Minutes of the Todd County Board of Adjustment Meeting

July 25th, 2024

Completed by: Sue Bertrand P&Z Staff

Site Visits conducted by Adam Ossefoort and Rick Johnson and Jamie Christenson, July 19th, 2024.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheit, Mike Soukup, Danny 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. Each board member introduced themselves and Rick explained the process for those attending.

Rick explained the meeting process.

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

Mike motioned to have the May 23rd, 2024 meeting minutes approved. Russ seconded the motion. Voice vote, no dissent heard. Motion carried. Rick and Ken abstained as they were not present at that meeting.

Introduction of the meeting etiquette by Rick.

1. **AGENDA ITEM 1: Jodi I. Marohn:** Section 25, Hartford Township
   Site Address: 28333 284th Street, Long Prairie, MN 56347 **PID:** 12-0030200
   1. Request to increase the height limit for her West and South property line fence from 6' to 8' in AF-1 Zoning district.

Jodi 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.

Jodi confirmed the staff report was accurate.

Rick reviewed his site visit notes. A copy of this may be viewed in full at the Planning and Zoning office upon request.

Correspondence received: None.

Rick reminded the public the board is looking for a presentation of the facts, that need to be relevant to the variance of increasing the fence height from six feet to eight feet. Bantering is not allowed. Not an actual court, so cross examination is not allowed. You will be giving the facts to the board. Limit of three minutes for public comments.

Public comment:

Henry Becker chairperson of the board of Hartford township, stated they discussed this application at the town board meeting on the 22nd of July and Hartford township does not have any qualms going from 6' to 8' with the fence, and he is speaking on behalf of the township.

Jim Woeste, a neighbor of Jodi's, stated Jodi wants to put up an additional wind break for horses and chickens in the corner of the farm.

Wayne Carstenson, 26947 Co. Rd. 16, stated he has helped her out making the place a little hobby farm. He actually thinks she should have a ten-foot fence. With the NW wind coming through there, when there is no corn and in the winter time, there is no wind break. Trees are mostly gone that were there. Really thinks she should have a better wind break than what she has. He thought the old panels were originally off the shed doors. The tin was loose and cows and horses could cut themselves. You want to have a nice-looking place and not have it look like junk. She's trying to make the place look nice. Added, he thought it should be a 10-foot fence.

Roy Parish stated he lives about half mile West of the property. Realized this is a wind break fence, but noticed, the shed there, has no cattle. Manure, in the spring, is piled up right by the shed and she gets a drift of that. Call it privacy or a wind break, he thought she needs a fence.

Tim Twardowski, lives right across the road, 28260 284th St., has some concerns. First of all, if there is a problem with spray, they have drift reducing nozzles and it is an NRCS thing and he is on a schedule, so there shouldn't be a problem with spray. They live in the country and you are going to have manure smell and cattle and all of those things. If the city moves to the country, what are we going to have? Another city? If we set a precedence like this, the sky is the limit. When he buys a place, he makes sure he knows what he is getting. The yard was there when she bought it and so was the open field. What is a 180-foot fence going to do? The field continues on and there is more dust on the gravel road. There are other options other than a fence, like planting trees. The panels that you were talking about were off the property line thirty feet, at the corner of the barn, so when grandpa would run the cows in, they couldn't see through. Saying she needs a fence, can you put a feedlot or chickens and goats that close to a fence? Isn't that thirty feet for confinement?
Prove that an eight-foot fence is going to stop the dust and spray. The posts better be deep, or it will blow right over if the wind is so bad it blows your hat off. She should have to prove the hardship. Has she lost trees from the spray? No. If you are going to build a six-foot fence, build a sixty-foot fence. If you are going to grant a variance, great, then he thinks she should do the whole side, because they live in the country and there is wind and dust from everywhere.

