

**Jo Daviess County Planning Commission/Zoning Board of Appeals
Minutes for Meeting
At the Courthouse-7:00 PM
August 24, 2016**

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 Winter to accept the July 27, 2016 minutes. Seconded by Mapes. Voice Vote: All Ayes; Tranel - Abstain

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

Unfinished Business

Denis & Susan Vondran, owners, (address: 3088 W. Culvert Road, Scales Mound, IL 61075) and Bradley & Keri Werner, petitioners (36 East Point Drive, Galena, IL 61036), requesting Special Use Permit to allow for a residence on a lot less than forty (40) acres, a one lot subdivision along with a variance from the required lot frontage, Chapter 3, Article A-4, D, of the County Zoning Ordinance and a 3 year time extension to begin use. Property is located in the AG Agricultural District. Common location: Parcel is located adjacent to 3088 W. Culver Road, Scales Mound.

This request was sent back to the Zoning Board of Appeals from the County Board meeting of August 9, 2016.

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. The Comprehensive Plan would indicate this parcel to be in the Farmland classification of statewide importance, Agricultural Area with areas of prime farmland. This request is in the mile and a half planning radius of Scales Mound, but has not been identified as part of their desired contiguous growth area. Map 5.6, Archaeological Resource Potential, indicates this area to have a high probability of Archaeological Resources. Map 7.2, Land Use Plan, indicates this request to be in the area of an identified environmental corridor. The County's Comprehensive Plan recognizes that home building provides an enormous

infusion of dollars to the local economy. It contributes not only the construction value of the homes but also increases the tax base and provides hundreds of well-paying jobs. The County recognizes the importance of this sector of the local economy.

- Wastewater Treatment: Soil borings were completed for this lot in July of 2015, which indicated that there is a small area of Group I soils that can support a raised, conventional septic system in the northwest portion of the lot. The Natural Resources Inventory Report indicates that the area that can support a conventional septic system is very near the FEMA Floodplain. Further investigation will have to be completed to determine if this area is located at an elevation higher than the FEMA Flood zone. If this area cannot be utilized for the construction of the septic system, then an alternative system, such as a sand filter, will have to be installed due to shallow soil depth over bedrock. This lot will be served by a private water well.
- Access Considerations: Access to this proposed parcel is from an easement onto Scales Mound Township maintained Culvert Road. There was a wood lath with orange flagging in the field and an existing field entrance west of the lath. Assuming this field entrance will be the location of the proposed easement, there is adequate sight distance.
- Other Considerations: The applicant would like to create a one lot subdivision with a variance in the road frontage requirement and overlay a special use permit for a residence on an agricultural lot less than forty acres. An Eco Cat inquiry done with the NRI Report indicates the Illinois Natural Heritage Database contains no record of State-listed threatened or endangered species, Illinois Natural Area Inventory sites, dedicated Illinois Nature Preserves, or register Land and Water Reserves in the vicinity of the project location. The Land Evaluation score on this property is 47.9, which is below the County average of 62.2 with an overall LESA score of 222. Some of the contributing scores to the Site Assessment end of the LESA were the percent of Agricultural land adjacent coming in at 25 points, percent of land in agriculture within 1 mile coming in at 15 points, availability of public water and sewer came in at 10 points each, distance from community services at 12 points, soil suitability for on-site disposal came in at 25 points. The consistency with the County Comprehensive Plan came in at 10 points and the consistency with a Municipal Comprehensive Plan came in at 10 points, this is due to the fact that the property falls within the 1.5 miles of the community, but, is not identified as a contiguous growth area by the Village of Scales Mound. The Village of Scales Mound has not commented on this request.

John O'Boyle states that there was concern about access and utilizing a contour for the driveway.

