

**Jo Daviess County Planning Commission/Zoning Board of Appeals  
Minutes for Meeting  
At the Courthouse-7:00 PM  
June 27, 2018**

**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  
Peter Huschitt, Alternate

**Staff & County Board Members:**

- ✓ Steve Keeffer, Highway Engineer  
Sandra Schleicher, JDC Health Dept.  
John Hay, State's Attorney
- ✓ Eric Tison, Planning & Development
- ✓ Robert Heuerman, JDC Board Member
- ✓ Melissa Soppe, Planning & Development

**Approval of Minutes:** A motion was made by Diedrick to approve the minutes. Seconded by Tranel. Voice Vote: All Ayes

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

**New Business**

**Ronald Beaton, owner (address: 3560 Timberlane, Cross Plains WI 53528),** have petitioned for a variation from the required rear lot line setback as established in Title 8, Chapter 5, Article B-46, B.4.b.; Building Siting and Orientation. Requesting to vary from the required thirty (30) feet to seventeen point four nine (17.49) feet, a twelve point five one (12.51) foot variation to allow for Guest Accommodations use. Property is located in the RP Planned Residential District. Commonly known as 14 Southridge 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: This home is served by public water and sewer service. This variance request should have no effect on either.
- Access Considerations: The property has an existing entrance onto East Galena Township maintained Southridge Drive. The existing entrance has adequate sight distance for the anticipated speeds on Southridge Drive.
- Other Considerations: The property is located in the Galena Territory. Construction of this home (1989) predates adoption of the zoning ordinance. The variance request applies to the location of the house in relation to the east property line. A 30 foot rear setback is required for Guest Accommodations use. A prior site visit was conducted to evaluate compliance with the remainder of the GA standards. No significant concerns were identified beyond the setback requirements; however, a formal application will be subject to review and

approval. The parcel abuts Association property to the east (rear). All surrounding residential parcels are zoned RP in accordance with their location in the Territory.

Jolene Houy, Galena Reservations, owner 1346 S Blackjack Road, Galena, representing owner

- The rear setback is hitting the corner of the screen porch. This backs up to the greenspace property. There is deck on the back as well. This is adjacent to 12 Southridge which is already a rental, that I manage, and the other side is a full time occupant. With my understanding they have no qualms with this.

Gratton stated this home was build prior to zoning and probably met all the standards when it was built.

### **Public Testimony**

Ronald Beaton, owner

- When I received the packet of the application with the 7 standards, I have a real estate company in Madison and typically I see 20 reasons why it should not be approved and I was shocked that you really consider all points. I sincerely thank you.

### **Public Testimony Closed**

Gratton states that the rear is backed by greenspace which we need to consider

Winter asks if any neighbors called

- Eric indicated no one had inquired.

Diedrick asks how many bedrooms

- Eric indicates I did not mention it
- Jolene Houy indicates 3 bedrooms

Gratton states that the bedrooms determines the setback

- Eric indicates that only determines on the side setback.

Diedrick asks about parking

- Eric indicates that I preliminarily looked at that and it appears that parking can be accomplished, it may be a little tight, pending an application parking will not be an issue.

Standards for variance were reviewed. – 1- ok, 2- ok, 3 – not exclusively 4 – true, 5 – ok, 6 – ok, 7- ok Standards are met

A motion was made by Mapes to approve the variance request as presented stating the following:

1. Standards for variance have been met

Seconded by Winter

Roll Call: Gary Diedrick – Aye  
Ron Mapes – Aye  
Nick Tranel – Aye

Laura Winter - Aye  
Mel Gratton – Aye

**Jeff Kluck, (2252 Indy Dr., Dubuque, IA 52002) petitioner, and Joe Erschen (7339 S Walnut St., East Dubuque IL 61025), owner, have petitioned for a variance from the required side yard setback as established in Title 8, Chapter 3, Article C, Section 8-3C-6 A2 Minimum Interior Side Yard of fifteen (15) feet to one point nine seven (1.97) feet; a variation of thirteen point zero three (13.03) foot variation for an existing structure. Property is located in the R2 Two-Family Residential District. Commonly known as 7339 S Walnut Street, East Dubuque, IL**

