

**Jo Daviess County Planning Commission/Zoning Board of Appeals  
Minutes for Meeting  
At the Courthouse-7:00 PM  
February 22, 2012**

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

**Roll Call Present:**

**Planning Commission:**

- ✓ Melvin Gratton
- ✓ William Tonne
- ✓ Nick Tranel
- ✓ Dave Jansen
- ✓ Jody Carroll, Alternate

**Staff & County Board Members:**

- ✓ Steve Keeffer, Highway Engineer
- ✓ Sandra Nolan, JDC Health Dept.  
Terry Kurt, State's Attorney
- ✓ Linda Delvaux, Building & Zoning  
Ron Mapes, JDC Board Member
- ✓ Marvin Schultz, JDC Board Chair

**Approval of Minutes:** A motion was made by Nick Tranel to accept the January minutes. Seconded by Bill Tonne Voice Vote: All Ayes

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

**New Business**

**Paul Middendorf (7800 S Burdick Ave., Oak Creek WI 53154) & Eldon & Cynthia Middendorf (8520 N High Ridge Road, East Dubuque, IL 61025) owners,** requesting a variance from the required road frontage of one hundred fifty feet (150) for the separation of a residence from a larger lot Chapter 3 Article 8-3a-2,C.3, and a one lot subdivision. Common Address: 8363 N High Ridge Road, East Dubuque

**Staff Report**

- Comprehensive Plan: The Comprehensive Plan does not address Variances directly, but does recognize the county has a rich supply of older housing stock and recognizes the enhancement to the historic ambiance of the areas and the opportunities for home ownership in a lower price range.
- Wastewater Treatment: The Health Department has no record of a septic system on this property. Verification of any existing system along with a soil investigation will be required. The septic system will need to be upgraded or replaced to meet current code requirements.
- Access Considerations: The proposed parcel is accessed from an easement which is essentially an extension of a 'dead end' township

road that is maintained by Menominee Township. Sight distance is not a factor.

- Other Considerations: This house was built prior to the adoption of zoning in 1995. A variance is required in order for this existing home to be split off of a larger lot. Should a variance and one lot subdivision be granted, petitioner will follow through with separating it from the larger lot under Chapter 3, Article 8-3a-2, C.3.

Paul Brashaw, surveyor representing owner

- Currently Paul and Eldon and Cynthia Middendorf own this farm together. They have approximately 120 acres. Paul wants to get a quit claim deed on his half of the house to be able to fix up the house and preserve the farm buildings. We meet all the standards as far as the setback requirements for buildings, with the one lot subdivision the township road does dead end at the western end of the property and there is no way that we can meet the road frontage requirement. We are creating an easement for the house and that is what triggers the plat act and subdivision requirements. This is a first time split, but we are creating that easement. The variance standards I believe are met. Currently there is nobody living in the house, he wants to get a mortgage on the house to fix it up. The easement may not be needed in the future when and if they split the property up.

**Public Testimony**

None

**Public Testimony Closed**

**Discussion:**

Gratton states this is a common request; there is no good way to get the road frontage requirement for this request.

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

1. Variance Standards met
2. Septic to be completed to Health Department requirements

Seconded by Bill Tonne

Roll Call: Jody Carroll – Aye  
Dave Jansen – Aye  
Nick Tranel – Aye  
Bill Tonne – Aye  
Mel Gratton – Aye

**Subdivision Request**

A motion was made by Dave Jansen to recommend approval of the subdivision.

Seconded by Nick Tranel

Roll Call: Dave Jansen – Aye  
Nick Tranel – Aye  
Bill Tonne – Aye  
Mel Gratton – Aye  
Jody Carroll – Aye

**Ernest & Jacqueline Balogh (908 N Dunton Avenue, Arlington Heights IL 60004), owners,** requesting a variance from the required side property line setback as established for Guest Accommodations use of twenty-five (25) feet to twenty (20) feet. Requesting a five (5) foot variation. Common Location: 379 West Wachter, Galena

### **Staff Report**

- 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: This home is served by a sand filter septic system which is sized properly for 5 bedrooms. The septic system was inspected in October 2011 and, after minor repairs, was found to be functioning properly. The variance request should have no affect on the septic system.
- Access Considerations: The parcel has an existing entrance onto Guilford Township maintained Wachter Road that will not be altered as a result of this request.
- Other Considerations: This house was built in 2002 and the Guest Accommodations setback standards were put in place in 2006. The petitioner is requesting a variance from the side lot line. The house has vacant lots on either side. This lot is approximately 291 feet deep and 115 feet wide.

