

**Jo Daviess County Planning Commission/Zoning Board of Appeals
Minutes for Meeting
At the Courthouse-7:30 PM
March 22, 2006**

Call to Order: Mel Gratton called the meeting to order at 7:30 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
- Andrew Sosnowski, Assistant 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 February 22, 2006 minutes with the following changes; page 4, Public Testimony Remains Open on Galena State Bank & Trust Company as Trustee under Trust No 586, (Marvin Hartz)

Seconded by Tom Heidenreich Voice Vote: All Ayes

Public hearing and recommendation on an application by Galena State Bank & Trust Company as Trustee under Trust No 586, (Marvin Hartz), owner, requesting a supplemental special use permit to allow for the substantial expansion of Eagle Ridge Realty. Common Address: 5148 US Highway 20 West, Galena has been continued

Public hearing and recommendation on an application by Jon & Molly Kreiss, owners, requesting a Special Use Permit to allow for a single-family home to be used for transient rental. Current Zoning: R-P Planned Residential District. Common Address: 1 Oakmont (ER3 Lot 4), Galena Territory has been continued

Public hearing and recommendation on an application by the Estate of Glada E. Wurm, owner, Vision/Aerie Partners, LLC, requesting rezoning from Ag-1 General Agriculture District to RP Planned

Residential District for a 40 acres parcel. Common Location: Fronting ¼ mile on Lake Road No. 3, immediately east of Apple Canyon Lake Development has been continued

Request was made by a citizen to consider having the meeting in a larger place because of the interest in the request near Apple Canyon Lake. Questions if there is an alternative parking area.

Mel also states that the size of the agenda may be long so we may consider changing location and to check the actual time of the meeting because it may be changed. Mel states there is a parking area on the other side of the courthouse, also up by the sheriffs department, after that you will need to park on the street.

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

New Business

Clarence & Carma Weis, owners, requesting a 27 foot variance to allow for a house addition closer to the road than the ordinance would allow. Current Zoning: Ag-1 General Agriculture District. Common Address: 5856 W Stagecoach Trail, Galena

Carma Weis

- We have a problem putting the room somewhere else on the house. We have the septic tank and the basement drainage on the east, the north side we have the well and the driveway, and on the west of the house we have the garage connected to the house. We need the room in our house when our children come with their family. We do not plan on a higher financial value because we do not plan on selling the house. Neighbors do not have an objection, not infringing upon any light or air of neighbors. The public safety would not be affected. I would hope it would increase property values instead of decrease.

Public Testimony

None

Public Testimony Closed

Discussion:

Staff Report

- Comprehensive Plan: The Comprehensive Plan does not address Variances.
- Wastewater treatment: Septic tank is east of the house and the drain field is located on the east side of the driveway.
- Access Considerations: The property will continue to use the current access. Information submitted by the petitioner indicates that the corner of the proposed addition will be 11 inches closer to Stagecoach Trail than the corner of the existing building, which is not a significant change from current conditions.
- Other Considerations: The County Zoning Ordinance would require front yard setbacks from a County maintained road to be sixty (60) feet from the property line or one-hundred-ten (110) feet from the center line of the right-of-way, whichever is greater. Petitioner would like to place an addition to an existing residence closer than the ordinance would allow resulting in a twenty-seven (27) foot variance request. This request would be in compliance with the side setbacks.

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.

- Steve states that the property is elevated in relation to the roadway. The existing home is already close to the road and this request would only be 11 inches closer, but they are asking for a 27 foot variance. I have no concern with the request.
- Tom states does the 11 inches further create a bigger impact or not

A motion was made by Bill Tonne to approve the request stating the following:

1. This is a unique request
2. Variance standards have been met

Seconded by Nick Tranel

Mel Gratton read the standards for Variance

D. **Standards for Variance**

- (1) The Zoning Board shall not vary the regulations of this Ordinance, as authorized in Paragraph A above, unless it shall make findings based upon the evidence presented to it in each specific case that
 - (i) The plight of the owners is due to unique circumstances; **Standard Met**
 - (ii) The variance, if granted, will not alter the essential character of the locality; **Standard Met**
- (2) In determining whether the strict application of the Zoning Ordinance creates practical difficulties for, or imposes a particular hardship on, an applicant for a variance, the Zoning Board shall consider the extent to which the following facts have been established by the evidence:
 - (i) The particular physical surroundings, shape, topographical condition of the specific property involved would result in a particular hardship on the owner, as distinguished by a mere inconvenience, if the strict letter of the regulations were carried out
The property is raised in relation to the roadway. Existing structure is close to the roadway. The existing amenities are restricting where they can build on to the house; Standard Met
 - (ii) The conditions upon which the petition for variance are based are unique and would not be applicable, generally, to other property within the same zoning classification
This may be a unique situation, but it may be applied to other properties within the same zoning classification; Standard Met
 - (iii) The purpose of the variance is not based exclusively upon a desire to obtain higher financial return on the property
The variance is for the petitioners use and not financial gain; Standard Met

