

Jo Daviess County Planning Commission/Zoning Board of Appeals
Minutes for Meeting
At the Courthouse-7:00 PM
April 22, 2015

Call to Order: Mel Gratton called the meeting to order at 7:00 p.m.

Roll Call Present:

Planning Commission:

- ✓ Melvin Gratton
- ✓ Nick Tranel
- ✓ Laura Winter
- ✓ Ron Mapes
- ✓ Gary Diedrick
- Jody Carroll, Alternate

Staff & County Board Members:

- ✓ Steve Keeffer, Highway Engineer
Matt Calvert, JDC Health Dept.
- ✓ John Hay, State's Attorney
- ✓ Linda Delvaux, Building & Zoning
- ✓ John O'Boyle, JDC Board Member

Approval of Minutes: A motion was made by Gary Diedrick to accept the March minutes. Seconded by Nick Tranel. Voice Vote: All Ayes Abstain: Ron Mapes

Mel Gratton swore in all who might want to testify on any request this evening.

Unfinished Business

Mark & Lisa Worsham, owners, (address: 3939 NW Miner Road, Galena), requesting a variance from the required side property line setback of twenty (20) feet to five (5) feet for a garage addition, seven (7) feet for a house addition and one (1) foot for the upstairs access deck in the AG Agricultural District. Common Location: 3939 NW Miner Road, Galena

Staff Report

- Comprehensive Plan: The Comprehensive Plan does not address Variances, but does recognize the importance of planning for future infrastructure such as roadway expansion, and variances should be reviewed with that in mind.
- Wastewater Treatment: The existing septic tank is located approximately 40 feet northwest of the house, and the drainfield is west of the septic tank. The well is located off the southwest corner of the house, near the existing garage. It appears that the garage and house addition is north & east of the house and the proposed expansion would not affect any part of the septic system or well.
- Access Considerations: This property has an existing entrance onto East Galena Township maintained Miner Road. Sight distance to the south is adequate. Sight distance to the north is 300 feet which equates to a 25 mph design speed.
- Other Considerations: This is a parcel with an existing residence off of NW Miner Road, which is a Township maintained roadway. This is a parcel that was created prior to the adoption of Zoning in the County, the home and accessory structures were also built pre zoning. The configuration of this lot makes meeting the setbacks on the majority of the buildable area on property difficult at

best, in addition to the area that is unusable due to the close proximity of the creek. The applicant constructed the garage and the house addition without a building permit and is coming forward for the requested variations to bring the structures into compliance with the Zoning Ordinance. Although the Zoning Ordinance allows for up to eight (8) steps servicing an entrance to be in the setback area, we have included the step setback in this request because there are more than the allowed number of steps and there is a second floor deck area attached to the access steps. Below are the Standards from the Zoning Ordinance, careful consideration should be given to these standards as they will be included in the Finding of Fact and be the basis of which the Zoning Boards decision comes from.

Gratton states this property was existing prior to zoning and would be classified as a legal non-conforming setback for the structures as they existed prior to the recent additions. The owner was asked at the public hearing to look at the site and see if anything can be made to the request to alleviate concerns.

Mark Worsham, owner

- The main change that I want to present because most of the concern from neighbors and you seemed to be the deck and steps, the rest is of concern as well, but seemed the closest stuff was of most concern. I would like to remove the stairs and deck and not have that be a part of this request. In January I was granted a continuance to make necessary changes to my request and sort things out with neighbors. I understand I have done things in the wrong order, and I assure you had I known this ordinance existed that I would have taken the steps that I am taking now prior to construction and this would have been a much easier process for all of us. I want to explain a little about me, I grew up on a large farm in Cassville, WI, all the neighbors got along, shared equipment and such. I was taught at a young age to cut firewood since this was our only source of heat, I was taught to take care of roofs, and how to clean chimneys, cut grass and weed whip. I was taught how to drive tractor, and operate equipment and things around the farm. I have pictures of me doing things by age 5. Growing up you don't understand why doing these things is important, but two months prior to my 10th birthday, my dad died at the age of 67. I was thrown into taking care of my mother who knew little more than taking care of my dad. My brother was 4 years older than me and was someone else I took care of and still do to this day, because he was born mentally challenged. I ended up in Galena in the 6th grade year at Cassville there was some child abuse in the school system and transferred to do homeschooling to finish that year then went to Tri-State Christian School. I drove from farm to school for just over a year until we relocated. My mother got a job as the school cleaning and she is still there to this day. I spent the summers in Idaho with my older half-brother roofing. I helped friends with construction and since had partnered with one of those guys. 2003 met my wife and got engaged, I was 19 and she was finishing up her final year of High School. We got married in 2005, bought our first property in Stockton and then living in Dubuque for a year we found our property that we bought in 2006 and are at right now. We started our family two years ago tomorrow and have since had our 2nd child and was the reason for the continuation for the meetings. Since the last meeting I have reached out to my neighbors several times to see what I could do to ease their minds that we

