

**Jo Daviess County Planning Commission/Zoning Board of Appeals
Minutes for Meeting
At the Courthouse-7:00 PM
June 28, 2006**

Call to Order: Tom Heidenreich called the meeting to order at 7:00 p.m.

Roll Call Present:

Planning Commission:

- Melvin Gratton
- ✓ Susie Davis
- ✓ Tom Heidenreich
- ✓ William Tonne
- ✓ Nick Tranel
- ✓ Dave Jansen (Alternate)

Staff & County Board Members:

- ✓ Steve Keeffer, Highway Engineer
- ✓ Heather Miller, Environmental Health
- Terry Kurt, State's Attorney
- Linda Delvaux, Building & Zoning
- ✓ Ron Mapes, Jo Daviess County Board Member

Approval of Minutes: A motion was made by Bill Tonne to accept the May 24, 2006 minutes
Seconded by Susie Davis Voice Vote: All Ayes Dave Jansen – Abstain

Tom Heidenreich swore in all who might want to testify on any request this evening.

New Business

Michael & Bonnie Gedmin, owners, requesting a variance from the required setback of ten (10) feet from a side lot line to one (1) foot from the side lot line, (9 foot variance) to allow for an accessory structure (This variance is to correct an existing violation). Current Zoning: R-P Planned Residential District. Common Location: 73 Tomahawk Lane, East Dubuque

Michael Gedmin, owner

- Moved into the house in 2000 and at that time had to keep the house in line with the other houses. I am 68 feet off the center of the road and the house is 42 feet off the property line. The closest other building to me is 24 feet and others are a greater distance. If I moved my garage I would be over my drainfield and I may not be able to access into the garage. The house is 9 feet from each side lot line. Would be a hardship if I couldn't have the garage there. If I move the garage it will be over my drainfield. The garage is only 20 feet deep. Not changing the front view and it is not uncommon for garages to be placed closer to the property lines.

Public Testimony

None

Public Testimony Closed

Nick Tranel present at 7:30 p.m.

Discussion:

Staff Report

- Comprehensive Plan: the Comprehensive Plan does not address Variances.
 - Wastewater treatment: No septic file on record for 73 Tomahawk Lane. Septic tank and drainfield should be located so no structure is built over any part of the septic system.
 - Access Considerations: This property is accessed from a Township Road. This request will not affect the access.
 - Other Considerations: This request is in the Pioneer Acre Subdivision, which was created prior to the adoption of zoning. This request is in a RP Planned Residential District and has historically had a mix of residential uses including mobile homes. Due to areas such as this an amendment was adopted creating an exception to setbacks.
“If, in existing subdivisions, established prior to the implementation of this ordinance, lesser setback lines have been observed by 50% of the structures in a block; then new structures in that block may be built to said lesser setback lines. In no case, however, shall the front yard be less than fifteen (15) feet or an interior yard be less than ten (10) feet. Furthermore, no lesser setback shall be allowed which interferes with safe traffic flow and unobstructed corner views in the subdivision.”
This exception cannot be applied due to the setback petitioner is requesting, but, what it does is state that the County recognizes the practical difficulties for setbacks in areas such as this. The amendment does not, however, address side setback difficulties as it states no less than ten (10) feet which is the actual setback requirement in this district.
This is an existing structure that was constructed without a permit. At the time the Building and Zoning office was made aware, a site visit was done and revealed the setback issues.
- Bill asks about the lot dimensions and existing septic area
 - Michael states that the width of the lot is 78 feet and the home was built in 2000. Was not allowed to go closer to the lot lines than 9 feet on each side per the building inspector at that time. The septic comes off the house on the back left side then runs back right.
 - Bill asks when the amendment that was mentioned in the staff report was added.
 - The amendment was added on April 11, 1995.
 - Bill asks Heather about the septic.
 - Heather states that I did not find a file, but that seems logical what he states.
 - Bill states to the petitioner that when you placed the home there in 2000 that there was a 10 foot setback, but you still went ahead without getting a building permit.
 - Michael Gedmin states that he was aware that he needed a permit and states the garage has been there for four years. The assessor saw it and has been paying taxes on it. States that he built the garage in 2001.
 - The orthophotography should be from 2002 that we are looking at and if the garage was built then it should be in the picture
 - The distance between the house on the right and the current house is about 12 feet. Dave asks if we would grant this variance if the garage was not built.
 - When doing a site visit we see if the owner knows where his property lines are and then go from there.

