

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

**July 27<sup>th</sup>, 2023**

Completed by: Sue Bertrand P&Z Staff

Site Visits conducted by Adam Ossefoort and Rick Johnson on July 18, 2023.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheid, Mike Soukup, Danny Payton, alternate Larry Bebus 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.

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

Adam mentioned the first item of the agenda has been tabled.

Ken motioned to approve the tabled item and the remaining agenda, as is, seconded by Dan voice vote, no dissent heard. Motion carried.

Rick motioned to have the June 22<sup>nd</sup>, 2023 meeting minutes approved. Mike seconded the motion. Voice vote, no dissent heard. Motion carried.

Introduction of the meeting process and etiquette.

### **AGENDA ITEM 1: Wayne Terry – PID 03-0050500 – Birchdale Township**

Request(s):

1. Variance request to reduce the ordinary-high-water-mark setback from 100' to 76' for dwelling replacement in Recreational Development Shoreland Zoning.
2. Variance request to increase the height restriction from 18' to 20' for dwelling replacement in Recreational Development Shoreland Zoning.

Wayne e-mailed Adam requesting more time so an Extended Time form was sent via e-mail to be signed. He has requested to be added to the August 24<sup>th</sup>, BOA agenda.

### **AGENDA ITEM 2: Nicholas & Abigail Klimek – PID 15-0027100 – Leslie Township**

Request(s):

1. After-the-fact Variance request to reduce the ordinary-high-water-mark setback from 150' to 64' for the construction of a deck in Natural Environment Shoreland Zoning.
2. After-the-fact Variance request to reduce the ordinary-high-water-mark setback from 150' to 64' for the construction of a dwelling addition in Natural Environment Shoreland Zoning.
3. After-the-fact Variance request to increase the peak height limit from 18' to 26' for dwelling roof repair in Natural Environment Shoreland Zoning.

Nicholas & Abigail were present as the applicants.

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. Establishment of a 15' vegetated buffer along the lake frontage consisting of deep-rooted native vegetation. A 10' wide access path will be allowed to be maintained for lake access.
2. Installation of a storm water retention structure to collect all stormwater from the proposed structure based on a 10 year/24-hour rainfall event.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
4. Obtain Land Use Permits for all structures to be paid at 2x after-the-fact rates.

Nicholas stated this is not a brand-new structure, the original was there, as that is what they built off of.

Adam stated the previous structure had been measured at 978 sq. ft. and this structure is measured at 1056 sq. ft. Generally, the same footprint, however, on the North side, the two structures were enclosed and added, making the structure larger, and also the previous structure had a lower peak height below 18' to now the peak height of 26'. Adam also stated that he has photos of the previous structure if the board would like to see. The board viewed the additional pictures on the overhead. These photos may be viewed in full at the Planning & Zoning office upon request.

Nicholas added, the two structures that were added to the main structure, had in fact been a part of the original footprint, they just added that square footage as part of the main structure.

Rick stated, just to make it clear for the record, looking at the old structure and the new structure, the claim states it is on the same footprint, when in fact, the expansion exceeds the existing. Rick stated again, because of the expansion and it not being exact for exact it requires a variance. He asked Nicholas and Abigail if they understood, to which they both confirmed.

Rick relayed his on-site report notes. These records may be viewed in full, upon request, at the Planning and Zoning office.

Correspondence received: None.

Public comment: None.

Board discussion:

Mike asked what the difference was between the previous building and what is there now?

Adam stated 78 sq. ft. more, not including the deck.

Bill, stated there were a lot of the cattails surrounding the lake from what is considered ordinary high water mark out to open water, and asked Adam what that measurement is approximately. Bill's follow up question was if there was anything that gives them open water access through the cattails.

Rick asked if there were any other land owners on this lake to which Nicholas stated no, he owns all around it with no public access.

Larry asked the reasons why the variance was denied back in 2020.

Rick mentioned, now days, not only do we have to consider the criteria questions, but must ask if there is an alternate site to build or minimize the variance, and we are obligated to do that. Rick stated he did recall from the last variance they would have had to move some pine trees.

Nicholas added there is a natural gas pipeline that runs through there.

Rick mentioned he did not go back into the records to pull anything, as this is a new application and must stand on its own merits.

Adam stated 239 feet to open water, in answer to Bill's question.

Rick reminded all, the burden of proof is the responsibility of the applicants, who must provide the facts and findings to support our decisions and make sure they meet the criteria questions.

Abigail stated they also wanted to maintain what they had, and they left 50% of the existing walls.

