Minutes of the Todd County Board of Adjustment Meeting

October 24th, 2024
Completed by: Sue Bertrand P&Z Staff

Site Visits conducted by Adam Ossefoort and Ken Hovet on October 17, 2024.

Meeting attended by board members: Chair Rick Johnson, Vice Chair Bill Berscheit, 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. and the Pledge of Allegiance was recited. Each board member introduced themselves and Rick explained the process for those attending.

Russ motioned to have the agenda approved as written. Dan seconded the motion. Voice vote, no dissent heard. Motion carried.

Dan motioned to have the September 26, 2024 BOA meeting minutes approved. Bill seconded the motion. Voice vote, no dissent heard, motion carried.

Introduction of the meeting process and etiquette by Rick.

AGENDA ITEM 1: Marty Host & Candy Schneekloth-Host – PID 24-0038500 – Turtle Creek Township

Request:

1. Request to reduce the East ROW setback from 20' to 5' for the construction of a shed in RD Shoreland Zoning.

Marty Host was present as the applicant. Marty introduced himself and stated his address as 1000 St. Johns Ave., in Browerville and he is requesting a variance on his Pine Island lake East of Browerville.

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

Host confirmed the staff report was accurate, however he stated the address is actually Lupine Trail, where the building will go is Lupine Dr. and it is one parcel, but yes, very accurate. As far as the buildings go, the old cabin was built in the late 60's by his Great Uncle. He stated he wasn't much for rules, so it's right in the middle of the right of way. At this point it is nothing but a nest for mice, so once the shed will be built, it will be torn down. There are a couple smaller sheds, one was an outhouse and another little storage shed on that same hill, and he doesn't use them, so they will be taken down. As far as the structure itself, he has requested five feet from the ROW. Adam would agree or verify this, where the road is, the ROW is 66 feet wide, most of the driven road is on the West edge of the ROW. He did have the septic inspected and that passed inspection. Other than that, he is asking for five-foot setback from the edge of the ROW, more likely, the shed, the way he has it pinned out there, is more like ten feet from the ROW, but he wanted a little leeway in case his excavator

says “you’re a little close to the back slope, we need to scoot it towards the front”. It is really the only flat part on that hill. He stated he wants to make an improvement out there, and other properties, there are neighbors that have sheds in the ROW along there, so there is a little bit of a precedent there, too. He stated for himself, there is no running water, just a stick built shed for storage, at this point in time.

Ken reviewed his field inspection report. This report may be viewed in full, upon request, at the planning and zoning office. He added if Host had turned that building 90 degrees and five feet back, it could meet all setbacks.

Host stated he was looking at having a gable end for snow removal reasons, he wanted it placed that way, more of a convenience than anything. If he turns it, like suggested, he would have a slope into the garage door openings. The way he would like it would make it easier to park and move stuff in there. If he turns it, he would end up having two doors instead of one, and that is more of an economic issue and it is his problem and not the boards’.

Ken asked if the garage door would be on the East or West.

Host, West facing the lake side.

Ken, so if you turned it 90 degrees, you need two doorways on the long end.

Host stated if you want to get everything in there, you are going to end up putting in two garage doors. Repeated he had it staked at more of a ten-foot encroachment and not reduced to a five-foot ROW setback, but wanted a little wiggle room.

Ken stated the last issue is a safety concern. If you are going to be that close to the setback, you could very well have issues with plowing that road, if you have a heavy snow in the winter.

Host stated, the township does not plow that road. When there is a bit of a setback, there is more of a place to go with the snow. Most of the time they would push the snow into the right of way and the neighbor, just to have access across the road from there, their snow gets pushed into his lot, too. They would end up clearing out to the south and pushing the snow over the bank, so it could drain down into the watershed and thinks there will be an issue either way. There is a limited space to move around up there, as you can see.

Ken stated again, what he saw, in his opinion, you can turn that shed around and not need the variance.

Correspondence received: None.

Public comment:

Roy Parish and goes to annual township meetings, and stated they have found one of the problems is people are pushing snow into the ROWs. That is not a good scenario. Not supposed to push snow across the road and not supposed to push snow in the ROW. Went around his block, two years ago, and found twelve violations. That is not being enforced very much. Statema’s Backhoe hit a drift and it cost a couple of thousand to repair

the wing as he hit snow in the ROW. He stated he had issues on his road that cost him a tire, hit a clump of snow that was pushed out on the road. Had little kids with him, it was cold ugly, drove it a half mile home on a flat. The milk man came through, hit one of those nice snow chunks, put the radiator into the fan of his milk truck. He has had past bad instances of people pushing snow into the roads. So that is why he stands up against pushing snow into the ROW.

