

**Jo Daviess County Planning Commission/Zoning Board of Appeals
Minutes for Meeting
At the Courthouse-7:00 PM
August 23, 2006**

Call to Order: Mel Gratton 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 Nick Tranel to accept the July 26, 2006 minutes
Seconded by Mel Gratton Voice Vote: All Ayes Bill Tonne – Abstain

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

Maxine & Gary Peters, owners, requesting rezoning from Ag-1 General Agriculture District to
R-1 Rural Residential District. Common Location: Council Hill Road, Galena has been
withdrawn

Unfinished 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

Public Testimony Remained Open

None

Public Testimony Closed

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.

The Zoning Ordinance sets forth certain standards that must be considered before a variance can be granted by the Zoning Board of Appeals. (See attached.) The petitioner must present evidence which indicates that the requested variance qualifies under the terms set forth in the Zoning Ordinance.

- Linda states that the Gedmins turned in another site plan showing the location of the septic field in the rear yard. They could not put the garage anywhere else because of the septic system.
- Heather states the septic information has been found for the property.
- Mel asks about where the lot lines are.
 - Linda states that the geomeia system is not exactly on, but the lines are very close
- Mel also asks about the area of a typical lot in Pioneer Acres; approximately 8,000 square feet in.
- Bill asks about the amendment that was made to the Zoning Ordinance in 1995 on setbacks.
 - Linda states that whole paragraph applies to existing subdivisions, and allows me administratively to approve the request if it meets the

standards. Within that amendment it does not allow me to grant anything less than 10 feet on the side lot line; that is why we are here.

- Mel asks about the setbacks on the site plans.
 - Linda states the measurement is about 8 feet from the rear setback.
- Mel states there was a statement about the nearest structure to the existing garage was 22 feet. This might inhibit the neighbor to do what he wants, but also for a safety issue
- Nick asks about the septic field and city sewer
 - Heather states that this field was replaced in 2000, but city sewer may not happen anytime soon.
- Susie states that since 1995, when zoning was adopted, setbacks have not been adhered to in this area, do we let them continue to do what they want to do. This is a safety issue and people need to know what setbacks are and that they may not have room for an accessory building due to setbacks. Mr. Gedmin new there were setbacks at the time he built. We asked to review Pioneer Acres with buildings that have been built since 1995 with out a building permit.
- Tom talks about the limitations on the lots; you have to work with that by decreasing the bedrooms or size of the home to fit everything on the lot. Tom asks about septic easements and if they get city sewer.
 - Heather states the only way to get public sewer would be through the street.
- Mel asks about the typical number of bedrooms on a lot in Pioneer Acres. You do not have a lot of room on the lot to get the home, septic, and an accessory building.
 - Heather states from one to three bedrooms. You will need 300 square feet for a three bedroom home and that is using a perfect layout for septic.
- Mel states that they have problems in Pioneer Acres already regarding setbacks.
- Tom asks about determining what was existing prior to zoning and what was built after for setback requirements. Would like to find out what is in violation.
 - Linda states that we can use assessor's info, but we do not have a certainty of what was existing and what is new. We can not accurately find what is in violation and what is from the past. Moving forward is where we need to start.
- Susie states that if a single garage was built and setbacks observed, you would not be able to maneuver through the access into the garage. Double doors allow for greater maneuverability.
- Tom states that petitioners must plan ahead and not come forward to correct a problem that has occurred. We need to worry about this point forward on buildings meeting setbacks.
- Mel states that we may need to review the way the ordinance deals with setbacks for a subdivision such as this that were done prior to zoning.
- Susie states that this should be an eye opener to Pioneer Acres area. The lot sizes are inadequate for house, septic and meeting setbacks. We should not allow these going forward because you can only fit so much on a lot and people should be aware of that.

A motion was made by Tom Heidenreich to approve the request stating the following:

1. Not uncommon to the central location of the request and would not alter the essential character of the locality
2. Meets the Standards

Seconded by Bill Tonne

Mel Gratton read the standards from the County Zoning Ordinance that need to be addressed.

- (1) 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) The nature of the area, small lots are hard to allow reasonable use for residential parcel and maintain setbacks.

No: (Why)

- 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) The subdivision created prior to zoning, Pioneer Acres has small lots and unique to the subdivision.

No: (Why)

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

Yes: (Why) This standard is met; they are using it for their own use and not for profit

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) This standard is met; Due to Pioneer Acres and the lot sizes, the owner was aware of setbacks and created the need for a variance by building without a permit.