Jeff Twardowski, the one who has the land and sold the twenty acres off, had planted a lot of the trees. She had cut down the Black walnut trees. He pointed out on the screen where there used to be nice trees. People

used to say he had a nice quiet yard. Jodi comes in, clears the trees out, and wants to put up a wind break. Where she wants to put the fence, what is that going to do? What is the benefit? You still have wind from the all directions. You had a wind break from God, why not plant a row of lilac bushes, or plant the trees back. He talked about shed placement in relation to property lines. Now it is wide open. Concerned about her German Shepherd dog. Hired Martin wire fencing so the dog would not come over and chew up him or grandkids. Hired CHS to spray, and is not worried about spray issues. You never saw the disk sitting there when the trees were there. The manure and spreader were there, because that's where they start when spreading manure and why would he haul machinery back and forth.

Wayne Carstensen stated he is not on the town board and has not been in six years. Explained Jodi is after a fence to block the wind for the horses and cattle and just trying to slow it down a bit. Not worried about looking at his equipment.

Rick interjected and halted a second round of comments from the public, stating as quasi judges, it is not the boards' job to determine "he said" "she said" when there is a difference between two people. The board is not interested in that. If someone has facts specifically related to the variance, hone in on the request of going from a six-foot fence to an eight-foot fence and why the board should allow this. She has all the rights to put a fence along the property line. She is asking to go eight feet. We are not looking for who took the trees down, who was on the board or when the sheds were moved. He will allow a second round of comments but not for these types of comments.

Harry Becker from Hartford township reconfirmed his support from the township for Jodi to go from 6' to 8' fence. An eight-foot fence is not going to be detrimental to the character of the neighborhood. Trying to be realistic.

Rick stated those were the comments the board is looking for.

Jim Woeste confirmed that an eight-foot fence would make a better difference for a wind break, as he delivered hay last winter with a nasty SW wind, and he speaks his opinion from experience.

Rick again stated those were the comments he was looking for.

Board Discussion:

Russ asked if the property line has been surveyed for the fence?

Jodi, yes.

Russ asked what kind of fence will she be building?

Jodi stated a board to board wooden fence. She stated she absolutely loves where she lives, it's beautiful. The wind is a bit rough, to say the least. She has four horses and last winter was mild, but her horses were literally shivering due to the wind in the winter. She believed any added inch to the fence will help. She has chickens on the West side of the barn, and it is thirty feet back, and is not too close for a feedlot. She wanted more in

height but didn't want to ask for too much. The wind barrier that was there was turned and all over the place and was up off the ground, but knew they were there for a reason. Then, one of her horses got its head caught in one of the things. A horse's skin is not like a cow's, so she had to take those fences down. She knew when she took it down, it was going to make a whirl wind but she lived with it. She is used to getting a permit for the fence and said she didn't need one, and wasn't aware it could only be six feet. She knows the smell of spray is expected, and a part of living there but thought any little thing she could do to stop that, would be for her benefit. Recently, the wind from the SE was so strong, she stated she was planning on putting trees up to the East of her house for extra wind barrier. She pointed on the map where the 40' x 40' area will be for the shop (which will help with the wind) and where the trees were removed. Tight on the SW corner, but knows 8 feet is better to than 6 feet. She is adapted to it and it is her peaceful place.

Ken stated no questions

Dan asked for the wetland area map. Dan stated he sees a lot of space to the East of the driveway, that is not in a wetland, when talking about tight spaces.

Jodi stated that is all pasture.

Bill stated he owns a sprayer, simply smelling it does not constitute a drift, period, not negotiable. We are talking two feet on a fence. When comments come out on both sides about "I believe", or "I feel", those are not statistically relevant. There is statistical data out there that will tell you how much the height of a barrier will block wind. Any type of information like that, from either side, would be relevant to this variance. This variance is about two feet. Like Rick has stated repeatedly, she can put a fence on that property line, we have got nothing from either side of the argument, that tells us, statistically, that there would be an advantage of eight feet vs six feet, to grant or deny. Statistically important information. The fence variance request states the practical difficulty is due to: overspray, dirt, wind and tractors in the field. He has heard solid fence and fence with gaps in it. Either way, a six or an eight-foot fence is not going to eliminate what is listed as a practical difficulty. A fence with gaps is not going to eliminate any spray drift or any dirt.

Rick stated on this board, we do have members with a lot of farming experience. All he has heard so far from the public is, "Based on their experiences is she should have an eight-foot fence."