- Susie asks if this was not built would we say downsize from a double to a single garage.
 - Michael Gedmin states downsizing to a single would not work because the turn is too sharp to access into the garage and that would be depriving me of a garage.
- Tom states that the hardship that he saw was the closeness of the garage to the house. If the garage was any further into the yard he would not be able to access it.
- Bill states that 50% of the structures in the subdivision have lesser setbacks on the side setback, but then it states in no case an interior side yard be less than 10 feet. They create there own hardship
- Susie asks when you purchase the property are you aware of the setbacks and the conditions. The owner states that others are building without permits and within setbacks. Susie states at what point do we put a stop to them or do we let it continue with making more clutter. Are the people in the subdivision aware of zoning and the requirements? If you put a stop to the building, there are many people that could not even have a garage or a utility shed.
- Dave states that the setbacks are for safety, but we have no objection on the request from neighbors. I think we should look at the request as if the garage was not built and would we allow this.
- Tom states in the amendment it states structures is what has to meet the requirement of 10 feet then are we willing to say on the homes cut back to meet the setbacks as if we can on a garage to be consistent. The purpose of a variance is to vary what is required and meet the standards. He states that if he came to us today and wanted to do this prior to building we would probably not allow this.
- Susie states that everyone will build then come in and ask for the variance if we let this one.
- Bill states that I have concerns with the standards on this request. This is not unique circumstances in this subdivision because he built the house that size and did not allow for the accessory structure. It would not alter the essential character of the locality.
- The building inspector saw the building and checked to see if there was a building permit and there was not.
- The density must not be a problem to the occupants of the subdivision because there is no testimony against the request. Via the orthophotography looked at many sites and approximate setbacks that may be an issue. Drainage issues may be a concern when building lot line to lot line.
 - Michael states the closest building to the accessory building is 22 feet. The inspector at that time told him the 10 foot setback was to keep distance from other structure for safety concern.
- Tom states that the lot is small and the plight of the owners is due to unique circumstances because they overbuild on the lots.

Tom Heidenreich read the standards from the County Zoning Ordinance that need to be addressed.

Standards for Variations - The Zoning Board of Appeals shall make findings of fact based upon the evidence presented to it specifying the reason for making such variation including findings with respect to the following standards:

- a. The physical surroundings, shape, or topographical conditions of the specific property will cause practical difficulties or a particular hardship to the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.

Yes: (Why)

No: (Why) To not have a garage would not be a hardship

- b. The conditions upon which a petition for a variation is based are unique to the property for which the variation is sought and are not applicable generally to other property within the same zoning classification.

Yes: (Why)

No: (Why) The subdivision as a whole has the same situation

- c. The purpose of the variation is not based exclusively upon a desire to make more money out of the property.

Yes: (Why) The garage is for his own use and not to gain money on the site.

No: (Why)

- d. The alleged difficulty or hardship is caused by this ordinance and has not been created by persons presently having an interest in the property.

Yes: (Why)

No : (Why) The owner was aware of the setbacks at the time the house was built in 2000 and created the setback issue for the accessory building by himself.

- e. The granting of the variation will not alter the essential character of the locality, and will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

Yes: (Why)

No: (Why) This may create lot line to lot line with buildings.

- f. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public street, or increase the danger of fire or flooding, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Yes: (Why)

No: (Why) This will increase the danger of fire and public safety in that area by placing buildings closer together than already.

- g. The variation requested is the minimum variation that will make possible the reasonable use of the land or structure.