No: (Why)

- 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) This standard is met and will not alter the character of the area. The continuance of this type of setback could create lot

line to lot line with structures, much of this exists and the continuance of this trend could be injurious to area

No: (Why)

- 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) Request does not negatively affect the adjoining properties

No: (Why)

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

Yes: (Why) This standard is met, the septic occupies large area of backyard and this is the only placement on the lot

No: (Why)

Roll Call: Bill Tonne – Aye
Susie Davis – Nay
Tom Heidenreich – Aye
Nick Tranel – Nay
Mel Gratton – Aye

New Business

Dennis & Gayle Redington, owners requesting a 1 lot subdivision approval. Common Address: 9994 N Council Hill Road, Galena

Paul Brashaw, surveyor representing request

- We were not aware that the septic was not included on the lot, but we will create a septic easement to include that. The current tenants would like to purchase the 2 acres and one building so that is why it is configured that way. They may in the future purchase the remaining buildings. The buildings will be used agriculturally that are not included in this lot. Mr. Redington bought the 24 acres in 2004. This request meets site distance on both driveways for house and remaining agriculture property.

Public Testimony

None

Public Testimony Closed

Discussion:

Staff Report

- This is a request for a 1 lot subdivision of an existing farmstead off of the farm. The farmstead is allowed to be sold off of the farm under the following regulation in the Jo Daviess County Zoning Ordinance. Article III, Section 3.7, Farm Consolidation: Single-family farm dwellings existing at the time of the effective date of this

Ordinance, which remain after farm consolidation, may be separated from the farm lot provided:

- A. Minimum Area – The parcel created shall not be less than two (2) acres in size.
- B. Minimum Width – A minimum width of one hundred and fifty (150) feet shall be maintained at the front property line

The petitioner does meet these requirements, but since the split triggers the State Plat Act, our Subdivision Ordinance was also triggered. Henceforth the petitioner must subdivide the property, but does not have to rezone it.

- Waste Treatment: The septic system serving the house was installed in 1996. The septic tank is 22 feet off the house. The drainfield is located 158 feet southwest of the house outside of the proposed lot one boundary.
- Access Considerations: The proposed lot is served by an existing access from county maintained Council Hill Road. The existing access has more than 500 feet of sight distance in both directions.
- Heather states that the septic field is west of the grain bin and the tank is behind the house.
- Tom asks about the well
 - The well is about 10 feet west of the house. This is the only well on the property. Electrical is on separate meters.
- Mel asks about the configuration of the lot. There are many things that need to be considered when looking at this configuration.
 - The line in the field follows the way it is planted and the contours.
- Mel suggests a contract for the shared well for the maintenance.
- Nick states that the line in the field does follow the way it is planted and the contours
- The option is to change to one acre and then we would have to rezone the parcel or see if something else can be done.
- Mel states this is not an ideal situation and not how we like to design subdivision
- Bill states this can be a problem moving forward in the future with this configuration

A motion was made by Mel Gratton to approve the request with the following condition:

1. Include the easement for the septic area

Seconded by Nick Tranel

Roll Call: Susie Davis – Nay
Tom Heidenreich – Nay
Nick Tranel - Aye
Mel Gratton – Nay
Bill Tonne – Nay

Motion failed

A motion was made by Tom Heidenreich to continue the request stating the following:

1. See how this can be figured more cleanly

Seconded by Nick Tranel

Roll Call: Tom Heidenreich – Aye

Nick Tranel – Aye
Mel Gratton – Aye
Bill Tonne – Aye
Susie Davis – Aye

Donald & Sandra Wieneen, owners, requesting a rezoning from Ag-1 General Ag District to R-1 Rural Residential District. Common Location: West side of Clark Lane, just north of 150 North Clark Lane, Galena

Paul Brashaw, surveyor representing request

- Rezoning only for the parcel and did provide a rough concept plan. If the rezoning is approved more detailed will be done on a subdivision plat. We will look more heavily at the road system if this was to be approved. Rezoning and subdivisions to the north have been approved. The neighbors would have about the same size parcels as what they would be proposing if approved. No agricultural tillable land on this parcel.

Public Testimony

Jack Mosevich, 84 S Clark Lane, Elizabeth

- This is only rezoning, but what is to stop them from making one acre lots instead of five acre lots.
 - Paul Brashaw states that we only want five lots that would get the best out of the property.
 - Mel also states that this will come back to the Planning Commission to subdivide.
- Against this proposal; there is plenty of development in the area already. Further development would be a detriment to the area and would in turn promote more development.