are not trying to steal their land through adverse possession. We reached an agreement the first phone call that if we get a lawyer writing something up that we would not be trying to steal their land because of adverse possession then they would have no reason to worry they would stop fighting the request. They had the lawyer that had done some work for them and since I knew the lawyer thought this would be simple, but we are both still here. They thought I could still take the land even though the lawyer was on board with this. I made another attempt with them through Paul Brashaw, who I play euchre with once a week at the Elks, and seemed he was a friend of theirs, I could speak to him on a weekly basis, after a few talks with Paul the middle man, we discussed trading some of our land for theirs, since they were unwilling to do an equal trade and only trying to get us to give half our property up for 20 feet of theirs, this would not guarantee this because we would be back in front of this board asking to correct a non-conforming property issue. I tried talking one last time about buying 20 feet, since they were willing to trade us, I offered money, but that was an issue with them. After these failed, my wife wrote them a nice letter to try and explain this and invite them over for dinner, after not hearing from them, she decided to call them and invite them over for dinner, and let them know we are not the malicious people they make us out to be. After everything failed, I talked to Mr. Story who was at the last meeting, and after everything, he said that he would probably not be at this meeting to contest, even though I see he is here. Both neighbors admitted that they had not heard of an ordinance about any of the setbacks, neither had I, until they received the letter. I thought the inspector was joking when he told me about the setbacks. With the revised request; the removal of the deck and stairs we are trying to make this easier for everyone including the neighbors and make your decision easier. Review of standards: 1 – My property meets all of this, the surroundings including the flooding and shape of the property. The topography with the hill in the back of the property has made it hard. This meets the practical difficulties that we have faced and hardships from collapsed retaining walls, the property flooding on the southwest. The way the property is this is not just a mere inconvenience. 2 – This seems clear to me and applies 100%, to those that don't think so let's just change the wording and to mean the opposite, you are stating that the conditions are not unique to my property which is said to be the most unique property in the county. I spend time at the courthouse today to see if there was anything similar to my property, but nothing close to mine. You would say that the shape, creek, hill and the fact that the house was placed within the setback 30 years ago were generally applicable to other property; I don't think this describes a bunch of properties in the county. Isn't one property like this enough? 3 – I did not add any businesses, or places to sell things. This standard would allow making more money, but it couldn't be the exclusive reason then why are we talking about this on my property. Clearly adding kids' playroom, storm shelter, storage room typically are not profitable areas and would only cost money. This does add to the value of the house, but do not plan on selling the house. 4 – This is the hardest for me to address. Last year I added on the addition and created the difficulty and hardship because of that I should not be allowed and be told to tear it down. It could be argued that the difficulty was already put into place when the property was made when the house was placed 16 feet 7 inches from the property line and 26 feet 8 inches from the other property line. Which side was I to build on? Either way I was going to be within the setback area. The house was put at an angle at the time put on the property. I did not

