

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

**January 25, 2024**

Completed by: Sue Bertrand P&Z Staff

Site Visits conducted by Site visit completed by Adam Ossefoort and Bill Berscheit on 1/22/2024

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheit, Mike Soukup, Dan Payton, Russ Vandenheuvel, 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. The Pledge of Allegiance was recited, each board member introduced themselves and Rick explained the process for those attending.

Motion to approve the Agenda for this evening by Russ, seconded by Ken, voice vote, no dissent heard, motion carried.

Mike motioned to have the December 28, 2023 meeting minutes approved. Dan seconded the motion. Voice vote, no dissent heard. Motion carried.

Introduction of the meeting process and etiquette.

### **AGENDA ITEM 1: Reorganization of the Board and Review of Business Rules**

Rick addressed the first part of business which is the appointing of Chair and Vice chair and asked for volunteers. Ken moved to nominate the current Chair, Rick Johnson and Vice chair, Bill Berscheit for another year, seconded by Russ, both agreed and are willing. Voice vote, no dissent heard, motioned carried. Rick expressed his appreciation for Bill with his tremendous and deep knowledge. He addressed the second order of business having to with the rules to adopt. After reading through the business rules, he proposed to amend the rules and add two steps to the business rules that the board has been practicing for some time, that were not listed. After step #3 he would like to add a field inspection report review. Also, would like to add after #5 a written correspondence is read for the record.

Mike stated as we look through #19 place case on hold, he thought we should have a synopsis of that also presented at the beginning when we are talking about semi-quasi-judicial process. So, the applicants know that they do have that option, in the course of the meeting, to put their case on hold if they so choose. It would be put that out there right away.

Rick agreed it could be added to his process review script. Rick explained to the public present, "... as a case is deliberated and it becomes apparent that insufficient evidence is present to determine the case or to set conditions, such case can be put on hold indefinitely by the land owner or can be set on hold for sixty days by the board."

Adam added, the board can put it on hold, but must decide within sixty days from the date of the application.

It doesn't allow you an additional sixty days. You can extend it an additional sixty days, so ultimately you could have 120 days, but just for clarification, it isn't sixty days from when it is tabled, it is sixty days from when the application was submitted, or when the County received it and accepted.

Rick stated he will incorporate the language into his script, and made a motion to approve the business rules for 2024 as amended with those two steps to the process review. Seconded by Ken, voice vote, no dissent heard, motion carried.

Rick explained a short explanation of process review.

**AGENDA ITEM 2: Michael T. and Lori K. Lyon, Trustees – PID 11-0049600 – Grey Eagle Township, Mound Lake.**

**Requests:**

1. Request to reduce the OHWL setback from 100' to 37.5' for construction of deck in RD Shoreland Zoning.
2. Request to reduce the OHWL setback from 100' to 47.5 for the proposed house with attached garage in RD Shoreland Zoning.
3. Request to reduce road right-of-way from 20' to 8.56 for the proposed garage in RD Shoreland Zoning.
4. Request to increase the height limit from 18' to 21'1.5" for the proposed house in RD Shoreland Zoning.

Michael & Lori Lyon 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. Implementation of a stormwater management plan as designed and approved by the Soil and Water Conservation District.
2. Establishment of a 10' vegetated buffer along the lake frontage (no mow zone). A 6' wide maintained area shall be allowed for lake access.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
4. Establishment of construction stormwater controls prior to issuance of land use permits.

Michael and Lori confirmed the staff report was accurate.

Site field inspection report was recapped by Bill. This report may be viewed in full at the Planning and Zoning Office upon request.

Correspondence received: None.

Public comment: None.

Board discussion:

Ken asked he they want to consider all the requests as a whole, or separately?

Rick stated he would like to review each separately as he agreed with Bill that there is a lot going on and a lot to process and absorb. If they dwelling isn't approved there is no need for a road right of way setback.

Bill stated he thought these are interconnected enough, for that same reason, and may be viewed as one.

Russ noted denying one would deny them all.