Dan stated he had a neighbor with a narrow lot and for twenty years sprayed three feet from the line and never killed the tomatoes. It can be done. Fence, no fence, he purposely worked with the wind and kept within arguments of wind speed. He has had CHS and Nutrient Ag both spray and have never had an issue. Had one issue and it was about fertilizer, not spray. They can spray one pass on a road ditch, 200 yards away, and he can smell it all the way to his house. Just because you can smell it does not mean it is drift. The smell will travel a long way depending on which spray you are using. Dan sees no practical difficulty with spray, wind, or dirt with this request.

Ken stated he worked for CHS for 41 years before he retired and has some insight with drift. Was party to a lot of claim adjudications. You don't need droplets of drift to call it drift. A lot of the pesticides are highly volatile and all you need are the vapors. You are going to smell it. It all depends on the pesticides and it depends on the weather conditions. It isn't the same all of the time. Some people are more sensitive to these things than others, it is not their fault. It's just the way it is. He stated if she is trying to avoid that, he doesn't blame her a

bit. If she thinks two feet is going to help her, he didn't know how we, as the board, could turn her down. Her beliefs are just as important as our statistics. She can build a fence, and two feet more isn't going to hurt anybody. There is nobody that will be harmed by that, not that he has seen, in this case.

Jodi stated she didn't mean to offend anyone about the spray. Didn't want to offend any farmers or farming. She adores the farmers, has taken care of them when they come into the hospital all the time. It's that wind. If it's twenty mph in town it is 40 mph at her house. Just trying to calm it down, and every inch counts. It's a whirlwind.

Rick stated he has one comment for the board, in reviewing this application, and after looking at the County Ordinance, it states that fences shall not exceed 6' in residential districts, and also states it shall not exceed 10 feet in commercial and industrial districts. Fences higher than these shall require a variance. Essentially, not in the comprehensive plan, other than orderly development, and not in the ordinance as we are talking about a fence in Agricultural Forest zone. It's silent. He could see the County is taking the more conservative position of six feet for residential. He stated if you are going to put up a fence in residential, for him, it's all about privacy, and he felt an intrusion of privacy there from the site visit, although she did not list it in the application, and doesn't speak of it, he felt it. Asking to build in between 6 and 10 feet, and agrees with Ken. He sees no reason why we could not grant the variance. If the fence was two feet higher, he sees no adverse impact to the County or the neighbors. This is what she wants and feels important about.

Because this is a unique situation and the criteria questions are not relevant, he skipped them and asked for a motion.

Russ motioned to grant the variance to eight feet, Ken seconded, with no conditions as presented.

Roll call vote commenced as follows:

Board member	**Vote (yes or no)**
Bill Berschiet	No
Dan Peyton	No
Mike Soukup	Yes
Ken Hovet	Yes
Russ Vandenhuevel	Yes
Rick Johnson	Yes

Motion carried to grant the Variance.

Rick called for a short break then reconvened.

AGENDA ITEM 2: Discussion on "Vanishing Natural Shorelines Report"

Rick wanted to share from the DNR, an article about Minnesota's Natural Shoreline, a loss that contributes to degraded lake quality, and thought it worth bringing to the board. What's it's saying is in answer to the cry for the poor quality of MN lakes, and if we don't start doing something, we are going to get to the point of no return. He wanted to read a couple highlights: Page 3, many MN lakes are in trouble, about ½ of MN lake shorelines have already been lost, and continues to vanish at an alarming rate. We are downgrading our lake quality. This report is all about natural shorelines, which we do address. For lake quality, fish and wildlife