### **Ernest Balogh, owner**

- In regards to the seven standards, we purchased the home in December 2011, the home was built in 2002, and it would be a hardship to move the home in anyway. It is 20 feet from the east side setback. The second standards it is not a general condition for other properties, others may have issues, but this is kind of unique to this property. The property has already been zoned for use as a four bedroom Guest Accommodations, it is a five bedroom home, and I would like to use the fifth bedroom for personal use as well as for Guest Accommodations. The motive is not strictly for profit. I have four adult children and they can have their own space. Difficulties caused by the Guest Accommodations side setback on the east side property and not due to any actions on my part, granting of the variance will not alter the character of the locality, as there are many rental properties throughout the Galena Territory. Tourism is an important component of the Galena Territory Association. The variance will not impair light, air quality, nor significantly increase congestion or any danger of fire or etc. This will not impair property values. This is the minimum variance requested.

**Public Testimony**

None

**Public Testimony Closed**

**Discussion:**

Tonne states that as the petitioner testified that it meets the standards, and I agree. Activities for indoor and outdoor are more to the rear and not the side requesting the variance.

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

Seconded by Jody Carroll

**Discussion:**

Tranel states this is screened and a good location.

Gratton states that it does have greenspace to the rear.

Roll Call:     Nick Tranel – Aye  
                  Bill Tonne – Aye  
                  Mel Gratton – Aye  
                  Jody Carroll – Aye  
                  Dave Jansen – Aye

**Diamond Building Partnership, Glenn Spolum and Don Spolum (801 W Main Street, Kirkland IL 60146), contract purchasers,** requesting a variance from the required maximum allowable living space of a guest household unit of nine hundred (900) square feet. Common Address: 1136 Menzemer Road, Elizabeth IL 61028

**Staff Report**

- Comprehensive Plan: The Comprehensive Plan does not address Variances directly; it does recognize and does encourage the preservation of historic or potential historic buildings and the reuse of them.
- Wastewater Treatment: A septic permit was issued in May 2000 for a new septic system to serve the barn. The system was designed for 2 bedrooms.
- Access Considerations: This property has an existing entrance onto Thompson Township maintained Menzemer Road which will remain the same.
- Other Considerations: The current owner of the property converted a barn to a guest household unit in 2000 and never got a building permit. The converted barn is over the allowed 900 square feet. This came to our attention as the owner is in the process of selling the property. The buyer has applied for the variance as he would like the property to be

zoning compliant.

Joe Nack, Lawyer representing contract purchaser

- Since we made application we have now closed on the property. The previous owner in 2002 renovated the old barn on the property. The footprint of the barn did not change only the interior did. We were under the impression that the square feet that we were over by 300 square feet, we were then told by the Zoning Administrator that we are 900 square feet over. This is a two bedroom and two baths. This was not created by the buyer in any way. This has been used in that capacity for 12 years, nothing has changed. We do not want to rent it out; it will be for personal use. The farm is currently in CRP and Forestry programs. All of the standards have been met, it could be argued that it was man made; this could be considered not unique to the property. The other standards are in line with the standards. This property can not be further divided due to the setbacks that would need to be met for the structures. There is no other way to do it, we want to be compliant with zoning, and my understanding is that is the variance is granted then the building permit can be issued. We can not go in and structurally alter the building to minimize the living area, or the other option is to tear it down. We would like to preserve the building.

Tonne states that you are not going to do any rental of that facility.

- Joe Nack states there will not be that use. They may have friends come out and stay.

**Public Testimony**

Paul Brashaw, surveyor

- I was in the barn and the previous owners remodeled that to some high standards and better than some of the things in my current house. It would be a shame if it were to be torn down.

**Public Testimony Closed**

**Discussion:**

Linda Delvaux clarified the square footage numbers we are asking for: I actually did send the Code Enforcement Officer to the site and the numbers are 1,600 square feet over the 900 square feet that are allowed. It is a pretty good size. The way it is positioned would be hard to split this off and meet setbacks.

Jansen asks about the punitive nature for this board to deal with when it comes to people that are not in compliance. These people new this was not in compliance at the time of purchase and yet went ahead and bought it. How do they get away with it?

- Linda Delvaux states; are they getting away with it, no they are here tonight asking for the variance. This board has the options of granting the variation or not to grant the variation. If the variance is not granted they have other options to appeal your decision or bring the building into compliance with the 900 square feet. They are not the ones that did it, should they have gotten a permit, yes they should have, this would then have been caught. They are now paying the price,

variation has a penalty fee attached and the building permit fee will have a penalty fee attached, as well as being in front of the ZBA here tonight.