John Ibeling, 365 N Clark Lane, Elizabeth

- Do not object to the rezoning because the property is not agriculturally used and is destined to be larger tracts of land for home sites. We need to be sensitive because the more houses we put in there the less rural it becomes and not conducive to wildlife. Would like to see 8 to 10 acres lots. Smaller lots creates more traffic and the road may not hold the traffic.

Larry Stoneburner, 1048 North Clark Lane, Galena

- Have my land in the conservation preservation. We need to keep the land rustic and rural. May not be a place to put a subdivision in.

Charles Haggard, 864 North Clark Lane, Galena

- Concerns are well water purity and the septic systems that will be installed.

Nancy McMenamin, 347 North Clark Lane, Galena

- Existing home with five acres and my concerns are also the water and car traffic.

Pat Ibeling, 365 North Clark Lane, Galena

- Concerned about the safety on Clark Lane, in particular the section that is graveled.

Chris Kirkpatrick, 523 S High, Galena

- The property does have some value which is timber production and that helps with the wildlife area. This area is also elevated area and is discouraged in the Comprehensive Plan. This is a very scenic area. Concerned with the different types of development in the area.

Paul Brashaw

- The Stoneburner property has an existing easement that does not affect this request.

Public Testimony Closed

Discussion:

Staff Report

- **Comprehensive Plan:** The Comprehensive Plan would indicate this parcel to be in the Agriculture area. This area has some important farmland soils. This parcel sits just south of the Galena Territory. The Galena Territory is a planned residential community and is a legally recognized subdivision. Since the Galena Territory is not incorporated, the Comprehensive Plan does not show a contiguous growth area. During the planning process of the Comprehensive Plan the Territory was consulted with regard to their preference for future land use in adjacent area. They cited the preservation of the rural character as a priority.
- **Waste Treatment:** The majority of the soil on this densely wooded parcel is not suitable for conventional septic systems. According to the county soil survey, suitable soils for conventional septic systems are found in the northwest corner and southeast corner. Sand filters would have to be installed on the lots without suitable soil. Soil borings have not been completed on the parcel. The large proposed lots provide ample expansion/replacement room for systems.
- **Access Considerations:** The submitted plat of survey indicates a short roadway with a cul-de-sac that could serve three of the 5 proposed lots. Presumably the remaining lots would have direct access to Clark Lane. Developing this property with the proposed short road and cul-de-sac should not be done as a 'Plat of Survey'. Providing 500 feet of sight distance in any direction for any proposed access point along the property frontage will be a challenge due to topography and vegetation. It may be possible to strategically locate one entrance point along the frontage with more than 500 feet of sight distance, but that cannot be determined with certainty because of the existing trees and brush. Vegetation could be removed from both sides of the road, and the sight distance reevaluated, but there are no guarantees that there will be a significant improvement and it will involve removal of trees that are not on the petitioner's property. After speaking with the Guilford Township Highway

Commissioner, he indicated that his discussions with the developer were about one cul-de-sac road, one additional driveway, and no shared driveways. A more significant interior road system appears to be the prudent way to develop this property to the proposed lot density.

- Other Considerations: A LESA was done and resulted in a score of 168. This parcel is approximately ½ of a mile from the Galena Territory. This request has a great deal of residentially zoned properties in the area, and a large Ag parcel to the north and east. The “Barbara Evans Subdivision” came through the Commission in 2001 and was approved for Residential Zoning on approximately 22 acres. That property lies just north and east of the requested parcel.
- Tom asks about the access of the lots and building sites.
 - The parcels would probably be accessing from one location being a cul-de-sac
- Mel asks about the site distance and can we get the site line before we move forward.
 - Steve states that it will be close; there appears to be trees on property that is not owned by the applicant. A preliminary check revealed there was not sufficient site distance, but it might be possible to find a spot on that stretch.
- Bill states that the LESA being 168 and the topography on the property makes it hard to farm.
- The road commissioner has talked with the petitioner and has no objection.
- Mel states that this is a sensitive area with the entrance and requirement for wells and septic.
- This would not negatively affect neighboring property values. Complies with the county plan

A motion was made by Nick Tranel to approve the request

Seconded by Tom Heidenreich

Roll Call: Nick Tranel – Aye
 Mel Gratton – Aye
 Bill Tonne – Aye
 Susie Davis – Aye
 Tom Heidenreich – Aye

Reports and Comments:

An update was given on the re-write of the Zoning Ordinance

Nick Tranel made a motion to adjourn at 9:30 PM. Bill Tonne seconded the motion. Voice Vote:
All Ayes