Minutes of the Todd County Board of Adjustment Meeting

August 22, 2024

Completed by: Sue Bertrand P&Z Staff

Site Visits conducted by Adam Ossefoort and Russ Vandenhuevel on August 16, 2024.

Meeting attended by board members Vice Chair Bill Berscheit, Mike Soukup, Danny Payton, Russ Vandenheuvel, 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.

Bill called the meeting to order at 6:00 p.m. and the Pledge of Allegiance was recited as a group. Each board member introduced themselves and Bill explained the process for those attending.

Dan made a motion to approve the agenda as written and Larry seconded, voice vote, no dissent heard, motion carried.

Russ motioned to have the July 25th, 2024 meeting minutes approved. Ken seconded the motion. Voice vote, no dissent heard. Motion carried.

AGENDA ITEM 1: Terry Hempleman – PID 24-0000101 – Turtle Creek Township

Request:

1. Request to decrease the West side OHW setback from 150' to 30' for a proposed 60 sq. ft. dwelling addition in Natural Environment Shoreland Zoning.

Terry 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. Establishment of a vegetated no mow zone on the west, north, and east sides of the structure.
2. Establishment of a storm water retention system to capture roof water and store on the landscape.
3. Establishment of erosion controls and inspection by the County prior to issuance of land use permits.

Terry confirmed the staff report was accurate.

Russ went over his site visit report. This may be viewed in full at the Planning and Zoning Office, upon request.

Correspondence received: None.

Public comment: None.

Board discussion:

Russ had a question for staff, on the report earlier, it said that the setback was granted for 18' and for 24' and this is for 30 feet, but he thinks they are closer to the lake than in 2004. Are those numbers just…?

Adam stated he did not know how they arrived at those numbers back then. Also added he did not know when the structure was built, but according to the assessor's sheet this has been since 1990.

Terry offered built in 1948 or 1952.

Russ asked if they owned it back then?

Terry, no, they bought it in 2001.

Dan questioned the lot lines.

Bill asked where the access to the property is and Terry pointed out on the map how they travel to get to the cabin and where Suttons were as neighbors.

Dan stated they purchased it in '01 and asked who he purchased it from.

Terry stated he purchased from Nordstroms.

Ken went over the area (shown in the picture on the overhead) he has proposed to fill in and how there is already a sidewalk in that area except for a small triangle corner and the change in impervious surface would not amount to a hill of beans.

Terry agreed zero change in impervious surface.

Terry showed the very little will change pointing on the photo.

Bill wanted to make a blanket statement. The purpose of zoning is to regulate where structures go and when zoning came in during the 70's (and this is backed up by the training the board has been taking over the last six months) and he has been on this board for a while, and it will be consistent through his entire term on this board, that some of these existing nonconformities go away with time. Especially those that encroach severely on the road or the lake. He says that with a little bit of tongue in cheek, but it is the reality, as it is the direction zoning was supposed to take. In that regard, he thinks anyone involved in zoning would admit it has been a miserable failure in accomplishing that. He sees two previous applications for variances on this property, and the point of that, is you have become overly incumbered by variances just to maintain an existence on a lot that simply does not meet any setbacks. He was a little surprised to see this and recalls this coming before the board years ago in regards to the structure. He would be surprised if there weren't questions asked about the integrity of the footings historically, prior to the sewer or the other variances being

granted. Now, having said that, it may not have had a great effect because there is no other available buildable space. He explained they looked at it as use of an existing structure with no options to move it.

Larry asked if there is buildable land further north?

Terry stated there is probably buildable area up there, and would involve certain hardships, there is 23 acres.

Adam added it is really steep and heavily wooded.

Terry added there are wetlands, so does he really have the thirty-three feet for the proper driveway? That would become quite a squeeze, should he go further to the north.

Bill corrected if it is private, it doesn't matter.

Larry stated he was just trying to understand the lay out of the property.

Bill stated one of his concerns looking at the topography, as we continue to make improvements on this, realized it's not becoming a year-round home for a family of six, but as we continue to make improvements to this, we are increasing traffic and that road is very tight to the lake all of the way around, so not only do we have impact just on the lot, we have impact issues through that entire roadway coming in. To move the structure, can we limit those impacts? It doesn't look like it's significant…

Terry stated if your concern was about the traffic, he would have brought it up when Sutton tripled the size of his structure to his South. Terry went on, the board has granted him variances that he has added probably three times the size of his cabin. That's where the traffic is. Terry stated he is still a little two-bedroom, summer only cabin, even with this little office extended onto it. Not to put too fine a point on it, but that would have been a good place to draw the line.

Bill agreed, fair point.

He covered over 600 sq. ft. more, with the concrete he poured just a month ago, all within the impact zone. Reminded the board of all the concrete poured for his projects.

Mike asked if we had a picture of the flood plain in that area?

Adam to follow up on Larry's question, obviously we have never measured that slope but it would potentially be either a bluff or considered a steep slope and neither are considered buildable areas.

Adam showed the floodplain layer and it didn't show anything.