Keri Werner, petitioner

- Thank the ZBA for looking at the request again. Asking to build a shed and home on our family farm near Scales Mound. This includes a 6.37 acre lot as well as an easement through crop ground to get to the site. Two main issues with the request were the high LESA score and the placement of the driveway. As far as the LESA score we better understand the point system. Having over 200 points indicates this as being a prime location for ag land. LESA score is not a cutoff, but each project will be considered in the context of its unique characteristics. Since the family has owned the land this area has been used as pasture, not great for crop ground, rocky, and steep drop off to the

north. We want to maintain as much pasture as we can and only take a small area for house and yard. Scores high on the farm productivity and factors scores our house will not majorly disrupt the farming practices and will affect under 2 acres of pasture land. Placement of driveway was a concern and at the last meeting discussed moving that to follow a contour line. We propose moving the driveway from straight in to using the same proposed access and then going toward the existing fenceline and follow that along the property. We did not get this surveyed again because if the special use is not granted the easement will not need to be done. The last concern was that at some point the land may not be owned by family and having this within the family farm, we understand and agree with that worry, however our family has talked and we feel that the benefit of having a true family farm and having the whole family live there is worth the chance. The family has owned the farm for about 35 years, and the family before us they owned for 50 years. We do appreciate the LESA scoring and understand why we have that in our county and why the Zoning Board was established, we are asking that you take into account the unique situation that is coming across our county.

Public Testimony

None

Public Testimony Closed

Gratton states the challenge was to uphold the ordinance and accomplish the goals of that and still allow this type of activity in the county. LESA scoring was updated and is doing exactly what we intended it to do; identifying areas that are questionable for being requested to be changed for zoning use.

Tranel states that the change in the driveway does improve the request for me.

Mapes asks if the new driveway will be on tillable ground or pasture. Will that disrupt the farming operation? How wide is the easement?

- Brad Werner states we are going all the way to the bottom of the field along the fenceline. It will be along the tillable land so it may take a little out. Easement is 30 feet wide.

Gratton states that you are using the same access point off the roadway.

- Brad states yes, because that is the best site distance

Diedrick asks about how far you would be paralleling with the township road before turning left to head north. The property falls off west to east and Steve would this be okay for access yet.

- Brad states that you would be about 250 feet.
- Steve Keeffer states yes that is the only point where is safe.

Winter states that we are concerned with the LESA score, but the area they are looking to build is pasture, it is not something that is tillable and would be a good spot for a house, I know we hold to the LESA score and very important to us.

Gratton states that however you move the site, the LESA score would be similar. To have family there it would be good and important. How do you do this with family and not damage the ordinance. Looking at the soils from the Soil & Water Report indicate this area as steep and shallow. There are some natural areas that you could get a 40 acre parcel and you would only need a building permit.

Diedrick states that the alternative would be a larger lot rather than the 6 acre, come up with a different entrance and follow those contours and you wouldn't have an issue with the LESA score. Do we know the LESA score to the west of this request?

- Linda states that we do not; each LESA is done when a request is made for zoning. Gratton states that we do have soil types, and would be a higher LESA score with the soil types.

Diedrick asks about the taxing of this parcel with a 40 acre parcel versus the 6 acres.

Gratton states the buildings would change the assessed value, but the land itself would be taxed similar.

Tranel states that if the land was taken out of agricultural it would raise the taxes.

A motion was made by Diedrick to recommend approval of the request for Special Use Permit for a single family home on a lot less than 40 acres with a 3 year time extension with the following condition:

1. With the 30 foot wide ingress/egress easement to be changed as proposed tonight with a 10 foot utility easement

Seconded by Tranel

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

A motion was made by Tranel to recommend approval of the request for a one lot subdivision with the following conditions:

1. Change of 30 foot easement location and 10 foot utility easement

Seconded by Winter

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

A motion was made by Diedrick to approve the request for a variance in the road frontage requirement.

Seconded by Tranel

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

New 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 four (4) feet in the AG Agricultural District. Common Location: 3939 NW Miner Road, Galena.

Gratton asks State's Attorney Hay if there are no major changes why is this here at the Zoning Board of Appeals again.

State's Attorney Hay states that the way he reads the ordinance is the decision was final on the issue raised, but if a new issue or request is raised then that is not final on that issue. I think they are separate issues and would need to be addressed. The ordinance does not have a time limit on how often a request could be requested and I have brought up that they may want to add this to the ordinance. The ordinance violations are still pending and were set for trial in July prior to this application being requested, but since have been continued, once this petition for variance was filed, but not that any decision at the Zoning Board level will control what happens with the already ordinance violations because at the time initially they were in violation.