Board discussion:

Russ, if you were to move it back to the 15-foot mark, would it still fit in there with the hill?

Host stated fifteen would be really tight. The lower right-hand corner it would start to drop off, if you go much further than ten foot. Plus, he is getting rid of eye sores. Fifteen would be tight.

Russ asked how about if you went up?

Host pointed out on the overhead and explained the contour. He could go a couple feet as they are taking out the trees. He tried to fit it in there as best he could without interrupting anything or having to take down too many trees.

Rick stated, other than Host's word and the drawing, he has not heard any evidence, for the record, to prove this is the only place you can put this building. When we have variances for dimensional setbacks, in addition to meeting the criteria, there are also considerations that the board has to make and one consideration is, there is no other spot you can put that size building, without needing a variance. Kind of heard that from Ken, but nothing really convinces him so far, to make a good decisive decision. Another thing, to get a variance, the circumstances have to be unique to the land. Which means, anything that has got to do with your personal design, your need for building that big, your need for where you want the gable end, all that has nothing to do with and is not unique to the land, but it is self-imposed by the land owner, and the board cannot grant variances that are self-imposed and are not unique to the land. So, for him to approve this variance, and it is a significant variance, we are talking five feet instead of twenty feet, he too has safety concerns and hard to overcome that. What are we going to do to protect the public, or drivers, or pedestrians, or you or anybody else? His question to Ken, in his opinion, could he speak about the ability to eliminate the variance or at least minimize the variance request by redesigning the building or by moving it?

Ken stated from what he saw and from where the pins are, where we determined the setback leaves us at, he still believes there is plenty room before you get to that back-edge slope to turn that building and make it fit, even with the size he has. You may have to put the doors on the other side.

Rick, and you think it might eliminate the need for a variance or at least reduce it from 75% to 25% or something.

Ken stated what makes it hard for him is putting a building within 5' of the right of way. Granted, it is not a road that is maintained by a township or County, but it is a public dedicated right of way. Who's to say, in the future, that the township isn't convinced to take that over. Then he can see the snow going right in to the side of the building.

Rick agreed, it is a public road.
Bill asked for the photo that shows a broader view of the area, and it would kind of give the board an idea of how much traffic or how many lots are serviced by this road, and how many, potentially, could be serviced in the future.

Adam showed the area on the overhead.

Bill stated, so it's a loop, or does it dead-end?

Parish stated it dead ends. So, the people down on the other end have private driveways.

Adam stated it is a loop, it's just not actually constructed as a loop.

Bill stated this is a public right of way so, fifty years from now, the chances are pretty high, this may be, in some way, shape or form, serviced by public service, instead of privately maintained. There is a number of people on there, the chances of that remaining private, privately maintained, aren't really high.

Rick stated he took the liberty and looked through public records and he was able to find when this property was subdivided and filed, and that was in September of 1966, and you are right, it does say that "and now and here after, be known as the Mattson's Subdivision and do by dedicate to the public use, forever, the road included by the annexed plat". So, it is there, and it is a loop.

Dan asked if the structure could be turned more at a 45 so he can come in on the end? Angled so it is perpendicular to the hill, and still come in from the end?

Ken explained yes, that opportunity exists, absolutely. Explained, if we put a rectangle in there, to represent the garage how he wants it, facing West, and turn that counter clock wise 45 degrees, is that what you are asking, addressing Dan?

Dan, yes. So, the structure would be perpendicular with the contour of the hill?

Ken, yes. Absolutely. But it would be "parallel" to the contour of the back hill.

More discussion on the contour lines and drop of slope.

Host showed the board a drawing.

Dan stated exactly.

Russ, what township and did they respond?

Host stated Turtle Creek.

Adam stated they did not get a response from the township.

Host stated he presented it at the township meeting, and they signed off on the application and were okay with it.

Rick stated he has heard there could be other possible sites to avoid the variance, and he needs to take that into consideration, and asked if Host can present any evidence that there is no other place, for the record.

Host stated he could go back out and look. He was trying to find the flattest part to make it work because there are some contours there. Ken's suggestion would be the next best suggestion, it would be facing the South. He stated planning to build it more like ten feet away from the road right of way, anyway, but he can see their point too. Some day down the road, it could happen, and they are going to run into other households that are that way and there is going to be a problem. He is already going to eliminate one of the problems by getting rid of that old shed. Ken's suggestion is the next best suggestion. He could get on board with turning it a full 90, and probably get back to that twenty feet. He might have to shorten up the depth to 30' or 28' or something if he was to do that process.

Rick called for Criteria Questions before they put it to a vote.