Bill stated it's just a matter of sorting through the data without isolating them.

Rick stated he was all for that, in fact, his thoughts were to address #2 request for the dwelling, but as we answer the criteria questions, a lot of the facts and circumstances they find are going to relate to each and every one. He stated what they can do is, if they come to a certain criteria question, we'll assume that we're discussing, we'll assume that our vote, we'll assume that our reasons for our vote apply to all four variances, simultaneously. If there is a situation where it might not, for instance, on #7 it has environmental and safety concerns. The setback from the lake is all about environmental concerns and the setback from the road right of way is all about safety concerns. He just asked that the board consider both those concerns for that particular criteria question. That way, we can get through these a lot quicker. He stated he was not in favor of reading seven questions four times, as it takes a lot of time. He asked if all were comfortable with that and all agreed.

Russ had a question and thought Adam could help clarify, and asked if we were addressing all three plots? If we were just on the one, the impervious surface would probably be over. Have they been combined already?

Adam clarified, yes, it is three platted lots as a single parcel.

Michael confirmed it was taken care of last year.

Russ stated so impervious surface is fine then.

Adam confirmed, with existing coverage they are only at 13.7%, and they plan on removing some areas and it will come out about the same and still under impervious surface requirements upon proposed completion.

Dan noted the proposed structure looking over the lake is wider than the current structure, and asked what is on the back side of the road?

Michael stated wetlands.

Dan was making sure they were not obstructing view of the lake for someone else.

Bill stated the proposed is lower than existing. If you go down the list, they are actually moving farther away from the lake, and the road and lowering the height. Bill added with looking at the road, we as a government unit, should move the road back and none of this discussion would be heard, that is the logical thing to do, but it's not going to happen.

Dan stated we are also representing the public, and explained floating by on the lake, he would like to see nature, if he wants to go see buildings he will go down town. He struggles with views from the lake. Asked if

the setbacks overlapped, and Adam stated 113' across the N line and the S is 127' so if you take the 100' setback from the lake and the 20' from the right-of-way you have a very narrow pie slice of buildable space.

Dan spoke of using space on the road side as the road was not built according to the plat. As far as the cement slab, he was asking if that was all coming out on the South side?

Michael stated yes, on the North side that fire pit ring is all coming out and on the south side the garage concrete pad is coming out, as well, along with the existing garage. The structure itself is getting repurposed, they would like to move it off and let someone else use it for what they need. The lake view reveals an old retaining wall that is starting to come apart. They want to lower that whole entire part of the house. So, when they walk out, they don't walk out onto a patio and down the steps, they want to walk out onto the patio and walk onto the grass.

Bill asked Adam to show topography, and looked at the elevations.

Michael stated they put a whole lot of thought into this and did everything they could to make it better, not worse, that's why he met with Josh from Soil and Water. That's why they did everything up front before the meeting, to try to get it done in one step. Runoff from the existing house runs directly to the lake, if you show the cement slab, that end of the house, the gutters drain all the water onto the cement slab and goes right out to the lake. The runoff from the existing garage does go toward the ditch. Stated it is eroding because of that. Their purpose behind this, or the goal is to make this better than what it is now.

Dan brought up the drainage of the rain gutters on the South side, on the house, the left side is draining to the lake, and thought it should go towards the road, and would like to see the warm water from the roof, filtered through cattails and so forth, to be more general about cleaner water.

Michael stated it could go either way, as it is going underground. That was why he met with Soil and Water and wanted their opinion on it.

Dan was in favor of the rain gardens, yes, try cool it down and filtering it.

Bill stated the sewer mound system is down there so it may be the reason why soil and water directed it the way they did and Dan agreed.

Michael stated he had asked Josh if he thought the proposed conditions would be better than what it currently is and Josh's reply was yes, definitely to prevent and reduce erosion on the property and Michael read the letter from Josh at Soil and Water. This letter may be viewed in full at the Planning and Zoning office upon request.

Rick asked Michael if he was okay with the proposed conditions Adam put on if approved as far as storm water management, and Michael stated yes.