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:** 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 reconstruction of the retaining wall is east of the house and 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 application request is not clear as there is a current setback violation on this property that sits closer than what the applicant has requested. 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. The applicant has referenced a retaining wall that predates the zoning ordinance. This office has no information, neither confirming nor denying that statement. In the Zoning Ordinance a structure is defined as: 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") (15cm) or more above grade and having a base greater than twelve (12) square feet (1 square meter). This does not, however, exclude such underground or surface structures such as 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. Should the retaining wall have met the definition of a structure it still would not be qualified for Title 8, Chapter 6-5, C of the Zoning Ordinance, which indicates that in the event that a nonconforming building or structure is damaged or destroyed by any means, such building or structure may be restored or reconstructed, providing such restoration is on the

existing footing of such buildings or structures. If such restoration or reconstruction is not on the existing footing, then such building shall not be restored unless it shall thereafter conform to the regulations from the district in which it is located. No repairs or restoration shall be made unless a building permit is obtained, and restoration is actually begun within one year after the date of damage or destruction and is diligently pursued to completion. This office has no knowledge of any footings in relation to the referenced retaining wall. Even if footings had been in existence this exception would only have allowed a structure to be reestablished on the existing footings and not allowed to expand or enlarge the structure. In reference to Title 8, Chapter 6-5, B-2, applicant would not have qualified for this section due to the fact that there was no original structure sitting as close to the lot line as what the applicant placed his new construction. 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.

Ron Leinen, attorney representing owners

- Submitting Exhibits A, B, and C for review.
- Prior hearing last year and the retaining wall was not fully brought out and given consideration and how it ties into the addition. I would describe this as a unique non-conforming lot. This is an irregular lot that predates the Zoning Ordinance. The retaining wall that extends along the back and side lot line, to within 4 feet of that lot line. Exhibit A which are pictures taken by Mr. Worsham prior to May of 2014, which shows that retaining wall along the residence and behind. In May of 2014 the retaining walls, which held the hillside back, collapsed in heavy rains. Exhibit B shows that house is built into the hillside. The retaining walls predated the Zoning Ordinance. The house is less than 80 feet from the road and he cannot build along the other side of the home because a creek is there and prone to flooding. The existing garage on the property is only seven feet from the property line. This is a highly irregular property that is always non-conforming. The existing retaining walls that collapsed in May 2014 were 4 feet from the side property line. There were two separate walls that were 3.5 feet high and the other that was 12 feet high, which are structures under the non-conforming structures and the definition of structure in the ordinance. The house previously was 15 feet to the side lot line. This property is zoned Agriculture and is off Miner Road. The closest residence is over 400 feet away and the other is about 1,000 feet away. The Worsham's purchased the house in 2006. The retaining walls collapsed in May 2014, and then the Worsham's repaired the retaining wall on the existing site and at that time made an addition to the residence. There is a deck and stairs that were done closer than the 4 foot retaining wall was and they are in the process of removing those. The area of the addition is completely within the retaining wall that collapsed. Exhibit B shows that addition and no closer than the retaining wall was. We would not be here if he got the building permit within a year. Discussion previously about the order of items and it was wrong, but are being dealt with and he will likely pay a fine for that. We need to look at the variance whether what he did is a proper variance or not. The other option would be to purchase land from the adjoining landowner. The Worsham's have offered numerous times to purchase property in excess of market value and all costs involved with it and have been rejected. The Worsham's are willing yet tonight to purchase property. Exhibit C shows neighbors that live in the area and that they have no objections. I don't think this will set precedence; they are likely going to pay a fine. Looking at this variance this is a unique lot and that is

what should be looked at.