communities and recreation, a reasonable natural shoreline protection and restoration goal would be: 75% of that shoreline be un-mowed with natural vegetation forbes grasses, shrubs and trees and at least 25 feet width landward from the lake, at a minimum. Once it is lost, it is hard to recover. Phosphate level in lakes, once it is in there it is there for a long time. Very alarming. Page 9, Storm water runoff is considered a major source of water pollution, and may be responsible for considerable water quality impairments. Page 12, they are doing surveys and have found MN 40-50 percent of its' natural shorelines. Central MN is the worst and where this problem is most significant. Page 15, state of lake shorelines is dire. Regulations have not stopped shoreline alterations, lot by lot, year by year, lake by lake and simply are not working and we better do something about it or we are going to lose our lakes. Where it hits home, Page 18 at the bottom, to Rick is: Variances are often seen as one of the bigger problems with lake shoreland management. Some local administrators see them as an opportunity to improve shoreland conditions, for example shoreland restoration for a granted variance may be an appropriate condition to mitigate activities, which we do, and goes on to state there are also some variance requests that get approved that have never been approved. Rick stated what he sees is all these small nonconforming lots, where everybody wants to build their retirement beautiful lake homes, and when we as a board address that, he sees and is sensing we actually have a "split" with the board members, and what they are comfortable with and not comfortable with. Makes him wonder, when he cannot see what they see in voting in the opposite direction.

Bill stated what he sees as a big issue is a use change. Agrees with Rick, when people take a three-season cabin and make it a year-round dwelling place. He stated it doesn't show up as a use change in the ordinance, so it is very hard to put your finger on it.

Dan agreed and has a bad feeling of what's coming up in the future. He stated we have tier one which is along the lake and tier two is usually the other side of the road, but DNR says lakeshore goes out 1000 feet. How about tier three and tier four? Are we just going to build residences all around the lake back to 1,000 feet just because the DNR says that's 1000 feet? That is lake shore. They only did that to control erosion. But now let's put houses out there at 40,000 sq. ft. a crack and now we can put twice as many houses around these lakes. It's adding to this run-off and what you are talking about. We could add SF-2, whatever farming community on the back side, doesn't matter, because the DNR says 1,000 feet, that's mine.

Bill drew attention to Page 14, added he and Julie have lake shore that is undeveloped and as with most things this comes down to money. They get asked repeatedly, by people to buy it, just to put homes on it. There is zero incentive to *not* develop it, and they have not. Every incentive out there is to develop it. Absolutely no incentive to keep that undeveloped, not even a tax incentive. It is the East side of Hennessey Lake.

Ken agreed and asked who wrote this?

Rick stated a joint effort of many people.

Ken stated what struck him, was they had no good suggestions and is just an awareness paper is all it is. To speak to that, we shouldn't be surprised our lakes are suffering, as we are developing like mad people for fifty years, and if we could figure out how to double stack houses on the lake, we'd do that too.

Rick agreed and wanted to bring recognition to it, what we have been doing for 50 years, is not working, with variances as one of the major problems.

Ken stated they said the ordinances are not working but they didn't give a reason why. Is it because it's not strict enough, not detailed enough or not being enforced? Stated if they are going to tell him about a problem, give him some solutions, too. He was disappointed about that.

Russ agreed.

Dan sees nothing in the Comprehensive plan about what to do with the lakeshores or talks about it. What works? Where's our guidelines?

Rick agreed and stated he thought the Comprehensive Plan and Ordinance could be improved. The board makes a lot of decisions without a lot of guidance. They do recognize to improve the situation is to address the ordinances.

Dan stated it comes down to, what we're trying to do is slow down the development?

Russ stated they do list resources at the end of the article.

Mike stated some of our things we are talking about are going to have to be changed rather quickly as the Supreme Court has just come down with separate rulings, and one of the things has to do setbacks to water and what is navigable waterways? What is our guidance with those new Supreme Court rulings?

Adam stated he doesn't know a lot about it, but those navigable waterways has been going on for about twelve years.

Bill stated we spend billions of dollars on it every time we change Presidents, and they argue about it again.

Russ, then it gets dropped.

Adam, the DNR has a proposed 8 million in this year's budget in order to re-establish the ordinary high-water levels on all the lakes across the state.

Rick confirmed.

Adam stated as far as the Comprehensive Plan goes, he is in the process of obtaining a quote to re-do the whole Comprehensive Plan because of so many Ordinance updates. So, instead of band-aid fixes throughout the Ordinance, here and there, part of that has to with the Shoreland Ordinance, we'll start with an update to the Comp Plan. Wheels are turning slowly and hopefully faster soon.