Nicholas added they wanted to make the structure look larger than what it was.

There was more discussion on meeting criteria, what exact for exact means and building new, meeting all setbacks, and in all cases a permit is required, which they did not obtain.

Bill asked where the gas line comes in and where it was in relation to the structure to which Nicholas pointed out.

Mike asked how steep the slope is down to the lake and Nicholas stated about an eight-foot drop in a matter of four- or five-foot distance to which Adam confirmed with the elevations photo.

Bill asked for clarity on the power line to which Nicholas clarified using the overhead photos. Nicholas also pointed out where the underground electrical power was buried.

Rick stated he was struggling with all of that property, why they could not build somewhere else on the property.

Nicholas stated on the West side of the lake there are a lot more wetlands and not much for high ground.

Rick asked to be shown the 150' from the ordinary high-water mark to which Adam measured on the GIS.

Dan asked if there were any official wetlands to which Adam zoomed out and showed the rest of the lake on GIS.

Mike asked Nicholas if he had any contingency for the water coming off that deck, so it does not go to the lake.

Nicholas stated when he had talked to the watershed district they discussed rain gutters, or possibly underground system containment, but it was suggested to them the deck was better than concrete for the watershed.

Mike clarified they put the deck down, and let the water come straight down onto the deck, and Nicholas confirmed.

Ken asked about the setbacks from the natural gas line and Nicholas explained he could not get an answer for his setback question when he called the gas company.

Bill asked if this gas line was a main line or residential, to which Nicholas said a main line. Went on to explain further, how he understood the service.

Rick stated it sounded like a local distribution line and not a trunk line.

Ken asked Rick to explain what his insight was on the mainline.

Rick explained (he spent his entire career with the pipeline) there is typically a 33' right of way for working space, in case they have to go back on that property and do maintenance. The trunk line is a larger, wider easement, where there can be no development or activity within the easement, however, there was no setback from the easement. This is not a mainline "trunk" transmission line. This is a distribution line that takes gas to the residence.

Adam asked Nicholas if he had researched any deed with a description of where and how wide the easement was.

Rick stated this seems no different from the 2020 variance application, other than this is after-the-fact and further complicates things. If they had simply just went exact for exact they would have been fine, they now have to comply with all of the existing regulations for building structures on shoreland. He went on to say this is a legal non-conforming building, grandfathered in, and the fact they have expanded it, is why they are here. He also stated because this is after the fact, what the Klimeks need to do is demonstrate a practical difficulty, and show that there is no alternate site to build this structure. He stated he did not see the facts stating why they had to build there. He stated he needed demonstration or an aerial map that shows buildable area, because "... have to be 150' back from the lake; ...have to have half of 33' from the pipeline; there's a power line coming in here, etc..." as he cannot see where the buildable area is, enough to decide whether there is an alternate site or not. He stated he would agree, if they would like to able this, to better demonstrate they have no other alternate site, and if they felt they had a chance to demonstrate that, he would recommend to table it.

The Klimeks agreed to table it for more information.

Adam stated he has an extended time form for them to fill out, and help get them connected with the recorders' office, to help research and track down any recorded easements.

Larry motioned to table until the next meeting, and Bill seconded. Voice vote, no dissent heard, motion carried.

Adam added they will automatically be on next month's agenda.

Rick called for a short recess.

Rick announced to resume at 6:50 pm.

**AGENDA ITEM 3: Shawn C. & Laura M. Flandrick: – PID 17-0017700 – Little Sauk Township**

Request(s):

1. Variance request to reduce the East side property line setback from 10' to 9' for a 12' dwelling addition in Recreational Development Shoreland Zoning.
2. Variance request to reduce the ordinary high-water mark from 100 feet to 56' for 12' dwelling addition in Recreational Development Shoreland Zoning.

Shawn & Laura were present as the applicants.

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. Establishment of a 15' vegetated buffer along the lake frontage consisting of deep-rooted native vegetation. A 10' wide access path will be allowed to be maintained for lake access.
2. Installation of a storm water retention structure to collect all stormwater from the proposed addition based on a 10 year/24-hour rainfall event.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
4. Submittal of a property line survey of the property line to be encroach upon prior to issuance of a land use permit.

Shawn and Laura confirmed the staff report was very accurate.

Rick went through his notes from the site visit. This report may be viewed, in full, at the Planning and Zoning office upon request.

Correspondence received: None.