- Reviewing standards A: Yes this is a particular hardship, the lot is extremely irregular, and configuration makes meeting setbacks on the buildable area difficult at best, if not impossible. The retaining walls, house and the existing garage are all non-conforming. When the retaining walls collapsed they had to do something because the whole house was in jeopardy. B: Lot is unique and having the retaining wall 4 feet from the side lot line they were put back there. All of the addition is within that 4 foot setback. C: The purpose is to clear up the legal issues and the addition of the residence and it is a residence, they are not here to make more money out of the property. D: I don't see the hardship as not getting building permit; it is the crazy property and the walls that have collapsed. They did not cause the retaining walls to collapse. He has taken no action to go closer than the 4 foot from the side lot line. This is in conformance with the historical non-conformity of this property. The deck and stairway are being removed. E: The property and area is zoned Agricultural, retaining wall structure was close to the side lot line and the house itself within the 20 foot setback and the garage. Changes in itself to the property and location are minor when viewed. F: No impact on pasture or factors in this. G: This is the minimum and the walls had to go back where they were. They serve the purpose of protecting the residence. The addition is quite modest and lies outside that 4 foot from the where the retaining walls were. I believe the requested variance is appropriate.

Diedrick asks about the retaining wall reconstruction with poured foundation or drainage installed to improve the situation.

- Mark Worsham indicates upon reconstruction proper clean stone and drain tile was installed.

Gratton states we can look at the picture, but do you know the setback of the retaining walls to the property line.

- Mark Worsham states that with the overhead photo 1 inch equals 25 foot; you can see the angled part goes under the large tree, it is hard to scale that, but you can see clearly the retaining wall is less than a ¼ of an inch on that map from that side lot line. The reason I know it was about 4 feet is that I could mow with my lawn mower between there.

Gratton states that the tree obstructs the photo and is not able to be confirmed. Asks Linda and how the retaining wall fits in our ordinance to what we are doing tonight.

- Linda states that even if there were footings, which could not be confirmed because these are railroad ties or when they were put in, even if he did need to replace that retaining wall there is a process that we would have had to do with notifying adjoining landowners that this was going to happen and that would have only allowed to replace the retaining wall only, would have had to been on the existing footings, could not have been enlarged.

Gratton then asks if it was replaced on the same exact footings.

- Linda indicates that we don't know that because I am not sure what retaining wall was where.
- Mark Worsham indicates that part of the retaining wall was eliminated because once you did the addition that was the wall. I am not any closer to the lot line than where the retaining wall was with the addition. I think the wording is if not creating any additional non-conformity, and I was not.
- Ron Leinen indicates that if he would have followed the building permit procedure we would not even be here for a variance.
- Linda states that you are quoting a different section of the ordinance stating not extending any closer than the original structure. If there was a structure there and you

were not extending any closer there would still have been a process to notify adjoining property owners prior to this being considered. I can't say if that would or would not have happened at that point. We are beyond that point.

Gratton asks if the retaining wall gives any license for building without the building permit.

- Linda states from the information I have and have looked at as stated in my staff report, no, in my opinion.

Mapes asks if I had a retaining wall that collapsed and wanted to build in the same location do I have to come to your office for a permit.

- Linda indicates that yes you do.

Gratton asks if the people that signed Exhibit C here tonight to testify.

- Ron Leinen states they are not

Gratton states that we accept those, but would need them to testify. The Exhibit C signatures are not adjoining landowners to the request; they just live in the area as far as standing.

Gratton states that the map we are looking at is an older picture from 2011 which does not show the addition.

Public Testimony

John Soppe, 4690 NW Miner Road, Galena adjoining landowner to the north

- We have a map from 2002 from GIS that shows no retaining wall. Previous owner Berning installed the manufactured home in the 1980's and there was not a retaining wall until Mr. Worsham bought the property and installed it himself. No wall was within 4 feet of the property line. I have lived there my whole life, owned the farm since 1991 and farmed it since 1981. The construction of the deck and garage he scrapped the dirt on my side to get it to blend in with his and caused erosion to run right down to his garage that is now 15 to 20 inches deep. It is eroding in my land as well. If a wall were to be put in right now the wall will be right up against my fence and slam against it and take it out.

