake. In fact, the last two containers lie right on the border, and he would be more than willing to part with the last two that are infringing, and take that variance request off the table, if it helps in any way, shape or form.

Bill asked for clarification on the 22' request from the road, and Ryan stated 33' was the edge of the road right from the center line and he is only 22' beyond that.

Adam pointed out he had the 2019 contours up, showing it is definitely a lower area, woody vegetation type wetland, where the crane sits.

Rick asked what kind of base the containers are sitting on.

Ryan stated basically sitting on the ground, with some blocks on some of them to help level.

Bill asked if these were standard shipping containers, to which Ryan confirmed.

Russ asked how steep that ditch was, and he was asking because of the possibility of an uncontrollable vehicle reaching his containers, or if there is some type of barrier, to which Adam went back to the photo of the right-of-way stake that showed the ditch view.

Rick moved to have the board review each variance separately, as they were different from each other and not along the same lines, to which the board agreed, so Rick called for Criteria Questions individually, by request, with the first set of questions pertaining to the road right-of-way setback.

<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>

Bill Berscheit	No.
Mike Soukup	No. Same reason as Russ.
Russ Vandenheuevel	No. Too close to the road.
Danny Peyton	No. Same reason as Russ.
Rick Johnson	No. 22' from 100' is way too significant. There has really been nothing presented to the board tonight.

Majority response-No

<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	No.
Bill Berscheit	No.
Danny Peyton	No, this is way past the 50% cut-off extreme.
Russ Vandenheuevel	The number was at 78%, so no.
Rick Johnson	No.

Majority response- No.

<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>
Russ Vandenheuevel	No.
Danny Peyton	Yes.
Bill Berscheit	"No. I don't have much of an issue with the storage use, but the development of this. I still look at the topography and I think there is an opportunity to start back a little further and perhaps a little different layout, may not be completely out of the setback, but would have made a difference from where we are at today."
Mike Soukup	Yes.
Rick Johnson	No, for the same exact that Bill articulated.

Majority response- No.

<b>Criteria Question #4: Is the need for a variance due to the circumstances unique to the property not created by the landowner?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Danny Peyton	No, created by the land owner, too many units on this property.
Mike Soukup	No,
Bill Berscheit	No.
Russ Vandenheuevel	Yes.
Rick Johnson	No, created by the land owner.

Majority response- No.

<b>Criteria Question #5: Will the variance maintain the essential character of the locality?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Russ Vandenheuevel	Yes. Orderly, straight, neat.
Mike Soukup	Yes
Danny Peyton	No. Remembered the area and being Commercial, things are set back. This one sticks out.
Bill Berscheit	No. In regards to the City limits, what is in that area, partially developed outside of City is still set back, and not this one.
Rick Johnson	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>
Bill Berscheit	No, going back to the topographical map, there is room to do more homework. Stated he was not saying there is more room to build, as he has heard from absolutely everybody that it is wet, but when looking at the topographical map, we have structures already, on a large portion laid out already, as lower ground. Stated he realized it was two-foot increments and that may be a substantial difference, and is thinking there is room to do more homework in that direction, before we look to granting a variance.
Danny Peyton	No. Road safety and environmental, although in Todd County you may build right up to the edge of the wetland.
Russ Vandenheuevel	No. There is a lot on that little lot.
Mike Soukup	No. Due to the surrounding wetlands in the area.
Rick Johnson	No. Among other things, the need for the Variance here was based on a misunderstanding, should not have been allowed.

Majority response- No.

<b>Criteria Question #7: Have safety and environmental concerns been adequately addressed?</b>	
<b>Board Member</b>	<b>Vote and Comments</b>
Russ Vandenheuevel	No. With roadways and wetlands, he says no.
Bill Berscheit	No. Absolutely agree with Rick, at this tightness along the highway, there is possibly obstruction of view. Not only is there a safety issue if running off the road, but obstruction of view and that restriction is still there.
Mike Soukup	No. Same reason as Russ.
Danny Peyton	No. Same reason as Russ.
Rick Johnson	No. There are good reasons for setbacks from the road, nothing has been presented or even addressed concerning that tonight.

Majority response- No

Summary of criteria question majority responses as follows:

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

Rick stated this is open for discussion, but felt they are extremely far from meeting the criteria questions for the Board of Adjustment to grant the variance, and felt no need to go through the after-the-fact variance questions, and asked for comments.

Bill added a number of the after-the-fact questions have been covered, so does not oppose not going through them.

Adam stated he would support either way the board decides, about the questions, and added the findings of facts portion has already addressed a number of the after the fact questions.

Russ made a motion to deny the variance.

Danny seconded the motion.

Rick requested a roll call vote for the motion to deny.

Board Member	Vote to the motion to deny the request
Bill Berscheit	Yes.
Mike Soukup	Yes.
Danny Peyton	Yes.
Russ Vandenneuvel	Yes.
Rick Johnson	Yes.

Motion carries unanimously to deny the appeal for a variance based on failure to meet the criteria necessary for granting of a variance and failure to establish a practical difficulty.

Rick brought up going through the criteria questions for the side yard property line portion of the variance request, and it was pointed out Ryan already agreed to drop the second variance.

Ryan asked officially, to withdraw the second variance.

Danny made the motion to accept the withdrawal request of the second variance and Bill seconded the motion.

Rick asked for a roll call vote.

Board Member	Vote to accept second variance withdrawal request
Bill Berscheit	Yes.
Mike Soukup	Yes.
Danny Peyton	Yes.
Russ Vandenneuvel	Yes.
Rick Johnson	Yes.

Motion carried to accept the withdrawal of the second variance request.

Ryan pointed out, on the overhead screen, how much closer the businesses were to the road within the City Limits, with a 30-mph speed limit and explained how it had never dawned on him how much of a difference it was. He also asked what his time frame was to get renters out and to rectify this.

Rick redirected Ryan's questions, due to the nature, to Adam and to work with Planning and Zoning, as it is not for the Board to decide.

Adam told Ryan he could work with him on all of that.

Danny made a motion to adjourn, Bill seconded, voice vote, no dissent heard, Board of Adjustment meeting for June 22<sup>nd</sup> adjourned at 6:52 PM.