Russ asked about obtaining statistics of lakes that are on the Impaired list. Just to see how they are progressing or regressing.

Adam asked meaning how much natural shoreland is left on a lake? Osakis is zero, he knows that. Interesting to see.

Rick DNR did a shoreline evaluation, 978 some lakes in MN.

Russ stated it would be nice to see if what we are doing is helping or not.

Dan, owns property, if we shut it down it, it devalues my land.

Ken first things he read was in the introduction they stated in the last 50 years our Ordinances and our education efforts, so far, have not worked. That is probably the only tools we have. So, if they are not working we have to fix that.

Bill asked if it is the rules or public attitude of, "It's my property and I can do whatever I want. The rules should apply to everyone else. I want clean water, I want everything cleaned up, but on my property, it shouldn't apply."

Ken stated after the initial comments, the whole rest of the paper blames public attitude. How are we going to change that?

Dan, follow the money trail. If I can make a dime off it, I'm going to do it.

Ken, we live in a capitalistic society and we are not going to change that.

Dan, then we are not slowing down development, so what can we do?

Bill stated if you can change the attitudes you can maybe get responsible development. Maybe take a slice of that lakeshore, say take 150 feet that is never mowed, you can maybe make a difference.

Russ asked Bill if they had ever done a study on his Lake?

Bill answered no. Another point, we have such a limited number of classifications, and they are so old. He thinks NES is no longer, truly NES. Where maybe on Hennessy (the lake he is on) it is still considered NES with only two or three homes on the entire lake.

Russ stated there had to have been a study at one time on quality and clarity and is virtually undeveloped.

Rick stated there is a lot of monitoring.

Adam showed on the U of M website for Water Quality Layers with Lakes, the higher the number, the better the clarity. Pointed to the graph showing the clarity of Hennessy over the years.

Russ stated he is going to look at Birch lake this month.

Ken appreciated Rick drawing attention to this as it is a good discussion point

Rick stated Variances are us, and that is one of the bigger problems. What are we doing as a bigger picture? Not just individual lot by lot.

Ken added he didn't think the board had ever violated or encroached on that twenty-foot barrier for variances.

Sue asked if we require a certain area for a "park" with new Plats, why couldn't we require all created lakeshore lots remain natural vegetation? Or be "stricter" with our 50% screening as viewed from the lake, and move to 75% screening?

Adam stated we could definitely do that in Platting scenarios. As a condition of approval, or develop covenants that are recorded prior to final plat approval. Gave the example of Rick's lake, with a set of protective covenants. The mistake he sees in that scenario, is they did not make the County a party of the covenants, so they are not enforceable by the County.

Rick hears a lack of good direction that makes it hard for decision making. It could start with the comprehensive plan. That direction can be incorporated into the County Ordinances. He has seen where some Counties can somehow quantify the variance and then quantify what you can do to offset it, and it has to equal.

He sometimes feels Todd county does not have a whole lot of direction in this area, which makes it hard to "make a decision" as a board.

Dan asked how we could require a 25-foot no mow zone for every lot? You will run into a large buzz saw.

Rick stated someone has to start working with the lake holders and redefine their prospective of what their lot should look like. It shouldn't be grass down to the water.

Dan added, or half the distance between the structure and the lake for those that are built too close. Stated he doesn't know what we are going to do, because it would have to go to some sort of ruling to the commissioners?

Bill stated this conversation is phenomenal, and we must remain mindful as every variance comes before us, where is the benefit to the County and where is the benefit to the lake?

Rick when it comes to staff proposing conditions, why not propose a twenty-five-foot natural shoreline of vegetation as a condition of this variance.

Adam, we sure can.

Bill stated one of the things that has to be done is the DNR has to get behind the local legal teams to enforcing these things. Take the island on Big Birch, how much support was there to enforce? People just washed their hands of this and let the County bear the cost of enforcement. If we had the DNR or other institutions stepping up and saying we are not going to these flagrant violations to run over County staff and Judicial systems. That would be huge.

More discussion on the value of natural shoreline property and the value of developed homes on lots.

Bill also added he felt lake lots are under taxed.