**Staff**

- Comprehensive Plan: The Comprehensive Plan does not address Variances, but does recognize the importance of the rural character of the County and the excellent quality of life that provides.
- Wastewater Treatment: A sand filter septic system was installed in 2005 for a 3 bedroom house. The septic tank is 63 feet northeast of the house. The property is served by a shared well. The variance request should not affect the septic system. The Illinois Private Sewage code requires that the area used for a sewage disposal system be protected from encroachment and requires a 5 foot minimum separation between the septic tank and a structure.
- Access Considerations: This parcel has an existing entrance onto Dunleith Township maintained Walnut Street with adequate sight distance.
- Other Considerations: This property is located just east of East Dubuque in Kennedy Acres. It was permitted as a new home in 2004 including the main house, rear deck and three car garage. Aerial photo records show the current swimming pool was added sometime between 2006 and 2009. There is no permit on file with this department for the addition of a pool. As a result, the pool encroaches the side yard setback, details of which can be found on the survey of the property included with the application. Adjacent parcels to either side are zoned R2. The parcel opposite on Walnut is zoned RP. The parcel abutting the rear property line is zoned AG.

Jeff Kluck, petitioner

- I am a contractor out of Dubuque, Iowa. I was contacted by Joe Erschen about putting a detached garage on his property. We checked with the department and applied for permits and a day later we were contacted asking if there was a pool on the property. I indicated yes, and was informed the Department does not show a permit for the pool. We need to take a step back and look at this, get a survey done and see how close we are. We hired a local firm and they staked out the side property line and immediately called Joe and he stated that he hired a contractor to construct the pool and assumed all permits were taken care of; he was not aware that he was that close to the property line. This was built in about 2010. The reason why the house is so far to the right, there was an extreme drop off to the left side and they could not get a truck around that side.

Joe Erschen, owner

- The house was built in 2004-2005 to the left of the house and around the back of the house, there is a gorge that was from 40-60 feet deep when the house was built, we had to go to the far right because we could not get a pickup truck around the left side so they could work on it. I entrusted the contractor that he figured he knew what he was doing and the permits for the structure. I had small children then and they wanted a swimming pool and so I hired Alvin Weiermont to construct a pool, it is an above ground pool. I entrusted that if he needed permits he would get them, apparently he did not get the permits. While wanting to put up this garage I went to the neighbors and they had no problem with the garage, but Jeff found out that the pool is too close to the property line. I wasn't trying to encroach on the neighbor's property. I have had over 7,000 loads of fill and now it is a presentable piece of property at great expense to me. I wasn't aware that I was encroaching on the neighbors.

Mapes asks when the pool was built. You assumed the contractor had a permit to construct.

- Joe Erschen indicates that it was built around 2010, I had an accident in 2013 and have had 5 brain surgeries since then and they took a third of my short term memory out. Yes I did, I have been in business for 46 years and you don't assume anything, but I did because I am not a builder and this is what he did for a living. I didn't really know if I needed a permit or not for an above ground pool. I would think if it was an in ground yes, but not for an above ground. Bill Montelius the assessor stopped and looked after the house was built.

Gratton asks if prior to building the pool were there any obstacles or other situations that existed that would have prevented you from building the pool within the proper setback line.

- Joe Erschen states that on the left side we had over 7,000 loads of fill brought in and you are not supposed to build on fill for at least 10 years, is what I am told. I couldn't go that direction then and behind the house is the septic tank and field. That was the only location. My grandkids come over and use the pool now.

Gratton asks if they could show where the septic lines come out of the back of the house.

- Eric shows on the aerial photo, Joe Erschen confirms.

Eric states that I did talk to Sandra at the Health Department and we don't know if the pool could have been accommodated with the location of the septic line as installed. Sandra said that it may have met the 5 foot setback from septic to structures. The only way to know is if we had a permit to look at and provide options.

Bob Heuerman states that the builder could have angled that in there and fit it in.

Gratton states that so it appears.

Gratton asks if Jeff is aware of permitting and such

- Jeff Kluck indicates yes, as he hired me he is assuming I am taking care of it.

