Minutes of the Todd County Board of Adjustment Meeting

May 23, 2024

Completed by: Sue Bertrand P&Z Staff

Site visit for Kunkel application conducted by Adam Ossefoort and Mike Soukup on April 17th, 2024.
Site visit for Rothstein application conducted by Adam Ossefoort and Larry Bebus on May 15, 2024.

Meeting attended by board members: Vice Chair Bill Berscheit, Mike Soukup, Danny Payton, Russ Vandenheuvel, and Planning Commission alternate Larry Bebus.

Staff members: Adam Ossefoort and Sue Bertrand

Other members of the public: Sign-in Sheet is available for viewing upon request.

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

Dan motioned to have the April 25th, meeting minutes approved. Russ seconded the motion. Voice vote, no dissent heard. Motion carried.

AGENDA ITEM 1: Mark and Gwendoline Kunkle – PID 11-0049800 – Grey Eagle Township

Adam stated the Kunkels requested to table until next month.

AGENDA ITEM 2: Michael A. and Janice Rothstein– PID 03-0033300 – Birchdale Township

1. Request to reduce the OHWL setback from 150' to 89' for proposed house addition and garage.

2. Request to increase the height limit for structures within a setback from 18' to 24' for proposed house addition and garage.

Staff Findings: Adam read through his staff report. This report may be viewed in full, upon request, at the Planning and Zoning Office.

Proposed Conditions if approved:

1. Maintain a minimum of 50% screening as viewed from the lake during leaf on conditions.
2. Establishment of a storm water retention system to capture stormwater from the proposed addition based on a 10 year/24-hour rainfall. Plans for the system shall be approved by Planning and Zoning prior to issuance of a land use permit.
3. Abide by all other applicable federal, state, and local standards.

Michael made a correction they were on the West side of the lake, not the East.

Adam confirmed the correction.

Larry went through his site visit report. This report may be viewed, in full, upon request, in the Planning & Zoning office.

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Correspondence received: None.

Public comment: None.

Board discussion:

Adam had called the Rothsteins, and if you look in the background, you will see a Tyvek covered shed that is being built to replace the existing one. After discussion, a permit was obtained showing they will be placing the shed back away from the lake, and the old shed will be removed.

Bill stated the practical difficulty has to do with topography and asked Adam to show on the overhead. Addressing Larry, asked if it is correct there is an alternate site that exists up out of the steeper topography?

Larry stated, way up in the steeper topography. The house itself was built before the zoning regulations, and the garage will be in back of the house. They will end up taking out some of the hill in the back in order to do this.

Dan clarified the addition is on the back side of the house? Asked if we had what the size of the addition is compared to the existing house structure?

Michael passed out plans of the structure for the board members and to Adam for the file and record.

Bill stated they needed to apply some diligence to "is there actually an alternative site or not"? To do an addition, it would require moving the entire structure to use an alternative site. Is it a moveable structure? Does it have deep footings?

Michael, yes, it has deep footings and it has a crawl space.

Bill explained the reason for the questions, when zoning was established in the 70's, part of the very basic principal to that, was over time, we would eliminate these non-conforming structures that significantly encroach on the lake. When you come to this board looking for a variance that's the time to ask all of these difficult questions. Is there a way to take this structure and move it back, replace it with a different structure, do something to get out of the set back? That was the goal for zoning, when it was put in on lakeshore. He stated he doesn't know that it has been successful, but that was the goal. He added, they as a board are required to do-diligence to that.

Russ asked if the back side of the house is opposite the lake?

Michael, yes.

Russ, on the picture handed out, is the taller part the existing cabin?

Michael and Jan both, no, that is the new addition. Michael added, they would like to put a gambrel roof on it,

and that would give storage above the garage. With the cabin, there is no storage and there is no basement.

If they plan to retire there, they are going to need a little more room. Instead of going larger, they would go a little higher on the garage that would give them the storage.

Mike Soukup, question for the staff, because this is a non-conforming structure and if this were to be granted, how would this extra some one thousand square footage effect, in the future, the exact for exact footprint?

Adam stated they could replace it just the same as any other non-conformity, because a variance is granted forever.

Soukup, so therefore, if a variance is granted on this, and this is attached to the house, we have just increased the footprint of a non-conforming footprint by 1300 sq. ft. roughly. Just wanted to clarify we would be expanding the footprint forever.