Jane Soppe, 4690 NW Miner Road, Galena adjoining landowner to the north

- As stated in the previous hearing the Zoning Board stated on April 22, 2015 that safety concern of having to go on your neighbor's property to access your own property is a concern. Illegal use may diminish property values in the neighborhood. Safety issue with no access to the rear of the property. The character of the county has been altered. If he is allowed little if any setback they have already illegally taken the maximum variance. Erosion has already started on our property due to their construction and to their own. GIS Office has no maps of the Worsham's property pre-1995, the earliest map they had was April 2002 well after zoning and 4-5 years before Worsham's bought the property. No wall is in that picture. We have no record of a wall predating zoning. The original owner of the property stated they had no wall behind the house after moving the house in. Jack and Mr. Story can attest that there was no wall when the Worsham's moved in. Ron Leinen indicates Zoning Ordinance section 8-6-5 which states repair or remodel shall not create or increase additional non-conformity of all or any part of the structure. The structure was to exist pre-zoning, which it did not. Had the structure existed it was to be built on the footing of the previous structure or shall not be restored, unless it thereafter conforms to the regulations, which it did not. Restoration had to begin within one year of the damage or destruction of a pre-zoning structure, no wall was pictured in GIS maps of April 2002. The original owner of the house was pre-zoning stated they did not have a wall to the rear or north side. Mr. Worsham after purchasing dug out the bank and built a retaining wall with a sharp angle placed a railroad tie wall against the dirt and it later failed. The maps from 2011 showed a wall. 8-6-5 states structure may be

occupied so long as it remains otherwise lawful, which it is not. There has been a woman living there for the best part of this year. Addressing the petition for variation page 5 question 1: this property was used for several years, 20 or more, before the Worsham's came and violated the rules, it had been occupied by at least three families that had school aged children. The question stated property was too narrow, too shallow, elevation problems, slope, shape issues just don't buy and move on. What you have done has caused us problems – erosion, accessing our property with or without consent, and changing our landscape. Page 5 question 3: there were no retaining walls pre-zoning four foot of the east lot line see map from 2002. The Worsham's property was used for years by families with children. Page 5 question 4 & 5: In our view the Worsham's problems were created by the Worsham's illegally adding on to the property. No existing wall according to GIS map, previous owners, and two eyewitnesses, now causing erosion, illegal property and devaluation of property. The railroad tie wall was put in well after zoning by Mr. Worsham nowhere close to the east property line. If he had footings, why didn't he have permit and within the year of restoration or destruction. Poorly constructed wall failed and Mark made the executive decision to replace it with construction. Page 5 question 6: It is our understanding that the Worsham's have come in to request this variation in order to justify their illegal construction so what is next. There wasn't a retaining wall 4 feet from the east property line pre or post-zoning that we can see. The present structure or the retaining wall described will cause more erosion than it already has. In our opinion it devalues our property and sets a precedent for others to build on non-existent footings and retaining walls. Page 6 question 7: they do not need a 4 foot setback from the east property line, they have plenty of space. Here is a picture showing plenty of space so not sure why they would need a setback variance on the side. This is not a minimum violation, it is a maximum violation, and current construction goes to the north property line. We believe it devalues property. I oppose the diminishing of property rights on non-offending parties and argue that the Zoning Ordinance already has an effective mechanism to allow effective use and quiet enjoyment of the very unique and beautiful land here in Jo Daviess County. We thank you for your notification, time and thoughtful consideration. We submit our formal protest to Mark and Lisa Worsham's request for variance. He offered money but not much to cover costs.

Dennis Story, 3825 NW Miner Road, Galena adjoining landowner to the south

- I have lived here since August 1997 and up until the Worsham's moved there I don't remember a retaining wall being there until after 2006. He has moved a lot of dirt in the back.

John Yorkman, 12176 Duanes Drive, Galena - friend and construction worker of Mark Worsham

- I think the adjoining landowners believe what they are saying, but if I was to read what they wrote I don't know that I could keep a straight face. The anger seems strange. The Soppe's live a mile away and cannot see this house; they have a rental house here. The adjoining owners have farm equipment sitting out, tree that has been lying down near here. They are saying it is devaluing the property, but not sure how. Mr. Story he would not be able to see Mark's property and not sure about moving the dirt because there are a lot of trees. My memory is not as good as it was, but the retaining wall was there when he moved in.

Dennis Story, 3825 NW Miner Road, Galena adjoining landowner to the south

- This time of year I cannot see his house, but fall, winter and part of spring I can see his house. Even I can't see his property, I can still hear if something like that is happening.

Ron Leinen, attorney representing owners

- The GIS map from April 2002, the quality is poor and cannot tell what is there.