Public comment:

Peter Klick lived on the lake since 1958, Todd County resident, with address of 17406 Echo Dr., Long Prairie. He stated he was president of the Lake Association for fourteen years and on various committees with the County, and stated he has talked to Shawn and Laura's neighbors and the people around, there is nobody that does not support this. He would like the board to know he also supports this and hopes they approve this so they will be able to put an addition on their home.

Board discussion:

Ken stated the proposed addition starts about midway along the East side of the house and it goes all the way around the house across the back, but does it go all the way to the West side of the house? Ken confirmed it was about twelve feet wide.

Shawn and Laura both explained it was a 12' x 12' and a 12' x 30' across the back (two sections).

Laura explained it is a cement basement foundation and a story on top.

Shawn explained they would like to do a single slope away from the lake keeping in mind the peak height of the addition must be under 18'. They stated they held off on the final plans.

Laura explained they were at a fifteen-foot peak now.

Shawn said the peak might come down. He added, he did not think it was practical to cut off that one-foot corner on the Eastern property line.

Ken stated the one-foot variance was not the more concerning, it was the lake request.

Dan asked for clarification, if they had plans of changing the roof peak height, to which they answered no. Dan also added, when looking at the sketch drawing, the front of the structure to ridgeline is how far?

Adam stated 42'.

Dan said the reason he is asking is in reference to one of the conditions in the staff report, suggesting a 15' vegetative buffer along the lake, back from the OHW.

Adam pointed out the picture of the structure from the lake view, with vegetation along the lake, and clarified the area that needs to be in the 15' buffer.

Dan wanted to know how far from the OHWL was the break of the ridge, to which Adam stated around 20'.

Mike asked for a measurement from the front left of the cabin to the lake, to which Adam obliged, showing 39.8 feet on the GIS.

Rick asked what the existing sq. footage of the structure is, to which Laura stated approximately 800 and they are going to increase by 672 sq. ft.

Rick commented it is more than a 50% expansion.

Rick called for Criteria Questions individually by request and asked they address both variance requests together to which no one opposed.

<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.
Dan Peyton	No.
Larry Bebus	Yes.
Bill Berscheit	No, that the intent of the official control is for these non-conformities move back away from the lake over time. Even though this addition is a best effort to keep away from the lake when attaching to this structure, it has not been clearly delineated there is no other buildable space on this lot. His opinion is he doesn't know if they can achieve setbacks with an addition, yet he doesn't know that they can't.
Ken Hovet	Yes.
Rick Johnson	No. Stated he has no safety concerns with the side property line but does for the lake setback. He agreed with Bill as far as alternate sites. The ordinance is clear, that any additions or expansions need to meet the current ordinance requirements, and to go from 800 and add to total 1,100 is a significant expansion, and this expansion stands on its own merit, where his answer is in harmony with keeping the intent and purpose of the official control.

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. % is too great of a distance to the OHW.
Dan Peyton	No. Comprehensive plan #2, protect the quality of the surface & water: With past history and no trees to secure the subsurface of the shore, it weighs on the proposal. We need large trees, and having 50% vegetative coverage for protection, so during rain, it breaks the fall before hitting the surface, preventing erosion, and for shade. He stated he would like to see the 50% happen before proposals like this be passed.
Larry Bebus	No.
Bill Berscheit	No and agreed with Dan's comments.
Ken Hovet	No.
Rick Johnson	No. Simply because the request is unreasonable & too large of a variance.

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>
Mike Soukup	No.
Dan Peyton	No.
Larry Bebus	Yes.
Bill Berscheit	Yes, stated he considered the request for livable space is a reasonable request.
Ken Hovet	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>	
Rick Johnson	Yes.

Majority response- Yes.

<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>
Mike Soukup	No.
Dan Peyton	No.
Larry Bebus	No, stated he agrees with Bill.
Bill Berscheit	No, I see this as a desire to increase the living space for this structure and that is definitely a landowner's desire.
Ken Hovet	Yes.
Rick Johnson	No, for the same reason as Bill.

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>
Mike Soukup	Yes.
Dan Peyton	Yes.
Larry Bebus	Yes.
Bill Berscheit	Yes. We are really not changing the lake side of this, that is what we typically classify as locality in either sheer size or encroachment or view on the lakeside and that is a minimalistic change.
Ken Hovet	Yes.
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>
Mike Soukup	Yes.
Dan Peyton	Yes.
Larry Bebus	Yes.
Bill Berscheit	Yes. It is a desire to increase the living space.
Ken Hovet	Yes.
Rick Johnson	Yes. The need is to expand the existing structure.