extend past the left side of the house, but since the house and lot line do not sit parallel the addition got me closer to the property line. Had I done this in the right order this standard would not have been addressed except that the standard would have been zoned in the shape it was in. The penalty for doing this in the wrong order was a fine and I have paid, I am not sure why that it applied directly to me and that I should have to tear it down because just owning this property just under nine years and having nothing to do with its shape or how the house or existing garage were placed since these were placed prior to me owning this. Had there not been this Zoning Ordinance in place I could have easily remedied all of this with a simple meeting for a permit, with a simple inspection or two, a minor fine for doing things in the wrong order and on with my day. That would be the fine for the building permit would be 50% more of the permit cost if not done in the right order and not made to be torn down. I could not even attach the smallest one car garage onto my house without being in violation, I would argue that this ordinance is the cause of the difficulty and hardship and not that I have done things in the wrong order. 5 – This does not alter the character of the locality of the neighborhood nor is the garage detrimental to the public at all nor is it injurious to other property. I did remove part of the request with the stairs and deck since this point of the cow jumping the fence and landing on the deck and tumbling head over heels down the stairs probably would never happen. I can understand them not wanting something like that close to them for any reason. I would have been happy to build a sturdy and permanent 6 foot tall fence with post and concrete that would not have been moved by anything, I thought the easier thing would be to just agree to remove them. I don't see how this could affect or be injurious to the neighborhood. 6 – There is no impairment of light or air to neighbor's property. The proposed garage is at ground level at the point where it is at 5 feet from the neighbor's property. The roof is at ground level. The front of the garage is 15 feet from property line. The addition which is two stories the first story is simply a basement and is built into the side of the hill and it is one story on the side that faces my neighbor's property. This does not increase the congestion of public streets in any way. The addition does not increase the fire or flooding, had I built it within the setback on the right side of the house there would have been an increased risk of flooding. We propose removing the stairs and deck to not endanger the public safety, had I known these setbacks existed I would have come up with a different idea for that area that did not pose harm to the cattle that graze in the pasture or anyone else on my property. The garage and addition do not endanger the public safety in any way, shape or form. I think this should be the clearest point for me only because I have firsthand with property values when neighbors make improvements. When improvements are made to a property it slightly increases the property values of those around the neighborhood. They have argued that their property is not worth much now. You might argue that I don't know a lot about property values, even though part of that is what I do, you couldn't convince a 7 year old that me adding a lot of value to my property has made the cow pasture next to me substantially less. What would substantially less be because of this. I have offered to buy land; they have declined due to not wanting to pay taxes on money received. After offering to pay the taxes they declined with no reason. I didn't mind paying a premium, but that was not an option for them. I plan on living here for a very long time, I can assure you that if the pasture goes up for sale I will be the first in line to buy it, and paying a premium since it would make my life all the easier and

everything better. 7 – I felt this statement did not allow for the steps and deck and I could have not made as an elaborate deck and steps for access to the addition behind the garage. I did not extend past the side of the house and only went back far enough to get a staircase and make the turn at the top with a landing and at the bottom. By building back I did get closer to the property line 7 feet away. The front of the addition is still the 16 feet 7 inches. The garage was built about 8 inches smaller than the recommend size for a one car garage. Inside it measures 11 feet 4 inches which barely enough room to open doors on the side. The back corner of the garage is 5 feet. I could not have built this any smaller and therefore is the minimum variation that I could request. I am sorry for the mess that I have made and not making the necessary phone calls for the setbacks or getting permits. It was not my intent to upset or hurt anyone. I didn't even know this board existed. Please consider everything that I have presented and know that I have done everything in my power to fix all of this. My family's future rests in your hands. I want to remove the steps and deck between the garage and the other addition. I have talked to see if I could put a sand box and the only reason the stairs were there was because it is a pain walking up the side of the hill.

Public Testimony

Jane Soppe, 4690 NW Miner Road, Galena, adjoining landowner

- One surprise to me is that he said he made these proposals like the land trade, we made that proposal and we went through Paul Brashaw and he never got back to Paul. Since the last zoning meeting we believe no real progress has been made. We made a couple offers which the Worsham's were not interested in. we suggested a land trade and Mark only wanted to do that if he could continue to use the land as though it were still his, continue to hunt, 4-wheeling, target practice, etc. He told us three times on March 17, 2015 that he had no need for our land because he had made a deal with the authorities involved. He stated the only thing he would have to do would take the steps and the deck and if he took the fight 'all the way' he would get to keep it all. Mr. Worsham said he had a deal done already, which is not agreeable with us. Mr. Worsham suggestion that we, not them, stop fighting the issue. Mrs. Worsham said to us that she does not want the turmoil and who made the turmoil, we didn't build without a permit, without permission for variances, no building inspector, and we didn't make the call to zoning. We bought and read the Zoning Ordinance and could not find one rule that said that you can go ahead and build and then try to obtain the right to do it. The setbacks are to protect lawful property owners, not to allow someone to build on a property line and come back to the Board of Appeals and it gets allowed. According to the standards for variation, regarding #4 in our opinion the Worsham's are responsible for creating the situation because they went ahead and built without asking for a permit and guidance. Mr. Worsham has worked in construction with some work out in the county, he should have and we believe did know he needed a permit. Applying for a permit he would have been given guidance through the process. Mrs. Worsham called me on April 15, 2015 and mentioned about a happening in the past where they received a request for variance regarding Neil Ehrler's property in relation to the road. Perhaps they did know about variances. Regarding standard for variance #6 we believe allowing this to stand could pose a risk of endangerment and could impair the property values. This area is zoned Agricultural, we have always had a cattle pasture there, the deck does not have a rail;