Dan, getting back to the addition, you are talking 2/3 the size of the original structure on the expansion. That is quite an expansion. He stated he is not 100 percent against expansion, but it is considerable. He is concerned about the height on this structure. The height is quite an addition. He does agree on what they want. Stated his mind may not be ready for that. Asked to see photos showing across the lake, stated he agrees one is very tall, but really doesn't see many that high. Stated they are already well within the setback too. A lot closer to the lake than some of these other structures.

Michael stated a lot further down the lake, the board had granted a variance to, a couple years ago, and they have a full walk out basement, and a second floor and they are pretty high, there.

Bill stated height limitations are set in place because the lake is public property, and when people are on the lake they do not want to look at a wall of houses. So, by putting height limits on structures it makes it a lot easier to screen with trees or vegetation and make them less visible from the lake. It gives the lake a more natural appearance as opposed to a wall of houses. That is primarily the reason and the logic behind the height limitations. Bill asked Adam to show the topography on the GIS and to measure a setback.

Adam showed the GIS overlay with the topography lines. He stated he wasn't sure the board knows what is going on with Long Lake, but this lake is five to six feet above the ordinary high right now.

Jan stated it has come down a little in the last couple of years.

Michael offered, it is over the ordinary high by about four feet right now.

Bill asked how long it has been that way?

Michael stated quite a while. He did not know if the board was aware of it, but they have been working alleviate this problem. All the water goes into this lake and there is no place for it to leave. Since they have been living there, it has gone up every year, with the heavy snows and rains and everything. So, the people

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around the lake are having a lot of problems with some buildings, with the water. They are planning to put in a drain that will run into the North end of Sauk Lake, and drain the lake back down to its' high-water mark.

Bill, asked who this was going through?

Michael stated the watershed district.

Adam offered more history, back when representative Poston was in office, he submitted a bonding bill to secure 1.4 million dollars. At this point, his understanding is the SRWD district is going to take that on, hire engineers and go through a bunch of stuff and basically, create a large siphon to drain the lake to Sauk Lake and be able to maintain the level of the Long Lake.

Dan asked if it will be a pump or an actual drain.

Adam stated there are no engineered plans.

Michael and Larry stated it will be drained, not pumped.

Larry added they already have the grant.

Adam explained the reason he had brought that up was he actually had to have the DNR come out and go out in the lake to find the ordinary high, so we could measure the setback. It is close to the end of the docks. Adam measured the 150 feet from the approx. ordinary high mark.

Bill stated there is actually fairly level, buildable space, right above the 150' mark.

Dan asked Adam to measure 150 feet back from the North side.

Russ, when did you move up there?

Jan stated nine years in June.

Russ, looks like there is plenty of cover there. He pointed out on Michael and Jan's drawing, listed a height of approximately 21 feet.

Michael stated after he had the plans were drawn up, he found out what the truss company needed for a gable for the gambrel roof, then he came to 21 feet. He applied for a 24' variance and he was guessing, as he didn't know for sure what he needed, then realized he only needed 21 feet.

Russ confirmed, the application states 24' variance request but they really only need 21 feet.

Michael stated that is correct.

Dan asked Adam if that is an official change?

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Adam explained the board would have to agree and let the applicants know they were okay with that, if they were to grant the variance, it would be capped at 21 feet. He stated variances should not be granted beyond what is needed to alleviate the practical difficulty. So, if the applicants are agreeable to that, the board would then consider 21-foot request instead of the 24 foot, then it would go to only a three-foot deviation instead of six.

Michael stated 21 feet it is.

Bill asked to see the lake frontage one more time, and stated we have height and are not going to flood the tress out anytime soon.

Adam stated the project should be done within the next two years, he was guessing.

Dan asked about the ordinary high, again.

Michael stated it is not quite out to the end of the dock. He had it at one time, maybe twelve feet from the shoreline, because he needed an accurate measurement to move the Tyvek shed back.

The board noticed two of the trees down by the lake shore may have been damaged already by the water and may not survive.

Bill stated we need a motion to adjust the height request from 24' down to 21', so it is official on the application prior to the criteria questions.

Dan motioned to accept the 21' foot height request instead of the 24'. Larry seconded, voice vote, no dissent heard, motion carried.