- Jansen states that I have some comfort in that, but people need to be responsible for their actions.

Carroll states that I know other people that have remodeled barns and the average person does not think they need a permit to do that.

- Linda Delvaux states that is part of our education process that we have been trying to get out to the public in press releases to show when you need a permit and when you don't need a permit.
- Carroll states would you rather have the barn fall apart or have them pay property tax on a place like this.
- Jansen states that I agree with you, but they didn't do it right and what is the result of that.

Gratton states that our intention is not to be punitive in any way, but there were some mistakes made. We do have to give credit to the new owner because they realized it was not in compliance and they are taking action to correct the situation. I don't think they caused the difficulty by buying it this way.

- Jansen states that it doesn't seem right.
- Gratton states that if the previous owner requested this, it would be different.

Tonne states that the location, topography, setback from the road and other things goes a long way from mitigating the reason for the 900 square feet and why we allow one residence per parcel. Those are good planning. This is 2,500 square foot place. You can remodel a barn, but when they remodel for habitation, that changes the use of the barn, use is the issue. How far apart are the house and the guest house? Down the road the third buyer of this property may think I have two homes, why can't I develop for more. I speak in favor of this request.

- Linda Delvaux states that it is about 45 to 50 feet apart. You can not create a property line between the two homes and meet setbacks that are required in the Zoning Ordinance.

Tranel states that this property is unique in how it is setup, they are close in proximity, I would hate for this board to discourage the remodeling of old barns, and I don't see a conflict with the neighbor anywhere in this location.

A motion was made by Nick Tranel to approve the variance request.

Seconded by Dave Jansen

**Discussion:**

Gratton states that it helps that the new owner was aware of this and is correcting it.

Variance standards have been met

Roll Call: Bill Tonne – Aye

Mel Gratton – Aye  
Jody Carroll – Aye  
Dave Jansen – Aye  
Nick Tranel – Aye

**Sharon Hasting (13216 E Krise Road, Stockton) owner,** requesting a variance from the required public street setback of fifty (50) feet from the property line, or eighty (80) feet from the centerline of the right-of-way, whichever is greater to 50 feet from the centerline of the right-of-way. Requesting a thirty (30) foot variation. Common Address: 13216 E Krise Road, Stockton

### **Staff Report**

- **Comprehensive Plan:** The Comprehensive Plan does not address Variances directly. The county zoning ordinance recognizes the permitted use of a single family home on this parcel, due to that, the normal things we look at in the Comprehensive Plan are not at the forefront of this request. The Comprehensive plan does however, recognize the importance of the home building industry as an important economic and tax base, at the same time weighing the bases for a variation in the ordinance regulations.
- **Wastewater Treatment:** The existing house is using an old cistern as a septic tank. Three areas have been investigated for a septic system to serve the new house. Shallow soil depths and seasonal groundwater levels limit the area available for septic. The new drainfield will need to be protected from animal grazing and farm equipment. If a new house is not constructed, the septic system serving the existing house will be required to be upgraded within 6 months.
- **Access Considerations:** The parcel has an existing entrance onto Wards Grove Township maintained Krise Road.
- **Other Considerations:** Petitioner would like to tear down existing home and rebuild in the same general location. The area petitioner would like to build has an existing disturbed area, hence the request for the variance, so the productive area doesn't have to be disturbed.

### **Sharon Hasting, owner**

- I would like to west of the existing house build a new house which would put the existing well to the east of the new home. I need to be to the west of the well. We have organic fruits and I need a building for that so that will go further back on the property. According to the Health Department they did not want to approve any septic that will cross a road with the lines. The septic field area was discussed and areas of the property are wet and access roads limit location of the septic. There is another building that is about 37 feet from the road; we will be further back than what that building is. We wanted to move the house because the old cistern caved in last year. Everything needs to go to the west of the existing house.

Gratton asks how many bedrooms you are anticipating.

- Sharon Hasting indicates five bedrooms. It will need to be a sand filter system.

### **Public Testimony**

None

### **Public Testimony Closed**

#### **Discussion:**

Tonne states that I don't believe there are any building on the other side of the road, should the road need to be widened. How big of a farm is this?

- Linda Delvaux states that the whole farm is about 250 acres.

Tonne asks about the house if it will be a one story or a two story. If one story you are looking at over 12,000 square feet.

- Sharon Hasting states that I want to use the basement for my organic fruit. If a two story then the upstairs would be only 1/3 of the house and the other 2/3's would be cathedral.

Gratton states that the soils do need to be suitable for buildings as well as septic. I don't think that building away from the farmstead on a larger farm like this is practical out in the country.