Criteria Question #1: Is the variance in harmony with the general purposes and intent of the official control?	
Board Member	**Vote and Comments**
Russell Vandenheuvel	No
Dan Peyton	No
Bill Berscheit	No
Ken Hovet	No
Rick Johnson	No

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**
Russell Vandenheuvel	No
Dan Peyton	No
Bill Berscheit	No
Ken Hovet	No
Rick Johnson	No

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**
Russell Vandenheuvel	No.
Dan Peyton	Yes.
Bill Berscheit	We can all see the direction this is going and perhaps you would like to table this. Is it a reasonable use, but no, this is a road right of way, even though it is an undeveloped road right of way where the structure is. As mentioned by Roy, we see an awful lot of snow issues on years we get a lot of snow and issues with snow in the

Criteria Question #3: Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?	
	road right of ways. As this becomes more developed over the next fifty years, the answer needs to be no.
Ken Hovet	Yes, a garage is a reasonable use.
Rick Johnson	No

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**
Russell Vandenheuvel	No, due to the size of the shed and how he wants to position it on the land.
Dan Peyton	No, gets back to what the land owner is wanting, due to the size.
Bill Berscheit	No, the size of the structure is not much of an argument, in regards to the gable end, either way the structure is oriented, rafters could be put on that to create a gable end from either side. It does affect the depth from that gable end.
Ken Hovet	No
Rick Johnson	No

Majority response- No

Criteria Question #5: Will the variance maintain the essential character of the locality?	
Board Member	**Vote and Comments**
Russell Vandenheuvel	Yes
Dan Peyton	Yes
Bill Berscheit	Yes, we know there is a structure or two in the ROW. He would hope, over the rest of the lots, it is not consistent through all of them, we do have these developments where it certainly is.
Ken Hovet	Yes
Rick Johnson	Yes

Majority response- Yes

Criteria Question #6: Does the need for the variance involve more than just economic considerations?	
Board Member	**Vote and Comments**
Russell Vandenheuvel	No
Dan Peyton	No
Bill Berscheit	No. He stated he thinks economics do enter into this. He hasn't been able to come up with what he would call a practical difficulty or hardship in regards to this case. If there is one, it is related to topography and any time you are building a structure it represents economics and doesn't see the topography in this, as a significant hurdle, that a few dollars could not overcome.
Ken Hovet	No
Rick Johnson	No

Majority response-

Criteria Question #7: Have safety and environmental concerns been adequately addressed?	
Board Member	**Vote and Comments**
Russell Vandenheuvel	No

Dan Peyton	No, safety is a slight concern if this road ever gets built where it should be, and the township takes it over in the future, right now it is not much, but still has to say no.
Bill Berscheit	No, environmentally we may not need to, safety we have certainly not addressed, if we were to, in any way shape or form, he would expect to see some type of plan to deal with speed, traffic, snow and road maintenance and we don't have any of that, so, no.
Ken Hovet	No
Rick Johnson	No, for the record agrees with Bill.

Majority response- No

Summary of criteria question majority responses as follows:

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

Dan stated he has a comment to the applicant, if you think you need five feet instead of fifteen feet, if he relooks at it again, and can relocate the structure at a different angle, he can table it and come back with a different proposal, or relook at it and see he doesn't need a variance and affect things in the future.

Rick addressed Dan's comment stating the applicant has the option to table this indefinitely, if you feel there is insufficient information, and in order for us to make a decision. It also gives you the opportunity to look at your design, how you want to place it, where you want to place it and the size and come back with more information to convince us you have no choice, or give you the opportunity to reduce the variance from five feet. Personally, there is no way he can overcome that, maybe one foot, two feet or three if you have no other choice. We are giving you the opportunity, if you wish, and if not, we will make a motion and vote on it. We kind of know which way this is going to go.

Host asked if we table it, is that another $500.00 application fee?

Adam explained no, we will just work off of this. Offered to go out and visit with him out on site, and put it on the next agenda for him, November 21, 2024. Being you are going to work in the direction of the ordinance, we wouldn't need anything new from him other than the setback be not anything less than what he has already requested.

Host, is there a setback from the steep slope?

Adam, no.

Host stated he requested to table it, to look at Ken's option, and may need to get it to where he would not need the variance.

Rick stated that is the beauty of him having that option. You can table it indefinitely, and gives you a chance to go back.

Dan stated if we vote on it, it starts over and then it is another $500.00.

Rick confirmed the applicant has stated he would like to table it indefinitely.

Ken motioned to approve to table, Russ seconded, voice vote, no dissent heard, motion to table carried.