Mapes states we found out about this because of the accessory building he wants to build, what if we disregard the pool, could he get a permit to put a building on the property.

- Eric indicates yes I can, the proposed location meets setbacks, and there may have been a question on the size allowed. I can consider the pool independent of an accessory structure.

Tranel asks the distance from the pool to the neighboring residence.

- Eric states that the placement of Joe's house is further back than the other residence. I didn't measure that exactly, maybe a couple hundred feet. Shown the measure tool and the closest to the garage is about 82 feet.

Gratton asks about the size of the lot.

- Eric indicates 10 acres, corrected it is slightly over 4 acres.
- Joe Erschen indicates that 80% of the property was unusable when built.

Gratton states that you have a beautiful piece of property, but unfortunate we are dealing with this.

### **Public Testimony**

None

### **Public Testimony Closed**

Standards for variance were reviewed. – 1- Mapes indicates that it is more of an inconvenience, if it was permitted properly we would not be here, Diedrick agrees it is an inconvenience to owner, not a hardship, no comment from any neighbors, 2- this is a large lot, septic to the rear of house, but the pool could have been turned more possibly, if this would have been requested prior to construction would we have approved as presented or not, Mapes states that we could not

have accepted that close to the property line, Winter indicates same if it was a building, this is a pool; Eric states that the pool is considered an accessory structure to the house, same as a garage if asked to place here – does not meet, Mapes and Diedrick indicate no, Tranel states that he states yes, this is worded for new construction, this is already here, neighbors don't have a problem, 3 – true, 4 – the owner created this , 5 – true, 6 – true, 7 – Eric indicates that if this were a smaller pool, would they be here; Gratton indicated that it is hard to access or maintain your structure without encroaching or going on neighbor's property, also the precedent that we would set if approved, we need to be consistent. Winter asks if the pool was not there, but the concrete was is there still a problem – Eric indicates yes, they would have been required to get a permit. Gratton states similar request previously. Mapes states that why have setbacks if we grant this, it is too close, need to move pool or buy adjoining land, it will not stop him from putting his other accessory building in

- Joe Erschen states this is not a blow up pool, it is very complex, and I am willing to abide by what you do.
- Jeff Kluck states that it is 8-10 feet off the ground, if it was to be turned as suggested, it would have been 15 feet out of the ground, and it is above ground pool with concrete all around it at about 6-7 feet in the air.

Gratton states that I don't think it is our job to solve the issue; we have to enforce an ordinance and look at the variance. There are possibilities to remedy the situation, some expense, some may not. If we approved we are telling people build it and then you can get a variance later. The other is under 2 feet is an adequate setback, I have a problem with that with the size of the lot. I know accessibility may have been difficult at one time, but there is no way this contractor worked on this pool without encroaching on his neighbor's property. Your neighbor may be ok with it today, but they may not always be there.

Winter asks if it is possible to purchase 14 feet from the neighbor.

- Eric indicates yes he could buy additional property and there are other options that may not be practical or cost prohibitive

Eric indicates that the options would be to purchase property, not doing anything which would make sales difficult in the future, or option to remove the structure itself.

Diedrick asks the distance from the property line to an existing accessory structure on the adjoining property line.

- Eric indicates that it is about 90 feet and I think that area was fenced.

Eric indicates that you should make your motion in the positive note; request should be made to approve the application that way we know what a yes and no vote means.

A motion was made by Diedrick to approve the variance request as presented stating the following:

1. Standards for variation are partially met per discussion

Seconded by Winter

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

Motion Failed

Melissa indicates you need to make another motion to deny in order to have the motion pass.

A motion was made by Mapes to deny the variance request as presented stating the following:

1. Standards for variation are not met

Seconded by Diedrick

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

**Reports and Comments:**

No business for July Planning Commission/Zoning Board of Appeals Meeting

We will have an August meeting and location will be in the court room, we have 3 commercial solar farm requests and possibly a couple other requests.

Mel indicates he will not be here in August.

Tranel made a motion to adjourn at 8:15 PM. Winter seconded. Voice Vote: All Ayes