Yes: (Why)

No: (Why) Not everyone in that subdivision has a garage to utilize on their property

- Dave asks about others in that subdivision if they have built without a permit. Would an inspection of the whole area be needed?
 - We really don't want to go through the whole subdivision. You may have many upset people.
- Tom states that going through the standards it does not meet all the standards and what are we willing to do. If we tell him to do something to the garage then what is the impact on all other structures in Pioneer Acres. Are we going to allow it or if we stop this what will the impact be in the area. I can not make a denial decision tonight without legal counsel. What is the number of homes in this subdivision?
 - Heather states that there are over 200 homes.
- Dave states that the comment that building has been happening with no permits needs to be verified in this subdivision.
- Bill states that we need to look at this subdivision and make sure we start and make this right.

- Ron Mapes, County Board member, suggests using what the Assessor’s Office has added since 1995 on properties.

A motion was made by Bill Tonne to continue the request with the following needed info:

1. Legal counsel
2. Review of Pioneer Acres area of what the actual setbacks are for structures and if they had permits. No time limit on review time.
3. Notify owners when ready to bring back to the Zoning Board of Appeals

Seconded by Nick Tranel

Roll Call: Susie Davis – Aye
 Bill Tonne – Aye
 Dave Jansen – Aye
 Nick Tranel – Aye
 Tom Heidenreich – Aye

Scott & Tammie Schaefer, owners, requesting a rezoning from Ag-General Ag District to R-P Planned Residential District and approval of a 1 lot subdivision. Common Location: Jule Ave/Third Street, East Dubuque

Scott Schaefer, owner

- Would like to split off a 125 x 100 foot lot with a 25 foot easement for a house. The area requesting is where other people use for four-wheelers and dump garbage here also. Would like to clean up the area and make it look like a lot. Mt. Vernon is letting them hookup for central water and central sewer.

Public Testimony

None

Public Testimony Closed

Discussion:

Staff Report

- Comprehensive Plan: The Comprehensive Plan would indicate this parcel to be in the Agriculture area, and is within a mile and half of the City of East Dubuque.
- Waste Treatment: This lot will be served by central sewer and central water from Mt. Vernon Association.
- Access Considerations: This lot will access off of the existing Mt. Vernon street system. The applicant has also dedicated a 25’ wide strip to the Township which would allow the extension of Jule Avenue if it ever becomes necessary.
- Other Considerations: Since the Soil and Water Office did not deem a Natural Resource Inventory Report necessary for this request, a LESA was also not done. This piece would be in-fill to the existing Leibold Place Subdivision. This parcel was at one time subdivided, but, was vacated, which brings us to this point. There is a large use of residential around the requested area. The adjoining “Leibold Place” is zoned RP Planned Residential.
- Upon review of the finding of fact shows that the request meets the criteria established by the Jo Daviess County Zoning Ordinance

A motion was made by Dave Jansen to approve the request:

Seconded by Nick Tranel

Roll Call: Bill Tonne – Aye
Dave Jansen – Aye
Nick Tranel – Aye
Tom Heidenreich – Aye
Susie Davis – Aye

Daylon & Diane Niemann, owners, & Steven & Jennifer Pax, contract purchasers, requesting a rezoning from Ag-1 General Ag District to R-1 Rural Residential District. Common Location: Hicks Road, Warren

Jennifer Pax, contract purchaser

- Would like to build 2 homes on this property. The Army Corps of Engineers, EPA, and the Department of Natural Resources were notified of what they would be doing and they do not require a permit. This is not actually Wolf Creek it is a tributary to Wolf Creek.