AGENDA ITEM 2: Jodi Marohn: – PID 12-0030200 – Hartford Township

Request:

1. Request to convert the front property line from the east property line to the north property line. in AF-1 Zoning.

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. He read the definition of a Lot Line, Front: that boundary of a lot which abuts an existing or dedicated public street, and in the case of a corner lot (which Jodi has) it shall be the shortest dimension on a public street. If the dimensions of a corner lot are equal, the front line shall be designated by the owner and filed with the County Recorder.

Proposed Condition(s):

1. None

Jodi confirmed the staff report was accurate. She added how we got into this mess. The lot was 120.1-acre farm and Jeff Twardowski took twenty acres off. Day one she has been dealing with the setback and pointed to the West line on the overhead. She and Jeff exchanged numbers and he called a couple weeks later throwing a fit saying the property line on the South side of the barn is a fifty-foot setback. So, she got permits, Jeff had to move his shed to be thirty feet off the line and for a year and a half she had been told she had to be thirty feet from the side (West) property line. She had Chad Twardowski out to her house, and pulled the permit to build the garage and Chad said let's call the County to make sure, thinking the thirty feet was too long of a setback so they called and talked to Kevin. Kevin looked at the West line and said, no, the setback is 50' because it is the end (rear) property line. When they separated the lot, they didn't realize this is a corner lot, so that is how they messed up on the line. This should actually be thirty feet (West lot line setback) and this should be fifty (South lot line setback) and she would have plenty of room for her sheds, and that is when she applied for permits to move her sheds thirty feet from the West property line and literally had to tell Chad Twardowski two hours into moving his dirt for her garage, to stop. Here she sits, a month and a half later when the garage should have been built, because of an error she did not make.

Adam clarified that was an error that the Planning and Zoning office made. An error on our part, absolutely, as we gave her the wrong information, no doubt about it, and when Chad called, and we looked into this, we want to make it right on all aspects, so, that's why we are here tonight.

Jodi continued it was suggested to move her garage and place it somewhere else and she explained she has no room as Chad was going to build her a turnaround spot avoiding the house, electrical lines, pointed out the pasture area and also the wetland (preventing a driveway access from the East road of 285th Ave.) Why would she want to build a garage in the SE corner of the lot and walk a quarter of a mile after a twelve-hour night shift of work?

Rick acknowledged her dilemma.

Ken reviewed his site visit report. This report may be viewed in full, upon request, at the planning and zoning office. He added, turning the front line from the East to the North makes a lot of sense for many reasons. In keeping with how that property is being used and for as long as people have lived there in the past, that is where the driveway has been, coming off of 284th St., and it is where it should be. The way it makes sense. Ken also added he didn't know a variance like this was even possible, but since it is, it would make sense that it should be considered as the front property line.

Adam stated he wasn't sure about that either, so when he and Jodi had this initial conversation, he got in touch with Jason and asked him about this specific scenario, and he said "absolutely" and sees no reason why this couldn't be a request for a variance.

Jodi explained she was going to go for four variances for each one of her buildings, and Adam asked why we don't just switch it to where it is?

Adam added it would have been multiple variances for all of the structures, because again, we incorrectly relayed to Jodi thinking the front line was the way she accessed it, but by "definition" it is not true.

Rick stated after reading this case, thinking about it and processing it, thought the same issue talked about, get variances for the buildings, and thought Kudos to Jodi, this is a great suggestion, and it turns out…

Jodi, it was Adam's.

Rick, because Adam is good at his job.

Bill extended a thank you to the staff for owning this. He stated he has sat on this board for a long, long time and he felt there are very, very few staff errors, and thanked staff again, for sharing this and owning this and addressing this. He appreciates that.

Adam apologized to the board as this is an impact on the board.

Bill added he thinks the staff report makes sense, and the home work is done and felt there was no need for criteria questions.

Rick agreed.

Correspondence received: None.

Public comment:

Roy Perish was at the last Hartford Township meeting and they discussed it as a township and had approved it, to acknowledge the front property line as 284th, the way the property has always been used.

Board discussion:

Russ asked if the mailbox on 284th? And if you need an ambulance or there is a fire, they would come off of 284th?

Jodi, right.

Russ finished with this is a "no-brainer".

Bill stated, at this point, he would like to make a motion to grant this variance to change the alteration or the front line of this lot. Russ seconded.

Roll call vote commenced as follows:

Board member	**Vote (yes or no)**
Russell Vandenheuvel	Yes
Dan Peyton	Yes
Bill Berscheit	Yes
Ken Hovet	Yes
Rick Johnson	Yes

Motion carried to grant the appeal for variance.

Ken motioned to adjourn and Dan seconded. Voice vote, no dissention heard, motion carried and the meeting adjourned at 7:08 pm.