Russ if this were granted, would you have to expand the sidewalk?

Larry stated the sidewalk for this project would have to be demolished for this build. They haven't completely decided, as the sidewalk was initially part of trying to protect this foundation, prevent the frost from coming

in, because he can't dig down as he is so close to the lake. He explained they have this horizontal barrier and they did it all within compliance of the width allowed at that time. He is not sure what they are going to do, as they may be accomplishing with the new footings and block wall the frost protection they need without having to go horizontal. He may run out of money before then, and left that "to be determined" depending on how this goes. He would definitely not need the triangular patio in that area that is there.

Bill asked for a "rough" measurement to the water from Adam on GIS.

Adam stated his measurement line does not take into consideration the slope, as the measurement on the screen is not what you measure on the landscape. 22 feet was the measurement on the screen. He continued, we would have to go out to measure again for an accurate measurement, whether that would make up the eight feet of difference, he didn't know.

Dan stated he didn't think the whole width is 150'. From side to side.

Terry stated the home is 24 feet wide East to West.

Dan, even if it were 70' from one side to the other, the structure is taking up half of it.

Russ stated it is a minimal request but it is a lot on that little peninsula.

Mike, we are talking 22' according to what he just measured from the existing inside wall as you go around the corner to the lake and right now, is one of the downspouts going down to the lake? He asked if it were possible to put a berm along the lake with a no-mow Zone to capture the water that's coming down so the water doesn't go into the lake first.

Terry pointed out on the overhead where has never mowed it, and the current no mow zone.

Russ asked if he could mow it if he wanted to? It seems wet there.

Terry, maybe with a bush hog, but not a mower and not because it is wet. He has never mowed it and it is pretty grown up with shorefront vegetation stuff. He noticed in regards to the West, North and East sides, he doesn't know how we would describe a no mow zone, but there is three or four feet if not more of un-mown waterfront vegetation on all of those sides. There is one little area where you go out onto the dock and where the canoe slides out, that is about six feet wide that they have maintained. This is on the shore that is further. On the West side, when they bought the place, they did some stuff to mitigate it; put in a retaining wall and tried to do some stuff to protect the shorefront and the structure in keeping them apart from each one. He said it has been challenging with trees because they are so close, so water vegetation is what they have tried to maintain.

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	No, due to the huge amount of setback we'd be granting.
Russell Vandenheuvel	No, it is not orderly development, it is development, but it is just so close to the lake, he says no.
Dan Peyton	No, the official control it to eliminate the non-conforming structures, and this is well within the 50% of that, too much of a percentage from the official control.
Larry Bebus	No, because of the small, non-conforming lot, the distance to the lake, Adam measured 22 feet and thinks it is just too close, and the lot is too small to have any type of additions or anything on it.
Ken Hovet	Yes, the extra net square feet, after you consider the sidewalk is so minimal it's not even significant.
Bill Berscheit	No, he agreed with previous reasons.

Majority response- No.

Criteria Question #2: Is the variance request consistent with the goals and policies of the comprehensive plan?	
Board Member	**Vote and Comments**
Mike Soukup	No.
Russell Vandenheuvel	No.
Dan Peyton	No. Thinking about the DNR and 50% setback, the comprehensive plan says fair and common-sense manner, this is way too much.
Larry Bebus	No.
Ken Hovet	Yes.
Bill Berscheit	No, the goals of the comprehensive plan are to limit encroachment, and something we have not spent time talking about with this application so far, is this is actually within the shore impact zone which the DNR very aggressively pushes on the County as a "no-build" zone, so we need to give some consideration to that also.

Majority response- No.

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.
Russell Vandenheuvel	No. Agrees with a lot of what he has heard already.
Dan Peyton	No. Practical difficulty, he had trouble with in the beginning, talked about the foundation and structure, to him that is a structure building, just like a roof, practical difficulty for us having a reason. Doesn't believe the practical difficulty as foundation meets our criteria of wetlands and so forth, and what we're somewhat looking for.
Larry Bebus	No, for all of the reasons that have been previously stated.
Ken Hovet	Yes.
Bill Berscheit	No, the footings are compromised or at risk. If that's the case, he stated, that is a significant argument that we no longer have a stable structure on the site and thinks that's the time to really question what the path forward is with the structure.

Majority response- No.

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.
Russell Vandenheuvel	No.
Dan Peyton	No.
Larry Bebus	No. It is created by the land owner trying to build, again, non-conforming lot, too close to the lake, the setbacks, everything that has been stated.
Ken Hovet	No.
Bill Berscheit	No.

Majority response- No.

Criteria Question #5: Will the variance maintain the essential character of the locality?	
Board Member	**Vote and Comments**
Mike Soukup	Yes, would maintain the character.
Russell Vandenheuvel	Yes, will maintain the character of the locality.
Dan Peyton	Yes, Sutton structure is also a nonconformity and right next door.
Larry Bebus	Yes, because he doesn't think it will change the essential character, as far as visual from the lake.
Ken Hovet	Yes.
Bill Berscheit	Yes, he doesn't see that there really is a comparable locality, if anything, it would be the Sutton home and doesn't think the Sutton home is quite this tight, however, there has certainly been a numerous number of variances applied for on that structure, on that property as well.