- (iv) The alleged difficulty or hardship has not been created by any person presently having an interest in the property
**Existing hardships have not been created by the petitioner;
Standard Met**
- (v) The granting of the variance will not be materially detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located
It will not affect neighboring properties; Standard Met
- (vi) The proposed variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets, or increase the danger of fire or endanger the public safety, or substantially diminish nor impair property values in the neighborhood
**It will not impair light and air to adjacent property or increase congestion on the roads nor will it impair property values;
Standard Met**

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

Jo Daviess County, requesting text amendments as presented to the Jo Daviess County Zoning Ordinance

Dave Akemann, Attorney on behalf of Jo Daviess County

- Trying to conform the text of the Ordinance to the Illinois Compiled Statutes, case law, and the zoning map. Added definitions to the ordinance to better define words. Certain areas we have changed the requirement and that is something that can be altered because it is not status quo. The changes put forth is for the Zoning Administrator to grant a variance within a percentage of the actual setback and the other change is the lot size designation for an agriculture residence. Section 4.5 has been recommended to be deleted.

Public Testimony

Steve McIntyre

- Is the 40 acre minimum also required for the special use requests within an Ag district?
 - Dave Akemann states the requirement would be established with the petition itself.
- It is becoming expensive to buy 40 acres and start a farm when it is selling for \$4,500 to \$10,000 an acre

Cathy Wiene

- Part owner in a vineyard and also breed and train horses. The vineyard is 2 acres and produced 10,000 pounds of grapes last year and that is viable Ag. The horse operation takes about 10 to 15 acres and we buy and sell thousands of dollars of livestock each year. 40 acres is a large

parcel especially with our topography in the county. There are at least five active vineyards in the county. The topography works well for that use.

- Does the additional farm house only allow one or as many as needed.
 - Mel states that the number of additional homes is not restricted.
- Why do you need the two acre if you are not parceling it off?
 - Linda states the two acres is there to provide for septic, well, and the required road frontage without creating easements.
- Why do you have to have a legal description, why wouldn't you create one farm access and have the farm houses on that roadway instead of creating strip development?
 - Dave Akemann states that this does not require a legal description to be parceled. You would need to show an area on the farm for the residential use.

Jody Carroll

- How can my son build a house and borrow the money because the bank is going to want a legal description for the two acres for a mortgage.
 - Linda states I have not found a good way to deal with this issue.

Steve McIntyre

- If through a farm consolidation the primary residence is split off, the 2 acres is non-conforming, what if a tornado would ruin the house they would have no where to live.
 - Mel states we currently would allow them to rebuild that house

Cathy Wiene

- Asks about farm signs
 - Linda states that you can still have a sign for farm on your property, but you can not go on someone else's property and advertise

Steve McIntyre

- Questions the public availability of the provisions and where they were published
 - Linda states that they were published in three newspapers, the Scoop, Galena Gazette, and the East Dubuque Register. We are only required to publish in one newspaper.
- Also comments on the word endanger and the word comfort in Article XIII, Section 13.9, c (1) is really the only word that does not fit in that phrase.

Marvin Schultz

- Marvin Schultz questions taking out a sentence in Article 5 R-1 RURAL RESIDENTIAL DISTRICT 5.1 PURPOSE Plats with lots of two (2) acres or more which were recorded prior to the adoption of this Ordinance, and the covenants pertaining thereto, are hereby grandfathered Rural Residential. Would those that were grandfathered residential then become non-conforming agriculture or what.
 - Dave states that grandfathered is not a legal term, but I think the intent of the draft was to allow the continuation of the use and not create a separate district if they were a non-conforming parcel
- Questions the revisions and the correction, but the people that bought property and thought they have rural residential parcels and we go and change this and now they are agriculture, how do we as County Board tell people they were not residential.