Mike asked if the boat house staying.

Michael stated staying, but needs to be redone, because the roof is starting to sag.

Mike Soukup asked if the boat house drainage will be incorporated into the new storm water plan and Michael explained the water is draining towards the area that Josh has already approved as the drainage area, so that wouldn't change, and that is the area that is not mowed.

Mike asked how far back from the lake is the boat house?

Michael stated 18 to 20 feet at best.

Mike asked if they mow between the boat house and the lake?

Michael stated nothing grows there.

Ken asked for clarification on the road right away, if Adam could show the survey.

Adam pointed out and clarified the road right of way.

Ken asked what the other dotted line was near the road right of way.

Adam stated he is not sure what those are indicating, as the edge of the road right of way are the same as the lot edge. He would have to ask Brad from Nyberg to be sure.

More discussion on the survey lines.

Adam suggested the original survey was back in 1917 so the legal description and the road right of way don't necessarily jive with one another, so based on the legal description they overlap each other.

Ken asked if we are proposing to build a structure within the road right of way? It isn't unusual to question an old survey map. That's Ken's question, and would have a hard time voting on this tonight, as he would like to make sure.

Michael stated the garage, mound system and the neighbor's garage are all sitting in the road right of way.

Ken would like to move to table to make sure, as it would be an automatic "no" until he knows.

Michael asked if this is all in the road right of way, you are not going to approve?

Ken stated there are a lot of things to consider here, it would not be an automatic "no", he just wants to make sure we know where it is before deciding and felt that was appropriate.

The board members talked among themselves in reference to the road right of way and the dotted lines on the survey.

Bill addressed Dale Ahrens, Birchdale Township Supervisor, and asked what he sees. Do you work off an existing road or do you work off a 100-yr. old survey?

Dale sees everything is a little bit different, he stated he cannot answer that.

Ed Kortuem, Mankato, has property at 12281 Alcott asked what the dimension was on the bottom and the top of the lot?

Adam stated 127' and 113'.

Ed suggested it may be the lake setback line, as it follows the lake shore, that's what he is seeing.

Adam stated the only way we would know is to ask Nyberg Surveying and offered, the application was submitted December 29<sup>th</sup> and sixty days would be Feb. 27<sup>th</sup> and the next BOA would be February 22<sup>nd</sup>, so that would fall within the sixty days, but we would have to "make a decision" by then.

Michael, stated even if that is the road right of way, is the road ever going to move?

Dan agreed, this is more of a permanent road, and for him, measure off two rods from the center of the road, should be the road right of way. Surveying it where the dotted lines are, to him, is bogus. He would rather move from the center of the road in favor of the land owner. We have a lot of no man's land here that might as well be to the land owner who owns the property.

Russ pointed out purposely take property away from the property owner if the platted road right of way was followed as opposed to where the driven road was built.

Dan stated the road has been there long enough.

Russ added we illegally put a structure there.

Dan added where you have an old fence line that's been there 100 years, to him it is permanent, 30' on one side and 80' on the other side, who builds a fence that crooked. Due what was there, nobody is questioning it, but his Dad was the one losing the land, so had the fence rebuilt and had to pay for the whole thing but gained the land back where it was supposed to be. This road has been here long enough and no one has questioned it, to him the right of way should be 33' from the driven centerline of the road. In this case, he actually has more property, back to the six, seven feet, it should be more like ten or fifteen feet requested. Where the garage is now, if you measured, he is sure it is more than 33' from the centerline of the road.

Bill asked Adam if he would measure 100' setback of the lake, and see if it is the same as the dotted line.

Michael used a tape measure and used the scale showing on the survey, it is 100'.

Rick was on the GIS and measured the 100' and stated he was trying to process this whole thing; perceived the second dotted line on this survey is the 100' setback from the lake. He added this is a more recent survey and

to him, he is going to rely on that survey, and it is going to rule as to where the property line is. It's going to rule as far as how far it is from the existing road.