Dan agreed.

Bill added when you look at what comes before the board, and majority is lake lots, the resources that lake lots pull out of our County is huge. Go to snow removal, road care, talk to Irv Hedering or private contractors who do some of the service work. If we are going to get a complaint, it is not going to come from a farmer, it's going to come from a lake lot. There is claims in small claims court that some sod was turned up. That doesn't come from the rural residents. They are definitely using our resources at a level, that he doesn't think they recognize, because most of them come from an environment where those resources were previously available to them.

Ken shared he had an uncle that grew up in the cities, Andover, became public works director, retired then moved East of here, and as soon the township people knew what he'd been doing, they put him on the board. He had said the lake people here are the worst pain in the butt. They want everything, and they are at every meeting. They want street lights, paved roads, curb and gutter, they are demanding of the local resources, that's for sure. His uncle grew up in the country and knew better and basically just told them no. That's not the way we live out here, and they are not going to move the city out here. They resisted that all the time and those kinds of demands are there. So, yes, if we have a way of taxing for that, by all means.

Dan added there are more people moving from the cities to work from home out here in a cabin because of the internet and the ability to just work from home. We have more of that coming, too.

Rick stated he wanted to bring this to everyone's attention and how we do play a small role when it comes to variances. Realizes we are not going to fix the situation. The discussion exceeded his expectations and it is good to know we are looking to redo the comprehensive plan, and the Ordinance. If there is any way our County residents can contribute to that process, he'd be willing to volunteer his efforts as he knows where it needs to go.

Adam stated he envisions it to be a "Watershed Plan Development". Take all these different groups of people and make subcommittees and develop through that. Will then have a consultant to lead the charge and write the plan, is how he envisions the process being. When that will happen, hopefully next year, but, we'll see.

Russ asked Adam to include a little report of the lake "condition" how the DNR reads it, in his staff reports, to help give them a little more awareness when making a variance decision.

Rick supported the idea and added Todd County lakes are doing pretty good compared to other counties, but we do have some "impaired" lakes and we do have DNR guidance to be more restrictive. That would be useful information.

Adam offered to add additional information, on a consistent basis, if the board would like it. He offered to look at the "impaired" water list and add to the report.

Russ and the board commended Adam on all of his excellent staff reports and agreed that would be helpful.

AGENDA ITEM 3: Discussion on Language Amendments to Todd County Ordinance: Section 5.03: - Variances

Adam explained this was initiated by the Commissioners, brought it through the process and we have already adopted the ordinance change for Rezoning, Variance and CUP applications. Basically, prior to submitting the application to the County, the applicant needs to go to their local township, and present it to the township before submitting it to the County. This has already been a requirement for platting.

Bill clarified even if the township votes it down, you can come to the BOA and we may still grant it.

Adam confirmed, the townships have no authority to grant or deny a variance other than Bruce and Bertha townships, who do their own. This is just to present the information. The issue we were having is we only have meetings at certain times every month. But, the twenty-eight townships across the county meet all throughout the month and at different times, and some townships are not getting our notice in time for them to discuss it and provide comments on it at our meeting. So, to avoid that, all together, they bring it to the township before it even gets to the County, so the townships are aware and if they have any comments they can submit to us or attend our meeting. Eliminates the argument of township not being able to be involved. Whether they comment on it or not is up to them.

Ken, next month we begin our Cannabis ordinance for the County. If you have any comments, ideas and suggestions. He is looking for ideas to do a descent job on that one.

Adam announced next Thurs, August 1st, we are looking to establish a moratorium and that allows us until January of 2025, basically says that nothing can happen for the next five months, even though things can't just happen by the Statute anyway, but just to make it clear there is a moratorium on Cannabis. On our website

there is some guidance documents, or you can go to AMC's website, or go to the Office of Cannabis Management that now has their own website with guidance in there, and model ordinances. Adam has that stuff drafted already and stated he has it ready to go to the board. There are eight or nine types of businesses in this Statute.

Ken motioned to adjourn and Mike seconded. Voice vote to adjourn. No dissent heard, motion carried and the meeting adjourned at 7:55 pm.