Public Testimony

Jim Frances, 7330 IL RT 78 North, Warren

- To the east of the parent parcel and previous owner to the requested property. I do not agree with the request because this parcel is suitable for agriculture for harvesting timber. Last harvest was in January of 2005. This is a good hunting area for the county. The concern would be putting residential in an area of hunting because safety would be a concern. The village of Warren has a subdivision plotted out at the corner of Jefferson and Fiedler Road that have lots that are buildable. The village has updated the sewer system to accommodate growth in the village. We were previous owners and we are in litigation with the lender on the property.
 - Bill asks if the litigation has any concern here tonight or not. I believe the zoning would stand on the property.
- I do not know the outcome of the litigation and if the rezoning would affect the property. The buyers or the Niemanns are not part of the litigation. The current owners do have a clear title to the property.

Public Testimony Closed

Discussion:

Staff Report

- Comprehensive Plan: The Comprehensive Plan would indicate this parcel to be in the Agriculture Preservation area 1, which would indicate concentrated areas of prime farmland soils. Warren does have a zoning ordinance, but no comprehensive plan. The Counties contiguous growth area map shows Warren's growth area to the South. This request is within the mile and half of Warren, but, appears to not be in their proposed growth area. The surrounding area has a considerable amount of Agriculture taking place.
- Waste Treatment: No soil borings on file. Borings for both proposed lots would need to be completed before a septic permit or building permit can be obtained.
- Access Considerations: This parcel will be accessed from Township maintained Hicks Road. There is adequate sight distance along the property frontage. It will be necessary to construct a

- significant crossing over Wolf Creek to access the building lots. This crossing should be hydraulically designed to ensure that Hicks Road will not be effected by created back water.
- Other Considerations: A LESA was done and resulted in a score of 194. This parcel is approximately .8 of a mile from the municipal boundaries of Warren and has mostly Ag surrounding uses. There are two properties within ¼ to ½ of a mile to the southeast and southwest of this request that were rezoned to R-1 and R-2 Rural Residential in 2003. This property is part of the parcel to the east.
 - Bill asks what the dimension of the culvert tube was.
 - The size is 91 x 58 feet and is an elliptical pipe. The Corps does not require a permit for this request, but upon completion they need to submit a document then they will inspect the work.
 - Dave asks if there is any farm ground on this property.
 - Jennifer states that the property is mainly timber and there is one open spot and is prairie grass and pine trees. In off the road there is about 40 feet of open area and a logging trail through the property and would be used as the driveway. The only trees that would be removed would be for the house. We only want to put one crossing to minimize any problems if having two or more in.
 - Steve Keeffer states that the Army Corps of Engineers does not do the actual engineering, they do indicate whether permits are needed or not. The one application is referred to as a nationwide permit and is distributed to all three departments. The DNR will not require a permit because it is under 10 square miles and the EPA will be covered under the same nationwide permit as the Army Corps of Engineers.
 - Dave asks about the split of the property
 - Jennifer states that it should be about an even split down the property.
 - Tom asks if we need to be concerned with future splitting.
 - They have no intentions on doing that, but they would have to request subdivision because of the road frontage requirement and create an interior roadway.
 - Dave asks about Warren's growth area. They do not have a Comprehensive Plan.
 - Susie asks about the LESA score and why it is so high.
 - The score is high because of what is contiguous.
 - Upon review of the finding of fact shows that the request meets the criteria established by the Jo Daviess County Zoning Ordinance
 - Made the contract purchasers aware there is a fencing requirement and law.

A motion was made by Nick Tranel to approve the request stating the following:

1. Approval of soil borings
2. Site distance is acceptable
3. Acceptable water crossing per Army Corps of Engineer, DNR, and EPA
4. LESA score under 200
5. .8 mile from Village of Warren
6. Not taking productive row crop out of production
7. Other property rezoned in the area
8. Road frontage requirement limits dividing further

Seconded by Dave Jansen

Roll Call: Dave Jansen – Aye
Nick Tranel – Aye
Tom Heidenreich – Aye
Susie Davis – Aye
Bill Tonne – Aye

Reports and Comments:

Tom Heidenreich states that the LESA is very near completion.

Tom Heidenreich made a motion to adjourn at 9:00 PM. Nick Tranel seconded the motion. Voice Vote:
All Ayes