Michael stated he was present when they did the survey and they found all the pins except for the one underneath the garage.

Rick added, so in doing that, he is just going to consider the road, and the survey that was done to put the road in, was in error. These are your property lines, it's the best we've got.

Bill stated if we were questioning these facts, we would send the applicant home for a survey, and the applicant showed up with the survey, so why would we send him home to do what he has already produced in the survey?

Ken asked Michael if the surveyor was looking for the road boundaries or just platting out your property lines?

Michael stated he found the stakes for the property lines.

Ken repeated, so he found the property lines but he wasn't looking for the road right of way. Stated if we have established anything this evening, it would be we don't know and would like to re-establish his motion to table for more information. We are opening ourselves up to "way too big" of a liability if we are allowing a structure within the road right of way, if that possibility exists, and he thinks it does.

Motion seconded by Russ.

Adam stated the ideal scenario is to decide at the next meeting. If we simply have missing information, the applicants can agree to give us more time and we may extend this for another 60 days if you have a valid reason as to why, but plan to make a decision at next month's meeting is the best. He also added we know the answers we have to get.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Dan Peyton	No
Bill Berscheit	No
Ken Hovet	Yes
Mike Soukup	Yes
Russ Vandenhuevel	Yes
Rick Johnson	Yes

Rick stated motion carried to table until next month, which is February 22, 2024, and staff will be responsible for providing the information in question.

Adam agreed we will work with Brad from Nyberg Surveying, and will get the answers, one way or another, and have that stuff prepared. Addressed Michael and Lori and said they will not have to worry about noticing or anything, they are already on next month's agenda. Same time same place just next month.

Rick suggested we take a short recess.

**AGENDA ITEM 3: Dennis P. and Jody L. Wessel – PID 03-0045500 – Birchdale Township, Little Birch Lake.**

**Requests:**

1. Request for variance to reduce the setback from the OHWL from 100' to 92' for proposed addition of handicapped accessible stairway to existing house in Recreational Development Shoreland Zoning.

Dennis & Jody 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. Implementation of a stormwater management plan based on a 10 year/24-hour rainfall. Plan shall be submitted to Planning and Zoning prior to issuance of land use permits.
2. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
3. Establishment of construction stormwater controls prior to issuance of land use permits.

Dennis and Jody confirmed the staff report was accurate and had nothing to add.

Site inspection report was reviewed by Bill and he stated the questions down the list, for the most part, are not applicable to this application and very minimal. No adverse impacts, no alternate site, any alternative site would increase the impact to the lake.

Correspondence received: None.

Public comment: None.

**Board discussion:**

Ken would like to clarify the request, and looking at the existing structure, asked if they would replace what is there with something different.

Jody explained 6' x 22' structure. A door to the outside at ground level, and the steps would be moved inside so that deck and door you see will come off.

Ken, so you will still have some steps...he was thinking it would be a handicapped ramp.

No, it will be a door at ground level, a landing and the steps will be on the inside.

Rick stated he was thinking a ramp, as well.

Dan asked if the steps will still be coming out the one side, just enclosing it?



Jodi stated the doorway would be near the bottom step, and a six-foot landing area inside, enclosed, as part of the house, like a split-level entry, is what they are going for.

Dennis explained they had a spiral staircase that does not allow enough room to make the turn to get up there.

Rick directed Dan to the floor plans to review.

Adam pointed out they are in the board packets for them to reference.

Rick stated after looking at the floor plan you can see the propose 6' 22' so it not only includes the entry but a walk-in closet.

Jody agreed someplace to store a wheelchair or walker.

Rick asked, because he was expecting a ramp of some sort, is this inner modification ADA compliant?

Jody said yes it will be and also the door has to be 36" wide which it will be to accommodate a wheelchair.

Rick agreed definitely something much better than what you have there.

Jody stated this would be easier on her than getting him up and down a ramp and maintaining it, plus looks better.

Russ stated he thinks it is a no brainer and would like made a motion to approve.