A motion was made by Nick Tranel to approve the variance request.

Seconded by Jody Carroll

#### **Discussion:**

Tonne states that there is space on the property to fit the house if turned, to avoid the variance and the well and still have septic area. It has to be topographically challenged, and I don't see it here. You actually have plenty of space; you may have to reconfigure something, trees and where cattle are. Septic can be within the setback.

Gratton states that we need to take into consideration the location of the well and the septic.

Tonne states that the septic can still be on the west of the new house.

Jansen asks how much drainfield for a septic.

- Sandra Nolan states for a five bedroom sand filter system you will need 1,000 square feet for the sand filter and about 1,100 square feet of drainfield.

Tranel states that you could reconfigure the house and get it to fit in, but you could raise issue with the septic.

- Sharon Hasting states the existing septic utilizes a cistern and the drainfield is under the cement cattle yard and then out into the neighbors.

Tranel states that the new house is twice the footprint of the existing house. If you were

to turn the house the other direction you may be able to fit it in.

- Sharon Hasting states that the house will not look right and it will be clumped together.

Jansen states that the only thing that comes out of the standards is the septic.

Tranel states that she has to do that anyway no matter what.

Variance standards have been met

Roll Call: Mel Gratton – Aye  
Jody Carroll – Aye  
Dave Jansen – Aye  
Nick Tranel – Aye  
Bill Tonne – Nay

**Jo Daviess County Board**, proposed amendment to the text of the Jo Daviess Zoning Ordinance, addressing County Zoning Ordinance Title 8; Chapter 4, Article 8-4c-5, Nonconforming Signs

8-4c-5 Nonconforming Signs:

- A. Any sign unless otherwise excepted by this Division, legally existing prior to enactment of this Division but which shall violate any provision of this Division, may continue to be maintained and used subject to the following provisions.
1. Enlargement: Nonconforming signs ~~shall not be enlarged, expanded, or extended to occupy a greater square footage or height than was occupied on the date of adoption or amendment of this Division.~~ may be enlarged, expanded, or extended to occupy a greater square footage than was occupied on the date of adoption or amendment of this Division, but shall be no more than 32 square feet in size, to be measured by the sign face. Both sides of a nonconforming sign may be utilized. Triangle settings may be utilized in the support of a sign limited to advertising on two sides only.
  2. Relocation: Nonconforming signs shall not be moved in whole or in part to any other portion of the lot, parcel or building not so occupied on the date of adoption of this Division, except that any such sign which is hereafter required to be moved by a governmental body for the purpose of construction, relocation, widening, or improvement of a street, highway, or other public purpose, may be relocated once and allowed to be maintained and used as before.
  3. Discontinuance: If the business or service advertised or identified

by a nonconforming sign ceases to be conducted for a period exceeding one hundred eighty (180) calendar days, the nonconforming sign shall be classified as an “abandoned sign” and removed.

4. Destruction: Should any nonconforming sign be destroyed ~~by the extent of fifty percent (50%) or more of its surface area or structure, it shall not be reconstructed, except it may be allowed to be reconstructed to its original size at the time of adoption or amendment of this Division. If an original nonconforming sign was smaller than 32 square feet in size it shall be allowed to be constructed in accordance with 8-4c-5, A., 1. above.~~
- B. If any existing sign is repainted or the sign panels are replaced for the purpose of changing the business, occupation, or tenant advertised or identified, it shall not be considered a new sign. Ordinary maintenance or repair of an existing sign to a safe condition shall not be cause to classify the sign as a new sign.
- C. In cases of doubt or on a specific question raised whether a nonconforming sign exists, it shall be a question of fact decided by the Zoning Administrator, and may be appealed to the Zoning Board of Appeals.

Linda Delvaux, representing County Board

- As with all living documents, changes must be made from time to time to reflect the growth and needs of the County. This version of the ZO was adopted in 2009 and I think we all knew that it would require amending from time to time as we began the practical application of the Ordinance. Tonight I am presenting to you a requested change in Chapter 4, Article 8-4c-5. Nonconforming signs of the County Zoning Ordinance. This proposal first came to the Development and Planning Committee by a citizen of Jo Daviess County and his County Board Representative. They shared their concerns about the restrictions in the non-conforming sections of the Article on Signage. It was requested that the D&P review the Ordinance to amend it in such a way as to be less restrictive on the reuse of existing signs. The current Ordinance on non-conforming signs 8-4c-5, 1 states that a sign may be reused, but, may not be enlarged, expanded, or extended to occupy a greater square footage or height than was occupied on the date of adoption or amendment of this division. The D&P Committee of the County Board felt that in these challenging economic times, a change could be made that would allow opportunities for businesses to advertise at the same time not increasing the number of off premise signs.
- The proposed amendment to 8-4c-5, 1 will allow:
  - Existing non-conforming signs to be reutilized; and
  - Allow signs that are smaller than 32 square feet in size to be enlarged to no more than 32 square feet, and;
  - Allow the use of Triangle (or V settings) to be utilized.