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	Yes, it involves more than just economic considerations. There is a lot of things involved here.
Larry Bebus	Yes.
Ken Hovet	Yes.
Bill Berscheit	Yes, it does involve a lot more than economic considerations, the argument is that it is structural. Where he finds a bit of a rub with that question is, if economics were of no question, perhaps that would be a stronger argument for movement of the structure, so it's a bit of a question of how you read in or interpret the question.

Majority response- Yes

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	**Vote and Comments**
Mike Soukup	Mike.
Russell Vandenheuvel	No, a lot of environmental issues potentially.
Dan Peyton	No, it gets back to the environment of this lake and the setback of 150' and we are down to 30 or 22 feet, is a long percentage away, that is a direct environmental consideration.
Larry Bebus	No, don't know if you can really create a lot of water retention areas that close to the lake. Has a feeling, there was a question asked if you could build a berm? Is there really enough? That would be a heck of a berm that you would have to build.

Ken Hovet	Yes.
Bill Berscheit	No, in regards to the environmental concerns, that is part of his concern is we currently have run-off and erosion from downspouts and the roof. The question is asked by the board in regards to areas and places to address those, and felt they have not come up with an answer, or a comfortable answer. He thinks, that leaves them with environmental concerns have not been adequately addressed. From your standpoint he doesn't know if there is anything more you can do, and that's to defend you, and that's how it leaves us with it not adequately addressed is if there was a way to address it, this board is used to that and would have numerous ideas to present to you for conversation, but he is not hearing those.

Majority response- No.

Summary of criteria question majority responses as follows:

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

Bill stated they have a "no" for five of the seven questions, and anything more from Terry, now would be the time, otherwise he would entertain a motion.

Terry defended they are adding zero impervious surface. The run-off they have now, would not be changed as they are adding zero impervious surface and maybe reducing it maybe, if he doesn't rebuild the wall. If this is an environmental impact how am I affecting that if it is a concrete walk instead of … Offered he could do better with the downspouts, he never revisited that from before, when they first set that up and just did what was easiest. Thinks that it was maybe some room for that, but he did not feel they were creating more of a run-off, here.

Terry stated they have done their best to comply, and maybe he has mis-characterized as to what the issue is. He is rebuilding the whole foundation, not because the whole foundation is falling apart, but because one part of it is failing and one corner, not even the corner proposing the work on. Just the most efficient repair to stabilize the whole site, he thought was to rebuild the whole foundation. It's about a three block deep, 10' wide footing. They came up with a plan to go ahead and secure it. It's not that the whole thing is falling apart and in the spirit of, this is a repair, and felt he was trying to do. As he reads the guidelines to this, a repair of a structure within the impact zone, one mentioned a roof, and he felt what he was trying to do was address something that's within that. Just trying to do it in a very thorough way. The ultimate plan would be to try just dig out that one corner and then maybe have it happen again, so he is trying to reduce the impact by creating a foundation that would not have to be worked on again, for many decades to come. As far as expanding or… he sees what has been okayed by his neighbor, this guest cabin, which grew beyond the height, and then a variance was applied for an after-the-fact, and the expansion of this happened. Now he is not as close to the lake as him, but definitely within a seventy-five-foot setback. So, he's seen hundreds and hundreds of square feet added to that property and hundreds and hundreds of square feet of interior living space added and he is asking for sixty square feet with a zero addition of impervious surface that seems a very modest request. He stated he does appreciate their consideration on it. Does this fall within the character, but he would say it is modest compared with the surrounding properties have done. This is very modest. It is also a plan to stabilize it so he would not have to have another little part of that foundation that cracked. That's why he was trying to

do it in a big and thorough way, rather than just do a spot repair on the one corner of the foundation that was failed. Also, with regards to the erosion, those downspouts have been there for 23 years, while he has owned the place. He asked if the board says these are creating an erosion problem?

Bill stated the onsite visit person discovered some erosion. Bill stated he did not want this to turn into or lead to a personal bantering situation. He truly appreciates Terry's comments, especially those in regards to the variances of the neighboring structures, and felt most of the board welcomes critique. Bill stated he doesn't view it necessarily as criticism and at this point we do need to move on, and asked for a motion.

Ken asked if you do not get a variance tonight, will you still fix your foundation?

Terry stated he will still fix his foundation.

Russ made a motion to deny, and Dan seconded.

Roll call vote commenced as follows:

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

Motion carried to deny.

Adam stated last time they met, the board talked about adding references for impaired waters to the staff report, and thought they would find it interesting (hand out) to see the 2024 impaired waters list for all of Todd County and that is all it is, just for information. Star lake was not on the list, as it is not an impaired water. He will still have this in the staff report, just wanted them to have a copy of it.

Ken motioned to adjourn and Mike seconded. Voice vote to adjourn. No dissention heard. Motion carried and the meeting adjourned at 6:52 PM.