Adam stated due to the construction being on the back side of the lake, he suggested dropping the proposed requirement for screening and the board agreed, so now down to two conditions.

Rick stated strike #2, and in reference to implementation of storm water management.

ADA does not exempt you from conditions, that we need to make accommodation for those things.

Rick asked Jodi if they were all right with the two remaining conditions that are on the table.

Bill pointed out the conditions apply only to the addition, not to the existing structures on the property and will second the motion from Russ with no conditions.

Mike suggested to list for a condition that the addition follows the ADA standards, and ask them to follow them.

Adam stated that they will adjust their motion and second that the addition be completed on one condition that they comply with the ADA standards.

The board agreed.

Russ motioned to approve, Bill seconded with the one condition as amended.

Conditions:

1. Proposed addition be completed with compliance of all ADA standards.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Dan Peyton	Yes
Bill Berscheit	Yes
Ken Hovet	Yes
Mike Soukup	Yes
Russ Vandenhuevel	Yes
Rick Johnson	Yes

Motion carried.

**Agenda Item 4: Edward C. Kortuem – PID 03-0030000 – Birchdale Township, Sauk Lake.**

**Requests:**

1. Request for variance to reduce the setback from the OHWL from 100' to 75' for proposed new house with attached garage in Recreational Development Shoreland Zoning.
2. Request for variance to increase the height limit from the required 18' to 21'11" for proposed new house with attached garage in Recreational Development Shoreland Zoning.

Edward Kortuem and Aaron Lahr the builder, 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. Implementation of a stormwater management plan based on a 10 year/24-hour rainfall. Plan shall be submitted to Planning and Zoning prior to issuance of land use permits.
2. There shall be no topographic or vegetative alterations on steep slopes along the lake frontage.
3. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
4. Establishment of construction stormwater controls prior to issuance of land use permits.

Edward confirmed the staff report was accurate.

Bill reviewed his onsite report and this may be viewed in full upon request at the Planning and Zoning office.

Correspondence received: Yes. The e-mail sent in from Edward confirming the #2 height variance request to be added to his application. No correspondence from the public.

Aaron Lahr stated he was the builder and explained the septic got marked out, and unfortunately, he was made aware of this after the site inspection, that the stakes had been moved. The way the septic was laid out, they are at the minimum setback from the septic to the proposed garage and is within the 75' of the setback.

The proposed garage will be less than 5' of the max distance they need to be for the septic from the structure. He stated unfortunately it was all marked out with paint before it snowed and of course, then it snowed.

Russ had a couple questions, so the septic is already there?

Aaron stated, no, it's the proposed septic and it is about the only spot they can put it; that it meets the setback from the road and meets the setback from the proposed structure.

Edward offered there is an existing old septic system that is non-compliant and will be removed.

Russ asked if Edward lives in the cabin?

Edward stated he has only used it as a cabin, never lived there, however, his folks live right next door. It's kind of the reason he is moving up here, because his dad was recently diagnosed with cancer and his mom is 80 years old and they want to get up here sooner rather than later.

Russ asked if the cement footings from the old cabin gone?

Aaron stated yes, everything is gone.

Ed stated part of the proposed location of this is to try and tuck it and hide it in, behind the shed, a little bit. Only part of the house is in the setback. If it is squared off to the road, part of the house is within the setback but the other part is out, as you move down the side of the lake.

Aaron stated being the lot runs at an angle, only part of the proposed house is at 75' and the rest is outside the 100' setback. He offered copies of the plans of the proposed structure for the board. Which they reviewed.

Rick asked if he had an aerial, to which Aaron stated no. Rick mentioned he was struggling with what's in the application and the information we are getting. There's not enough. After receiving the floor plans and elevations hand out, he stated these were in the application in the board packets.

Ken asked Adam to turn to the lot layout, and Aaron to point out where the septic is, which he did. He showed where the existing shed and house were and pointed out where the proposed was going to be and explained, to reduce the impact to the neighbors across the street and minimize and give more distance from the East side of the garage to property lines. This is more aesthetically pleasing.