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	No.
Dan Peyton	No, a lot of surface on this property that needs control, and we need an extreme amount more.
Larry Bebus	Yes.
Bill Berscheit	No, in that we've had conversation that led him to believe we could possibly increase upon the proposed conditions, in the event this should pass, and at this point in time, he did not think we had adequately addressed those issues.
Ken Hovet	Yes, with the proposed conditions.



Rick Johnson	Yes, with the proposed conditions, we have adequately mitigated the efforts and we have also adequately discussed the safety concerns and encroachment concerns on site.
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Majority response- No.

Summary of criteria question majority responses as follows:

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

Dan motioned to deny, Bill seconded.

Roll call vote to deny, commenced as follows:

Board member	Vote (yes or no)
Bill	Yes
Ken	No
Dan	Yes
Larry	Yes
Mike	Yes
Rick	Yes

Motion carried to deny the appeal for variance.

**AGENDA ITEM 4: Brian Zales: – PID 03-0062600 – Birchdale Township**

Request(s):

1. Variance request to reduce the SW side property line setback from 10’ to 6’ for a detached garage in Recreational Development Shoreland Zoning.

Brian 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. Submittal of a property line survey prior to issuance of a land use permit.
2. Establishment of rain gutters on the proposed structure to prevent water reaching neighboring properties. No additional storm water shall be directed to neighboring properties.

Rick asked Brian if the staff report was accurate, to which he stated there was one small correction; originally asking for three variances and now it is down to this one.

Rick went over his on-site visit report to the board, and this report may be viewed in full at the Planning and Zoning office upon request.

Correspondence received: None.

Public comment:

Thomas Wills, 12153, stated he is the affected neighbor, and has looked it over and has absolutely no concerns on his part.

Board discussion:

Ken pointed out he was looking at Zales' sketch, and assuming straight up is N, stated you are asking for a four-foot variance to the left of the garage, it looks like you have 10 feet between your septic tank and the proposing site, how hard would it be to move that site four feet over so there is no need for the variance?

Brian stated it was his understanding there is a ten-foot setback for his garage from the septic tank.

Adam corrected him, stating the setback requirement is for dwellings, not accessory structures.

Brian stated if that is the case, there is an alternate site, and we do not need to be here.

Rick stated the applicant wishes to withdraw his application.

Ken made a motion to accept his withdrawal and Bill seconded.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Bill	Yes
Ken	Yes
Dan	Yes
Larry	Yes
Mike	Yes
Rick	Yes

Motion carried the appeal for the variance has been withdrawn.

Adam stated, for the record, section 9.08, B., iii: sewage treatment system setback requirements apply to dwelling structures and not accessory structures.

Peter Klick asked why we do not say the pledge of allegiance, as this is an official County meeting. He also stated on variances, he doesn't see anyone checking on them to make sure the public is doing what we allowed them to do. He gave Maple Lake for an example, he reads in the paper, a request for so many feet is granted and over the limit was built, or a fudged line over, etc. When he talked to the assessors and talked to Planning and Zoning, he stated he was told if he wanted to file a complaint, we will go out and check. Peter urged, as the County, we need to follow up on these and check on the variances granted.

Bill addressed the follow up, as simply a shortness of staff. Not an excuse, it is an issue. He agreed as a board, we have seen this happen. We are aware that it happens, and rarely is it immediately caught. Over time, they are typically caught. If we had eyes on everything, that would be awesome. When you look at the larger picture and look at Zoning as a long-term plan and process, he stated he felt the County does quite good. He stated that does not mean he doesn't agree with Peter's point, in any way shape or form, however, as a citizen, he would not like to live in a "Policed" state. Bill stated as a take away, it may take time, three years, five years maybe, but rarely do these things go unchecked over a ten or fifteen-year period.

Klick gave other examples of violations going on and on. Somewhere we would like to get some enforcement and if it takes more money, he stated, he is all for it.

Rick stated we will address the pledge of allegiance, however, this board exists solely to make decisions on whether people meet the criteria for appeal. What happens before they get here and what happens after they leave here, as a Board, we have nothing to do with that, and cannot change that. He added, this Board is not the place to voice your dissatisfaction. We just do not have the jurisdiction.

Klick brought up he has mentioned it to the Commissioners.

The board was all in agreement to add the pledge of allegiance to the agenda.

Ken motioned to adjourn and Dan seconded. Voice vote to adjourn. No dissention heard. Motion carried and the meeting adjourned at 7:50 PM.