Mark Worsham, owners

- There is definitely a wall there, it was in shambles and had stood it back up. I wish I had pictures of this, I do have a picture of the area the day we bought the property showing the retaining walls. If there was not a wall in the back, the dirt is higher than the house. When we bought the house there was dirt under the house from it washing so I said I better get those walls back up. The property was completely overgrown; the walls were there the day I bought the house.

Ron Leinen asks as it has been alleged that you only offered \$1,000 to purchase land that would resolve this issue.

- Mark states that the \$1,000 was in response to you stating that what about the tax we will pay on that \$10,000 for the 1 acre of land. I would pay the additional tax. I offered to replace the fence, and purchase the property, but not move the fence and lease back to them to use the property. I am still willing to do that.
- Devalue of the property, I would pay \$10,000, I don't know how that would devalue the property, I would think it would increase it.

Jane Soppe, 4690 NW Miner Road, Galena adjoining landowner to the north

- Here is a 2006 picture as well showing no retaining wall.

Public Testimony Closed

Gratton states that we need to look at the issue of the retaining wall and if this is a variance that we would grant.

Mapes states that if there is a retaining wall and it collapsed the proper procedure would be to go to the Planning and Development Office and state I want to replace in the same spot, but that was never done, correct.

- Linda states that would be correct. The retaining wall would have had to exist pre-zoning. They would have had to go through a process.

Gratton asks pertaining to the retaining wall; if rebuilding retaining wall, does that allowance pertain to any other structure next to that.

- John Hay states that would be up to this board to see if that retaining wall meets the definition of a structure in the Zoning Ordinance.
- Linda states that if it does fit the definition of a structure then what was done would need to fit within the parameters of which is allowed in the Zoning Ordinance. They have a very strict parameter of what they can do on those existing footings on a pre-existing structure.

Gratton proposes a scenario of a structure that is 100 feet from the house, does that give me the right to rebuild and any other structure along the perimeter of the property within 4 feet of the property line. Is the retaining wall different from the structure?

- John Hay states no because you are talking about a different structure. My opinion is: What they added, is the same structure as what was there before? No.
- Linda states that if there were existing footings with the retaining wall, the addition extends beyond those original footings that could have been there, what they did is more and bigger than what might of been there.

Diedrick states that they did construct the garage and addition without permit and close to

property line. Retaining wall was done without following procedures.

Gratton states that we don't know if this would have been granted if came in prior to construction, this is a challenging situation, but not sure and is a problem.

Standards for variation:

1 – Property is topographically challenged; the applicant made that determination, not the Zoning Board.

2 – This property is unique, but did not have opportunity to rule prior to construction

3 – Does not appear to be that way, but did not have opportunity to rule prior to construction. An illegal use may diminish the value.

4 – Ordinance did not cause this, the owner created this.

5 – Injurious to the neighbor being that close and present a hardship to the neighbor if they wanted to construct something to ask for a variance

6 – Property values are hard to determine and I don't think they are substantial if they are, supply of light and air not an issue.

7 – I think this is the maximum variation to do what he wanted to do, not the minimum.

Gratton states that standards 4 & 7 were not meet. States that we only look at the variance, but there were no inspections on the structure, septic, is that sized properly, and constructed a wall that failed. We tried to work with the petitioner to get this fixed, but did not get that done.

A motion was made by Diedrick to approve the request for variance from the required side property line setback of 20 feet to 4 feet.

Variance Standards 4& 7 have not been met

Seconded by Tranel

Gratton states that this may set a precedent of being 4 feet from a side lot line. This seems to undermine the intent and purpose of our ordinance.

Mapes states that if this passes what good is our ordinance especially with the standards not met.

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

A motion was made by Tranel to deny the request for variance from the required side property line setback of 20 feet to 4 feet.