- Tom asks were they ever Rural residential
- Dave states that you do not grandfather a district you are in you are either in or out of a district.
- Bill states that there use is still the same which is residential
- Linda states that if they would have looked at the map then they would have been agriculture. The text of the ordinance should reflect what the map shows. This will make the map and the text conform

Cathy Wienen

- Whether if it was written right or not those people think that they are rural residential because it was written in the ordinance. How can you ever phase out non-conforming uses because the house on a two acre lot is destroyed then how can they rebuild.
 - The intent of the ordinance is to not do that and let them rebuild if that would happen

Public Testimony Closed

Discussion:

- Mel comments on the addition of the Basic Industry under the agriculture district with a definition
- Also added was #17 Hospitals under the commercial district
- Bill comments on the Ag district with the minimum acreage. Is the 40 acreage legal?
 - Dave Akemann states that is legal to designate an acreage for the Ag-residence
- Mel states do we create unnecessary work by requiring that to be 40 acres or do we set a reasonable acreage and setbacks
- Bill comments on a 1 acre Ag lot for a vineyard. Would that fit with our Comprehensive Plan? I would lean toward taking out the 40 acre minimum for an Ag residence.
- Tom states that the acreage below 40 would that be administrative or in front of the commission.
 - Dave Akemann states the only way to approve anything under the 40 acres would be by a map amendment.
- Tom states there are other viable farms that are under 40 acres
- Dave Akemann states that this does not regulate the size of an agriculture parcel, but this is regulating if the Ag-residence is placed on the property.
- Tom states that the Comprehensive Plan supports Ag and does not distinguish between traditional and non-traditional Ag.
- Bill states that the non-agriculture would be allowed on a 40 acres site, but anything less than that would need to request a map amendment. This is what the current practice is in the office.
- Mel states that 40 acres may be a good size for a non agriculture residence in some places, but not in others.
- Mel states currently right now you need a 2 acre minimum for additional agriculture homes and 150 feet of road frontage. The part that is cut out is the part that is a gray area of who can build
- Tom states that this enacts the spirit of the ordinance and allows the farmer to use his property whatever large acreage he has to build a home on it for his workers
- Linda states that we added the word additional agriculture residences and that better defines it and we took out the phrase establish a separate parcel of at least 2 acres. Creating smaller separate parcels off an agriculture piece is not ideal and I think the intention of the ordinance is on the agriculture parcel to allow more than one agriculture home for a farm operator or

farmhand and not split off a small parcel. If in the future the smaller parcels that are created for that agriculture home and are sold later then they are subject to the zoning ordinance and when it is already split off it is hard to keep track of all these parcels.

- Bill asks about the agriculture added to the phrase, and the operator and his family or farmhand additionally working the farm. Not all your children can build unless they are working the farm.
- Linda states that they will not be allowed to create a separate parcel for that use.
- Steve states that where in there does it say you can not split that parcel off. How can you stop them from splitting it off?
- Tom states that the spirit of the ordinance is to provide additional housing for the farm help then shouldn't the farmer build the house.
- Bill asks if each house should have a defined lot or area legally.
 - Dave states that you have setback requirements and septic requirements, but you do not have a requirement of how many homes can be built on that property for agriculture use.
- Bill asks can we make the principal agriculture residence and the additional both two acre requirements.
- Linda states that if we allow that to be split off and then it is sold and not part of the farm operation then we are creating a non-conforming parcel because the use is a non agriculture house.
- Bill states we should maybe go back and change the principal agriculture residence and the additional agriculture residences to a 2 acre minimum
- Tom asks about non-conforming uses and how you can eliminate them over time.
- Dave states that when something is non-conforming you have three choices – current ordinance lets you continue and expand in size and intensity within the same parcel, another choice is to let the use continue, but with no expansion and additions to the useful life, and the final would be to let it continue, but over a useful life which is reasonable to be eliminated.
- Bill asks about Article 10 10.2 F, Signs Along County and Township Roads and why are we deleting this.
 - Linda states that currently the signs are to be within 600 feet of the existing business on a commercial lot, which you will not find out in the county, therefore nowhere to allow it. Steve Keeffer has established tourist oriented destination signs (TODS) which have been used on county and township roads.
- Susie questions if in Article 7 7.9 SCREENING AND LANDSCAPING A. Screening (1) if we should add in the R-2 district.
 - Linda states it may not have been in there since the R-2 district was an amendment
- Susie questions under the commercial district why drive-ins are excluded.
- Mel states that drive-ins are included under a special use within the commercial district.
- Susie questions why tavern is repeated in number 23 under permitted uses and also in 17
 - Dave states that it could be redundant or someone could have thought there was a difference between a restaurant tavern and a tavern. They are under the same permitted uses.
- Susie asks about the mile and a half jurisdiction under Article 12 12.17 SCOPE AND EXEMPTIONS. We have had a problem with the mile and a half jurisdiction and why don't we have intergovernmental agreements with municipalities that have zoning. Municipalities have a problem with time frame and being able to comment or act on the request.