it has a barbed wire fence where a rail would normally go. From our view the deck is right on our property line. Cattle are known to jump fences, chase people when they have small calves, push through fences and spread bodily fluids, which could impact people and property in such a close proximity. I kind of heard that they might replace the deck with a cement patio, so we are right back where they started. Why anyone would want a deck or patio right on the property line of a livestock operation, at the very least consider the children. According to the last minutes Mr. Worsham stated 'that the cows have broken through the fence so many times in that area.' Keeping in mind the fence there is his expense, why would anyone build a deck or patio right on the fence line. Setbacks are for separation and safety. We have talked to an assessor, a surveyor, real estate agent, an agricultural professional, and a banker and none of them thought this was a good idea and this would negatively impact property values, the loan officer said that if someone would come back and want to loan on Worshams property the bank would ask that a survey be done because of the close proximity. The loan officer also felt that it affected property values in a negative way. A future owner of this property might not be as understanding as the Worshams, which could affect us or potential buyer of our property in regards to liability issues. Regarding variance standard #7 the Worsham's did not ask for the minimum variance, they took the maximum variation possible. Mr. and Mrs. Pete Berning lived on this property in the same house with their two children and seemed to do just fine. Mr. Worsham states that he is entitled to an attached garage. My parents or Jack and I never had an attached garage; there are plenty of people who not only have no garage, but also no car. It appears to us that they could have built on the other side of their property, if not they have five other properties listed in their name, maybe they could rework that situation instead of imposing on our space and blaming the neighbors for the present situation. Use your foresight before and after buying a property for adding to it. He stated he did not need our land, but at the same time he needed our property for the cement truck to access his retaining wall before any of the new structures were built, now they are there, how does he access those areas now. It appears that he built a make shift drainage area on our land and scraped down pasture land it what appears to be an attempt to level out his landscaping. The result being a more precarious path for our cattle that now could be more likely to fall into the fence and this is our land without our permission. What about the precedence this sets if allowed, won't people think this is the way to get away with it, build now and make it difficult for people to say no. What will stop the Worshams from doing this on the same property? Mark Worsham was told to leave the construction alone, Jean Story called me on April 1st and she was watching Mark using his skid loader to scrap down their dirt and she stated he was piling against the retaining wall that holds the new addition. We received a letter from Lisa Worsham that day asking us to give up the 'fight' not much encouragement from Marks side. Jean Story stated he was on their property again on April 2nd. We tried to deal with the Worshams and it seems only to be one way, their way. Mark clearly told us that he does not need our land, we are done, no permits, no variances, no building inspection, and no deal. We feel this is an encroachment on our property.

Paul Brashaw, 4413 W Stagecoach Trail, Galena,

- I did work with Mark and Jane trying to get to some agreement. Every time that we came up with a solution there were things that went on with the county, if they traded

land they would have to come forward for a special use permit. This 20 foot rule is steadfast not only in Jo Daviess County, but in other counties. It is my job as a surveyor to tell people that yes you can this or no based on the setbacks. Mark elected to build and Mel scolded him in the January meeting that you put an addition on and now you are coming in to ask for permission after the fact. I feel that if this were to be allowed there should be new rule called the Worsham rule, go ahead build then come in and this board will either approve or deny. I don't feel that is right. I feel that what he did is in violation of the setbacks that the addition should not be allowed, other people have asked for the variance ahead of time, the board was understanding of concerns and most of the time were favorable on the requests. This is after the fact and should not be allowed.

Dennis Story, 3825 NW Miner Road, Galena, adjoining landowner

- This does not affect me directly, I agree that coming in after the fact is not the way things should be done and should not be allowed. Mark talked to me on the 17th and I thought that there was no bedroom or bathroom in this addition, but there is a bedroom and a bath in the addition. I have heard that if he is forced to take this down, he may build on the other end of the house on my side, I do care. The existing garage is grandfathered as far as setbacks so that is fine, but anything beyond that, I am not for. Moving dirt onto my property or off of my property without my permission is trespassing. Mark has done some stuff for me.

Jack Soppe, 4690 NW Miner Road, Galena, adjoining landowner

- When he was landscaping over by the deck and beyond, he did not have my permission to do that and it is already on a slant and made the slant worse where the cattle walk, they will slide right into the addition. As far as the land trade this would be the simplest thing, but he stated I don't need your land.

Paul Brashaw, 4413 W Stagecoach Trail, Galena,

- In all fairness Jack and Jane tried working with him and a resolution, that did not work out, they have done all they could to resolve this issue, but has been a one sided thing, I am not here to badmouth Mark and his wife, but the fact is that they violated the ordinance with the setback and should not allow to keep what they did.