Rick stated this information was helpful in terms of the criteria questions and how it will look from the back and from the lake.

Mike Soukup asked what the distance between the new house and the existing shed.

Aaron stated only about four feet between them.

Rick in reference to the finding of facts, and it is the applicants' responsibility to demonstrate that there is no alternative sites. He stated we've been talking about that and the proposed septic system as a practical matter of alternative sites. When he goes on the GIS and look at an aerial view of his property and draw a 100' line from the ordinary high-water line, he sees a lot of space where there could be a potential alternate site. Could you demonstrate that you are minimizing the variance request by putting it where it's at, or why can't you use that space?

Aaron stated we get too crowded on the East side to bring that structure out in front of that existing shed and out of the minimum setback.

Rick asked Adam to bring up the GIS and take a look at that. Rick stated the board needs to insure a variance they grant is the minimum request to alleviate the problem.

Aaron stated he understood.

Rick pointed out there is a lot of space to the East and the South East to build a structure, why does it need to be where it is proposed?

Aaron stated he was told they don't have enough room for the septic in the back yard, if outside the 100' setback. They had to move the entire structure to the side and in front of the existing shed and would crowd the East line too hard.

Rick stated he heard that you would encroach on the East property line to do it.

Ed stated they would block the view of the neighbor's lot. He stated they sit out on their deck and they look through.

Aaron stated part of the variance request is not trying to block their view. It drops off tremendously the further you go to the East.

Rick stated he felt comfortable with that. He stated he thinks there needs to be a balance between what the property owner's needs are and what the neighbor's needs are or the public's for this matter.

Bill stated he wished he had better dimensions. He wished we could factually say, although he's telling us there is not much room to move the sewer system, but we don't have actual dimensions that show us we can't take that sewer system and put it over on the other side of the garage, or the lakeside or somewhere else. There's a whole pile of options available for configurations on this lot and we don't have any dimensions to rule any of them out.

Rick stated again, it is up to the applicants to provide the findings of facts, and when not provided, we have to vote negative, due to lack of facts. It is critical that they can demonstrate that you can't have a structure and meet the 100' setback. He stated he understands why is proposing to do that, because of the view of the neighbors, but we have to balance everybody's needs here and eventually come to a determination.

Aaron asked to table it to mark the stakes and setbacks, and allow the board to look at it again?

Dan added in reference to the first applicant how they clearly provided dimensions, where everything is laid out and where it is proposed, not just existing.

Bill referenced the first applicant and how they came with their storm water management plan, and how they were going to do it and where they were going to do it and as the applicants, they don't want to leave all of that up to the board to dictate a storm management plan for them. It would be a poor choice on their part.

Ken stated when working on the house plans, keep in mind that generally you can come up with plans that will fit the lot, and encouraged them to think about that.

Rick explained house plans are not considered a finding of facts to grant a variance. It's a design and self-imposed. He's seen some pretty small lots with very limited space and people can come up with some pretty creative ideas to minimize the variance, and also encouraged Mike and Aaron to do that. Thought it wise to table and bring back more information to the board.

Aaron agreed to table.

Ken motioned to table to February 22, 2024 for more information and Mike Soukup seconded.

Roll call vote commenced as follows:

<b>Board member</b>	<b>Vote (yes or no)</b>
Dan Peyton	Yes
Bill Berscheit	Yes
Ken Hovet	Yes
Mike Soukup	Yes
Russ Vandenhuevel	Yes
Rick Johnson	Yes

Motion carried to table until February 22, 2024.

Dan added in reference to #8: is the unique circumstance created by the landowner? He stated they have seen everything and knows you can't put twenty pounds into a five-pound sack.

Ed asked what the other date was that is available, and Rick stated March 28.

Aaron asked if there will be another site visit before the 22nd, and Adam stated yes.

Rick confirmed there will be another field inspection by Adam and one of the other Board members.

Russ motioned to adjourn and Dan seconded. Voice vote to adjourn. No dissent heard. Motion carried and the meeting adjourned at 8:04 PM.