- Dave asks if there is no intergovernmental agreement what happens and if there is then the terms would be binding by the municipality and the county, then you would not need to put that in the zoning ordinance.
- Susie states if the municipality wants to be active in the mile and a half then they need to have an intergovernmental agreement with the county.
- Susie asks about the Standards under Section 13.9 SPECIAL USE PERMITS if this is taken directly from statute or can we alter these with the word substantially adding in number 1.
- Dave thinks the standards are not from the special use statute; they may be from the existing language or from case law.
- Dave Jansen comments on the word comfort because that can mean different things to each person. May be better to strike it or define it.
- Tom states that another word that can be used differently is will, in place of that you can use shall or may and mean something different
- Nick asks about under the special uses within an agricultural district the concentrated commercial feeding areas, the Livestock Management Act should cover this requirement unless we want to be more restrictive.
- Dave states the setback portion would be legal to put in, but this should be covered by the Livestock Management Act and would not need to be in here. The only part of it that is enforceable is the setbacks.
- Mel and Tom state this should be a permitted use within an agriculture district.
- Dave states that making someone come in for the concentrated commercial feeding area would be beyond the scope of the Counties lawful authority, except for the setback requirement. You could be more restrictive on the setback requirement.
- Nick questions Article 3 Ag-1 General Agriculture District 3.2 USES C Special Uses (3) animal hospitals – I question an animal hospital and the setback requirement within there.
- Linda states that the addendum that they received is included for review.
- Mel states that we do need to create the type of standards necessary in Jo Daviess County in a new draft to move forward rather than in the revisions here, but these are to make the current ordinance conform to statute and case law.

A motion was made by Bill Tonne to approve the request with the following changes:

1. Article 3 AG-1 GENERAL AGRICULTURE DISTRICT 3.3 LOT SIZE REGULATIONS A. Minimum Lot Area, Principal Residence For agricultural residences, Two (2) acres
For non-agricultural residences, forty (40) acres, however, except that residences may be constructed on a lot less than forty (40) acres if the lot was recorded as a lawful platted lot prior to March 1, 1995 and provided further that said residential use conforms with all septic and waste disposal requirements for said use.
2. Article 7 MH PLANNED MOBILE HOME PARK DISTRICT 7.9 SCREENING AND LANDSCAPING A. Screening (1) Mobile Home Parks which abut an R-1, R-2 or RP Residential District shall be adequately screened from such district by a natural or landscaped area.
3. Article 13 ADMINISTRATION, PROCESSING AND ENFORCEMENT 13.9 SPECIAL USE PERMITS C. Necessity to Meet Standards (1) The establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, ~~comfort~~ or general welfare.

4. Remove Article 3 AG-1 GENERAL AGRICULTURE DISTRICT 3.2 USES C. ~~Special Uses (10) Concentrated commercial feeding of poultry and livestock in a structure or area in which five hundred (500) or more units of livestock per acre are confined for the production of agricultural products. For the purpose of this Ordinance, one (1) unit shall be equivalent to one (1) head of cattle, two (2) hogs, two (2) sheep or ten (10) poultry. These operations shall not be closer than one thousand (1,000) feet from residences.~~
5. Article 8 CP PLANNED COMMERCIAL DISTRICT 8.2 USES B. Special Uses (17) Hospitals
6. Article 3 AG-1 GENERAL AGRICULTURE DISTRICT 3.2 USES C. Special Uses (38) Basic Industry
7. Article 15 RULES AND DEFINITIONS 15.2 DEFINITIONS Basic Industry: An establishment engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials. Typical uses include distilleries, pulp processing and paper products manufacturing; glass manufacturing; brick manufacturing; steel works; tanneries; acid manufacturing; cement, lime, gypsum, or plaster of paris manufacturing; fertilizer or chemical manufacturing; and petroleum refineries.

Seconded by Nick Tranel

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

Reports and Comments:

Steve McIntyre presented information on the sales that took place in 2005 that were recorded.

Tom Heidenreich states the LESA needs some finishing items done with the state and hope to be approved in May. Tom comments on the number of CRP contracts and eighty percent of the payments are mailed outside of the county.

Bill Tonne and Mel Gratton comment on the redraft of the ordinance and meeting with the County Board.

Nick Tranel made a motion to adjourn at 10:00 PM. Susie Davis seconded the motion. Voice Vote: All Ayes