Randy Jobgen

- We have the rules and written down and when you start messing with the rules and saying it is okay, everybody is going to say it is okay. I am just going to build and get by with it afterwards. I think this is a bad precedent to set.

Mark Worsham

- The land trade wasn't such that I don't need your land, this was they wanted almost half of my property for 20 feet on their side. If they wanted to trade an equal amount of property or two to three times as much as I was getting, I was all for that, I didn't want to give up half of my property. I have just less than 3 acres. They wanted the section of woods in the back and this was one of the reasons I bought this property. I went and talked to Linda and tried to see if this was something that was possible. This would create a non-conforming property issue and would bring you in front of the board again. This didn't just fix the property and I decided to not give up half my

property. In regards to setting a precedent, there are penalties in place for this type of thing of not coming beforehand is paying time and a half, I understand that is not harsh, but it is a penalty. I don't think doing something in the wrong order, you do approve things to be built within setback areas, and that is why this board exists to grant people requests on people that have pieces of property that you just can't build. Building on the right side, not sure where Dennis got that idea, I have no intention; it is 26 feet from that property line. I am at your mercy, even though I have done things in the wrong order it is not a request that should be just denied because of that.

Diedrick indicates that you proposed removing the steps and deck and they are wooden. If those were to be removed are you able to have rock steps in place of or would that be too steep, have you given thought to that yet.

- Mark Worsham states yes. The only thing I have done is to figure out what could be allowed. I had met with Linda and a couple conversations with the Building Inspector to see what is okay so that you could walk up the side of that, we haven't reached any agreement or conclusion, it will probably end up being grass like before. I read someone where that you could pour concrete as long as it is ground level, if you wanted to concrete your whole property you could as long as it would be at ground level. Because the deck was elevated off the ground on a portion of it would require meeting setbacks. I thought to do a sand box for the kids.

Mapes questions that you are in the construction business and never been in the zoning office for a permit?

- Mark Worsham states that I have been there for one permit for a house several years ago. I have fixed up, replaced, and repaired on that house on the inside and out of the house over the nine years I have lived there, as wrong as it may be I have never pulled a permit for anything, I was in the country, I honestly didn't think it was a big deal for a contractor to be working on his own house. Things they base permits on in the city is what your cost or labor costs are and doing it myself at home, it wasn't planned out, part of it is concrete, part is cinder blocks, the garage was added and a month and a half later I built a stone retaining wall to hold the ground, I couldn't afford cement so I used cinder blocks. All I can do is apologize and say that I am sorry and I didn't know the setback issues, this is the first addition I have put on any house in my life, and haven't had to deal with a setback issue. I would hope since I did try to address the standards for variance that I hope I presented a good enough of a case, if I had come forward in the right order that the request may have been granted, nobody knows what would have happened, and it would have been easier for everyone.

Mapes states so you knew that the zoning office was there, but went ahead and did it anyway without checking

Jane Soppe, 4690 NW Miner Road, Galena, adjoining landowner

- Your wife had stated that you received a letter regarding Neil Ehrlers property regarding variances and that was a couple years ago, obviously you knew something about variances. The hill behind the house is so sharp, before they moved there it was a rolling hill, now it is a sharp cut, put railroad ties, and the railroad ties failed so he asked Jack can I have a cement truck drive on your property to pour cement for the retaining wall.

Mark Worsham

- Since the snow melted the only dirt that is disturbed on their property of any kind is a small scuff north east of the cedar tree, I got my skid loader stuck between the house and the fence while I was backfilling for the deck, and I went on their property with my mini-excavator, pulled it out. The hill has been a wicked hill since I have lived there. Nothing has been disturbed, but a wheel barrow of dirt. In regards to Dennis and the dirt, I still had a dirt pile in the center of my yard and I started spreading it out along the retaining wall, as far as me being on his property there were some trenches that the creek had washed out, I put some dirt in them.

Dennis Story, 3825 NW Miner Road, Galena, adjoining landowner

- In my comments whether he was taking or putting dirt on my property it still is trespassing without my permission. Putting dirt in these crevices is not going to solve anything because when it rains heavy it will wash out and go down the creek and under his driveway. I believe working inside the house you really don't need a permit even in the city, but if you are making an addition to an existing property it is a good idea.

Public Testimony Closed

Gratton states the whole process is backwards, it isn't whether we grant variances or don't grant them; variances are granted depending on situations with the standards. He does have a challenging property; it is the ugliest parcel I have seen come through. It does not mean that you don't go through a process before you build, we would have worked with him and we have worked with people. We never had the opportunity to look at this before; he made the decision for us.