Variance Standards 4 & 7 have not been met

Seconded by Diedrick

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

Luke & Stephanie Galambos, owners, (address: 2139 W Webster Avenue, Chicago IL 60647), requesting a variance from Title 8, Chapter 5, Article B-46, B. 4; Building Siting and Orientation; outdoor activity areas. Requesting to allow for a portion of the outdoor activity area to be allowed closer to the lot line than the Guest Accommodations Standards would allow. Property is located in the RP Planned Residential District. Common Location: 16 Ravine Drive, Galena IL 61036

Staff

- **Comprehensive Plan:** The Comprehensive Plan does not address Variances, but does recognize the importance of tourism and the use of the homes for rental is a direct result of tourism.
- **Wastewater Treatment:** The existing septic tank is located approximately 23 feet southeast of the house, and the drainfield is south & west of the septic tank. It appears that the sidewalk in question is north of the house and does not affect any part of the septic system. Soil borings were completed on 7/16/16 so this septic system can be brought to current code to meet the Guest Accommodation Ordinance requirements. The replacement system will be located in the same area as the existing septic system.
- **Access Considerations:** The property has an existing entrance onto a cul-de-sac at the end of East Galena Township maintained Ravine Drive. The entrance has adequate sight distance.
- **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 pre 1995; an addition to the garage was added in 2001. The fountain area appears to have been established prior to the setback standards being adopted in 2006. This home has the North Beach on Lake Galena to the east. The lot to the north is vacant and owned by a Mr. Nolte who just recently sold this lot to the Galambos' and the lot to the South is greenspace. The variance request is to the north side of the property. The site plan shows the area surrounding the fountain and a portion of the fountain sitting into the 20 foot setback requirement for Guest Accommodations use. 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.

Luke Galambos, owner

- Purchased this property 8/1/2016, the prior owner was the original builder of this home in 1981 and they own the adjoining lot as well. The vacant lot to the north is just trees and wooded area beyond this fountain area. We would be renting occasionally when we would not be here to just subsidize the purchase rather than have only as an income property. We have gone through the exterior requirement for getting a Guest Accommodations license and we have met everything except for this requirement. We do have interior requirements that will need to be done; this was a very custom built home.

Gratton states that this may get back to what a structure is.

- Linda states that it would, but they would be okay if it was not going to be used for Guest Accommodations with the more restrictive setbacks. This gets caught in the requirement of outdoor activity area for the Guest Accommodations and they need to meet the setbacks. The accessory structure is not committed to the 20 foot setback, but

why this needs to meet the 20 foot setback is that it is an outdoor activity area according to the standards.

Winter asks if any comments from neighbors were called in.

- Mr. Galambos indicated at closing the adjoining landowner indicated no issues.

Gratton asks where the building site would be on the adjoining lot.

- Mr. Galambos indicated that it would be in the top left corner. That lot is for sale, but the price is more than what we would want to pay right now. The front yard of our house is part of the adjoining lot. To build back into the lot would need to demo a lot of trees.

Public Testimony

Andy Klemmt, realtor 2 Stony Point, Galena, IL 61036

- The value of the adjacent lot is the lake view, if a home were to be built it would be more to the top of the lot or front to get that lake view.

Public Testimony Closed

Gratton states that it could be remedied by removing that area from the lot.

Diedrick states we are only doing this for the Guest Accommodations, if it was not used for that this could remain as is. I don't think it seems appropriate to make that a consideration.

Gratton states that you are saying that it doesn't matter then to have that area that close to the property line for Guest Accommodations.

Diedrick states if for personal residence probably not a problem, but a 4 bedroom home for Guest Accommodations will you have that much of a difference from Guest Accommodations to a personal residence.

Mapes states that if there was an existing house on the adjacent lot that would make a difference, but it is vacant. Not sure if this will be rental 10 years down the road and where the house on adjacent lot will be.

A motion was made by Winter to approve the request for variance from the required side lot line from 20 feet to 4 feet for the outdoor activity area for Guest Accommodations.

Seconded by Diedrick

Gratton states standard #6 may not be met if a house were next door to have the potential to diminish enjoyment of the neighbor's property. This could be remediated if that area were taken out.

Variance Standards have been reviewed and are met

Mr. Galambos states that the entire front yard is garden area and to remove that portion would damage the whole front yard area. If forced to do we would have to consider that, but we are not looking to do that right now.

Roll Call: Nick Tranel – Aye
 Laura Winter - Aye
 Ron Mapes – Aye

Gary Diedrick – Aye
Mel Gratton – Nay

Reports and Comments:

Merri Berlage states that a committee has been appointed to replace the Planning & Development Administrator.

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