Bill 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**
Mike Soukup	Yes.
Russell Vandenheuvel	Yes.
Dan Peyton	Yes.
Bill Berscheit	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**
Mike Soukup	Yes.
Russell Vandenheuvel	No. Agrees with Bill.
Dan Peyton	Yes.
Bill Berscheit	No. Percentage wise, this is a very large addition, so, we're increasing the footprint considerably, and when we do that, it's

	time to exercise the use of the alternative site to put this structure. He stated he believes they have established: there is an alternative space.
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**
Mike Soukup	No, because of the footprint of the addition, and as mentioned, there are alternative sites for building.
Russell Vandenheuvel	No. Agreed with Mike Soukup, doubling the size of the footprint.
Dan Peyton	Yes.
Bill Berscheit	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**
Mike Soukup	No, because there is an alternative building site. Again, for the large number of square footages they are adding.
Russell Vandenheuvel	No.
Dan Peyton	No. The height is a landowner request. They could get by. The footprint is excessive, guessing 75% to 80% increase overall.
Bill Berscheit	No. We've established there is an alternative site. The request is for increased footage for living space, so that is created by the land owner.
Larry Bebus	Yes, because of the house being built prior to zoning regulations. He believes that taking it back, they are already going to have to move a lot of land and take a lot of trees out, in order to flatten this out. So, they are going to be digging into hills and can't control the scope of the land.

Majority response- No.

Criteria Question #5: Will the variance maintain the essential character of the locality?	
Board Member	**Vote and Comments**
Mike Soukup	Yes.
Russell Vandenheuvel	Yes. Across the lake, there other bigger buildings.
Dan Peyton	No. Due to the distance from the lake, it shows up more.
Bill Berscheit	Yes.
Larry Bebus	Yes. There are other buildings that are as big or bigger.

Majority response- Yes.

Criteria Question #6: Does the need for the variance involve more than just economic considerations?	
Board Member	**Vote and Comments**
Mike Soukup	Yes.
Russell Vandenheuvel	Yes.
Dan Peyton	No. He stated he believed it was a cost factor for moving it.
Bill Berscheit	Yes.
Larry Bebus	Yes.

Majority response- Yes.

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Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	**Vote and Comments**
Mike Soukup	Yes.
Russell Vandenheuvel	No. Feels there is a lot inside this setback happening if they are going to move some earth, all in the setback, and they are doubling the size of the structure, so, no.
Dan Peyton	Yes. Environmental concerns have always been his pet peeve, but due to the setback, there is a flat area, yes.
Bill Berscheit	Yes. He has significant concerns with the distance to the lake and the current high-water issue, and the lakeshore as it is now, giving us the ability to establish enough screening. Screening can somewhat be considered environmental, but he is not going to rate it as a negative vote in response to this question, so, yes. Safety and environmental concerns have been met, so long as we are using the proposed conditions that are being put together by staff.
Larry Bebus	Yes. With the proper gutters, drain spouts and water basins, and catches, there was a low spot that would have been by the proposed garage, that would have been, what he thought, a good basin for water to run into. They have already agreed to move the existing shed that was down by the lake, if that is considered environmental.

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.

Bill stated one thing he loved about this board is split votes, and actually giving their thoughts on the reason for the vote they put forward. Whether you agree with it or not, it's important everybody has their reason. He explained, the way this works is with a failure on question number four, unless there is something that overcomes that failure, we would now be looking for a motion.

Dan motioned to deny the proposal, Russ seconded the motion, as presented.

Roll call vote commenced as follows:

Board member	**Vote (yes or no)**
Russ Vandenhuevel	Yes.
Larry Bebus	No.
Dan Peyton	Yes.
Mike Soukup	Yes.
Bill Berscheit	Yes.

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The motion to deny the variance has been carried and your request has been denied. Bill stated the applicants can certainly visit with staff on how to proceed forward from here. Bill and Dan also stated relief from the decision would go to district court and not to the County Commissioners or other governmental units in the County. It goes to district court.

Adam offered he will be in the office tomorrow. Stated he has no further business.

Russ motioned to adjourn and Dan seconded. Voice vote to adjourn. No dissention heard. Motion carried and the meeting adjourned at 6:45 PM.

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