Diedrick states that the standard that is of most concern is #4 – he created the problem. He has volunteered to remove the deck and the steps, but still doesn't solve the issue with the garage or addition. Garage, is it a convenience or a necessity? They are talking about an addition for space for the family. How far do we go with this?

Mapes states concern with the Zoning Ordinance and this board, the decision that goes forward concerns everybody. We do have an ordinance, it is meant for everyone and it is fair. I feel sorry for Mark, but we have to do what we have to with what we are given.

Tranel states that it is unfortunate for this board that the neighbors couldn't come to an agreement.

Winter states that this is the greatest variance that I have had to vote on. As the only woman on the board and a mom I feel for the family aspect of it, but you choose to live where you live, you choose to live in this county, this county has rules and you can move somewhere else if you don't like them.

Gratton covers the area on what getting a permit does for you as far as inspections for electrical, septic and building codes are adhered to. If we were to allow this that says that we don't care about any of those things, build it and it is okay the way it is, but we are concerned about those things. We don't know if a bathroom is in there, but if there is, the Health

Department should be aware for septic size. Mr. Worsham suggesting that the ordinance caused this, I disagree, the petitioner caused this problem. The ordinance would give remedies possibly to work through it if we saw this before construction. We try and are reasonable with the way we deal with these. As far as devaluation of property we don't have hard evidence to show that. I am concerned with what this does to our ordinance, I think if you do this and say this is okay everybody else can do the same thing and we have to say it is okay. If we are going to do that, we don't need an ordinance.

Standard 1 – Petitioner decided this for them. There are topographical issues, but we didn't get to decide how much.

Standard 2 – It is a unique property, but the situation had been made difficult by petitioner not giving this board the opportunity to determine the facts.

Standard 3 – He is trying to utilize his property, as far as adding value, does an illegal use add value.

Standard 4 – The petitioner created the hardship and not the ordinance.

Standard 5 – It alters the essential character because of the location and the fact that the variance does not exist elsewhere in the county where they did not get prior authorization. Character of county and locality has been altered. This would be allowing little or no setbacks.

Standards 6 – We have not heard enough testimony to determine if that be the case, air and light should have been an issue. Safety concern of having to get on your neighbor's property to access your own property is a concern. Illegal use may diminish property values in the neighborhood. This is a safety issue with no access to the rear of the property.

Standards 7 – Not met, they took the maximum variance.

A motion was made by Mapes to deny the variances from the required side property line setback of twenty (20) feet to five (5) feet for the garage fifteen (15) foot five (5) inch variance, seven (7) feet for the addition thirteen (13) foot variance, and one (1) foot for the upstairs access deck nineteen (19) foot variance in the AG Agricultural District stating:

Standards have not been met

Seconded by Diedrick

Roll Call: Mel Gratton – Aye
Ron Mapes – Aye
Nick Tranel - Aye

Laura Winter – Aye
Gary Diedrick– Aye

New Business

Robert & Karen Fitzgerald, owners, (address: 1031 Ridgeview Drive, Inverness, IL 60010), requesting a variance from the required thirty (30) foot setback from the front property line as platted to sixteen (16) feet resulting in a fourteen (14) foot variance request in the RP Planned Residential District. Common Location: 15 Longwood Drive, Galena

Staff

- Comprehensive Plan: The Comprehensive Plan does not address Variances, but

does recognize the importance of planning for future infrastructure such as roadway expansion, and variances should be reviewed with that in mind.

- Wastewater Treatment: According to records, the septic system was installed in 2005. The existing septic tank for the house is located approximately 17 feet west of the house, and the drainfield is north of the septic tank and house. This property does not have a private well, & is on the Galena Territory's public water supply. The water line enters the property from the north. It appears that the fire pit & patio is southeast of the house and does not affect any part of the septic system or water line.
- Access Considerations: This parcel is accessed from an existing entrance onto Guilford Township maintained Longwood Drive with adequate sight distance. No changes to the existing entrance are being contemplated as part this proposal
- Other Considerations: This is a parcel located in the Galena Territory with an existing residence. This is a parcel that was created prior to the adoption of Zoning in the County. The home on this parcel was built in 2004. The applicant is requesting a variance on the setbacks for the fire pit. According to the 2012 International Building code this type of structure would be exempt from getting a building permit, but, is not exempt from complying with the setback regulations out of the County Zoning Ordinance. Consequently, because of no requirement for a building permit the applicant did not inquire with the Building & Zoning Office about the required setbacks and the fire pit was constructed in the setback area. The applicant has talked to the Galena Territory Association and will address this issue again with them once the county public hearing has been concluded. Below are the Standards from the Zoning Ordinance, careful consideration should be given to these standards as they will be included in the Finding of Fact and be the basis of which the Zoning Boards decision comes from.