The current Ordinance on Non-conforming signs 8-4c-5, 2 states that should any nonconforming sign be destroyed by the extent of fifty percent or more of its surface area or structure; it shall not be reconstructed except in conformance with the requirements of this title.

- The proposed amendment to 8-4c-5, 2 will allow:  
All existing signs to be reconstructed should they be damaged or destroyed, and; It indicates that if the sign was bigger than 32 square feet in size it may be reconstructed to its original size (no bigger), but if it was smaller than 32 square feet in size it may be reconstructed up to 32 square feet in size.

Information was gathered as to how many existing signs this amendment would affect. Bethel, Blackjack, Scout Camp, Stagecoach, Derinda, Massbach, Elizabeth-Scales Mound, US20 and East Lake Road 2 & 3 were driven and a count taken as to the number of signs. There were 5 – 4X8 one sided signs and 16 signs smaller than 4X8. This is just a sampling of what is out there, some of the major routes that didn't get driven were Route 78, 84, or 35 but even if this is one third of what's out there, you are still only looking at approximately 60 some signs in the whole County that are 32 square feet in size or less that could be affected. According to the Building & Zoning Office there are 17 signs that are 150 to 300 square feet in size and 11 that are over 300 Square feet in size. According to the County Highway Department, there are 181 miles of County maintained Roads and 720 miles of Township maintained roads. When you look at the estimated number of signs in the County being less than 100 that could be affected and look at the total miles of roadway these signs are off of: 901 miles, you are looking at approximately 1 sign for every 9 miles of roadway. This amendment will not change these numbers as it affords the reuse of existing signs and doesn't permit additional.

- In closing I would just like to say: There is no negative impact from this amendment on the number of signs in the County as it doesn't allow additional ones to be put up, but affords the opportunity to improve upon existing signs. And, I would say affords a positive economic impact allow the existing signs to be reutilized by those small businesses looking for a way to get there information out there.

### **Public Testimony**

None

### **Public Testimony Closed**

### **Discussion:**

Tonne states this is a very good idea and makes sense.

Gratton states that signs have been a concern all the way back to the Comprehensive Plan, also talks about the Scenic Areas one and two that were previously in the ordinance. The testimony that we heard when this was reviewed a few years ago was that in no way that we wanted it to become billboards or signs all over the place. We tried to incorporate the aspects of the Comprehensive Plan into the Zoning Ordinance and it has a lot about signage. This was something that was taken a great deal of review of this. This is under the non-conforming section and going forward these are not what we intended to see out there. There may be 900 miles of roadway, but they are not all traveled scenic roadways. If a large non-conforming sign is destroyed then it is allowed to be replaced, do we think that is appropriate.

Tonne states that the 50 percent in there now is hard to determine. I think this is a good thing.

Tranel states that this is a living document and we will need to make updates to the ordinance in the future and I speak in favor of this request.

A motion was made by Nick Tranel to recommend approval of the request.

Seconded by Bill Tonne

Roll Call: Jody Carroll – Aye  
Dave Jansen – Aye  
Nick Tranel – Aye  
Bill Tonne – Aye  
Mel Gratton – Aye

**Reports and Comments:**

Jansen asks about the Highway Beautification Act.

Steve Keeffer states that I believe it only affects State Highways and not County Highways.

Marvin Schultz informed the board about the text amendment for the Who May File was withdrawn by the County Board and will go back to the Development & Planning for further review if they wish to submit it again. Talked about the route of a text amendment that the public was not aware they could bring forward a text amendment.

Discussion on process of text amendments who may file and how to accomplish this. Rick Dittmar states, if it isn't broke, don't fix it. This is not being abused and I thought this board voted and I see no reason to bring it back again. Someone could bring it to this committee and get a hearing and that is what we wanted. Thanks Linda for the sign amendment that was previously heard.

Linda Delvaux asks about the training that is upcoming and if anybody is available. I would like to see if we can record it and get together to watch it.

Nick Tranel made a motion to adjourn at 8:45 PM. Dave Jansen seconded. Voice Vote:  
All Ayes

DRAFT