Karen Fitzgerald, owner

- We have a 30 foot setback from our property line along Longwood Drive and Court; we have a 50 foot setback from the golf course, which dramatically limits our yard space. I did not know about the 30 foot setback, we had a fire pit there, but was much smaller. We have a lot of family and we enjoy the outdoors so we built a nice fire pit. The landscaper did not know that he needed to get a permit either, and he has worked in the Galena Territory for years. Are we required to get a permit or not?
 - Linda states that you are not required to get a building permit from the County, but you would have to meet the setbacks based on the definitions in the Zoning Ordinance.
- I heard from Dave Oldenburg about getting a permit from them. We went to a couple meetings with them and the last meeting they voted and was majority vote that we could leave the fire pit there if it was okay with the county. The 30 foot setback, from what I understand, was put in place by Branigar to keep it from looking like a city block, preventing sheds from being too close to the road, is what my understanding. I don't think our fire pit violates that purpose. We have gotten comments from our neighbors on the fire pit.

Gratton states this is a unique lot and where it is and setback requirements for the RP District

- Linda states because this is a corner lot it has a front setback from both Longwood Drive and Longwood Court. We utilize the 30 foot setback that was platted and recorded for this subdivision as it was recorded prior to zoning being adopted. The

side lot lines typically are 10 feet and properties that border the golf course have a 50 foot setback, but we do not enforce that setback as it is more restrictive than the Counties and it falls under their covenants and restrictions. We do try to be cognizant of it.

Karen Fitzgerald reviews the standards; 1 – we can't put it anywhere else on the property. 2 – The way the house sits on the property is unique, where the septic is located, and there is limited yard. 3 – The purpose is for our total enjoyment of our family and property. 4 – The hardship is caused because we didn't seek any ones approval, we didn't know we needed to. No neighbors have complained to us. We put a row of pine trees along our property line; they are within the 30 foot setback. We met with Jeff Winders to determine where we could plant more trees. 5 – No issues 6 – No issue with this. 7 – The minimum request is 14 foot variance.

Public Testimony

Randy Jobgen

- Your landscaper should know what the rules are, here we go again with somebody that puts it in and then asks for permission.
 - Karen Fitzgerald stated I think it is a bigger issue if you are on someone else's property.
- He was not on someone else's property.

Gratton stated that he was close, but we didn't have a survey to confirm it.

Public Testimony Closed

Gratton asks Linda to cover the definition of structure.

- Linda Delvaux states according to the Zoning Ordinance it is, 'anything that is built or constructed, including, but not limited to, any usable, permanent, in place device or appliance within the lot making a projection of six inches (6") or more above grade and having a base greater than twelve (12) square feet. This does not, however, exclude such underground or surface structures such a tunnels, future foundations, or swimming pools in whole or in part below grade. An improvement upon land, other than the land itself, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground'. This is what it qualifies under the Zoning Ordinance, when we talk about setbacks we indicate for structures. The information in the Building Code is a little different for structure – retaining walls not over 4 feet in height measured from the bottom of the footing to the top of the wall those things we wouldn't permit. This would qualify under this for not getting a permit, but would need to meet setbacks.

Gratton asks if the side walls were less than that six inches would you consider that a structure then.

- Linda states that if it is over the twelve square feet it would still qualify.

Winter asks if anything was talked to with the Galena Territory before this was done.

- Karen Fitzgerald states our landscaper Matt Reed has done work in the Galena Territory for 10-15 years and has never had to get a permit for a fire pit. I know there are only about 2 fire pits in the Galena Territory. Dave Oldenburg stated to me at their meeting that this has never come up before for a fire pit. No conversation was had with the Galena Territory before construction. Nothing was done intentional. George Knuckey who built the house never talked to us about setbacks, I know George and Dave talked about setbacks, but we as homeowners were not talked to

about setbacks. When the house was built the one corner of the garage was close so George was asked to downsize that, I just found that out from Dave not that long ago. Is the 30 foot setback your issue or is it the Galena Territory.

Diedrick asks if this were platted today the 30 foot setback would not be approved correct because of the setback of 50 foot setback.

- Linda states that our County Zoning Ordinance would require that, but our Subdivision Ordinance allows for subdivisions with interior roadways to have those lesser setbacks, that would be something that would be discussed at the hearing of a proposed subdivision plat. We have a clause in our Zoning Ordinance that we allow the platted setback if recorded prior to zoning. We were not aware of this until the Galena Territory brought this to our attention and they did send a letter to Mrs. Fitzgerald about the violation of being within setback regulations.

Diedrick states if this were to move this 14 feet they would not need this variance, correct?

- Linda stated that would be correct.
- Mrs. Fitzgerald states that there would have to be a much larger retaining wall – 4 feet because the property drops, we would have to remove sprinkler systems and be partially in the rock drainage area. We talked to the golf course and they have no problem, they think it is a pretty view from the golf course.

Gratton states this is a rather sloping area; vertical drop from roadway is about 10 feet or more. Is this the minimum amount that can be requested?

- Rick Paulson, former Building Commissioner and Zoning Administrator in Crystal Lake, if you move that fire pit within 25 feet of something combustible (house or deck) it will create an insurance issue for her.
- Mrs. Fitzgerald stated we talked to Carl Winter from Winter Plumbing and I knew he was Fire Chief as well and he said that I would not move it closer to the home. I tried seeing where else on the property we could put this and I could not find a place without being in any setback.
- Gratton states those are the things we would have gone over if this was done prior to construction.

Mapes states that the problem is that they did it and now are asking for variance.

- Mrs. Fitzgerald stated that I thought I would not have had to come to you for this.
- Linda Delvaux states you would have had to come to us because the 30 foot setback is what is recorded and you would have been required to meet that for us.
- Mrs. Fitzgerald stated that how would we have known that.

Gratton states that I would hope that people that work out there should know these things.

- Linda states that Galena Territory Architectural Review look at more things than what we look at. Initially they did not go to GTA so that was why the letter was written from GTA. I believe she has to go back to GTA to get a permit after this process.

Winter states that it was blatantly or unknowingly done on accident versus the prior one.

Gratton states that we need to look at the reasonableness of this and if we would have granted, this looking at the topography depending on what was presented to us in that request. We may have asked for it to be downsized.

- Mrs. Fitzgerald states that the fire pit is pretty much in the same location as what was previously there. Are brick pavers considered permanent structure?
 - Linda states that it would qualify as a structure under our Zoning Ordinance.

A motion was made by Tranel to approve the variances from the required front setback of thirty (30) feet to sixteen (16) feet in the RP Planned Residential District stating:
Standards all met except #4
Seconded by Mapes

Discussion:

Review of standards for variation - #4 stands out that it was created by persons having interest in the property.

Deidrick asks if an overhead lattice system or gazebo that was installed over this would that be something that we can address.

Linda states that they would need a building permit for that type of work.

Winter asks if we grant this would that allow them to do something like a gazebo over this.

Linda states that you are giving a variance on a structure.

Mrs. Fitzgerald states why you would enclose something like this.

Mapes states that I disagree that this is a structure; I could go tomorrow and take this out of there. I wouldn't consider this a permanent structure.

Gratton states that this is hard if we have an ordinance that indicates something, but you don't agree with it.

Linda states that we originally thought that this wouldn't require anything, but after review of the ordinance we found this out. The Ordinance is what we are given to enforce.

Gratton states that there is really no harm, no safety issue, doesn't keep roadway from widening if need be, nor impairing anything. We are held with keeping with the ordinance.

Roll Call:	Ron Mapes - Aye	Gary Diedrick– Abstain
	Nick Tranel - Aye	Mel Gratton – Nay
	Laura Winter – Aye	

Reports and Comments:

Randy Jobgen stated that two on the agenda that built and then ask for variances. If we don't start enforcing the rules we have then why have them. If the rules aren't correct lets change them. I think we should increase the fines for starting without a permit.

Steve McIntyre asks what happens next on something that is denied a variance.

Linda states that we will get in touch with Mr. Worsham that his variance was denied which he then remains in violation and the only way to correct a violation is either remove the structure or to buy more property from the adjoining landowner. If neither one of those things happen then my next option is to write a citation based on the fact that he is in violation of the Zoning Ordinance. The violation then goes to the States Attorney to enforce.

John O'Boyle says that more communication needs to happen, but I don't know how to do that.

Linda states we do press releases, but the newspapers publish to fill space because we

don't pay for them to be put in. We send them to Territory Times, AppleCore, Flash, Scoop, and Galena Gazette.

Mapes made a motion to adjourn at 9:30 PM. Tranel seconded. Voice Vote: All Ayes