



Zoning Board of Appeals

George Bell  
Chairman

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April 4, 2019

TO: George Bell, Chairman  
Lake County Zoning Board of Appeals

FROM: Brad Denz, Senior Planner  
Lake County Department of Planning, Building and Development

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CASE NO: #000475-2019

REQUESTED ACTION:

1. To decrease the side yard setback from 12 feet to 2.72 feet.
2. To allow an increase of the maximum building height from 25 feet to 27 feet.
3. To allow accessory structures in the absence of a principal structure.
4. To allow more than three accessory structures.

HEARING DATE: April 10, 2019

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**GENERAL INFORMATION**

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APPLICANTS: Karen Marie Stolzman Revocable Trust, record owner

# OF PARCELS: Two

SIZE: 6.8 acres, per Lake County Maps Online

LOCATION: 28449 and 28445 N. Arcadia Road, Libertyville, Illinois  
P.I.N. 11-24-400-008, 11-24-400-009

EXISTING ZONING: Agricultural (AG)

EXISTING  
LAND USE: Four accessory structures

PROPOSED  
LAND USE: Retain the existing accessory structures

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### **SURROUNDING ZONING / LAND USE**

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NORTH:	Residential-1 (R-1) / single-family dwellings and a METRA Railroad facility station
NORTHEAST:	Agricultural (AG) / a 50' x 1200' strip vacant land
WEST:	Limited Industrial (LI) / railroad tracks
SOUTH and EAST:	Open Space (OS) / Forest Preserve with a walking trail; owned by the Lake County Forest Preserve District

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### **COMPREHENSIVE PLANS**

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LAKE COUNTY:	Public and Private Open Space
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### **DETAILS OF REQUEST**

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ACCESS:	The property takes access from Arcadia Road
NONCONFORMING LOT:	The subject property is a nonconforming lot in the AG zoning district due to lot width.
FLOODPLAIN / WETLAND:	The subject property contains wetlands. Floodplains are present on the southside of the property.
SEWER AND WATER:	The property is currently served by public sewer and a private water well.

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### **ADDITIONAL STAFF COMMENTS**

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#### Lake County Health Department – Comments by Mark Mussachio

The Health Department has no objection to the granting of this request.

#### Lake County Environmental Engineering Division - Comments by Eric Steffen

The Engineering Division has no objection to the requested variances. A Site Development Permit will be required for this project.

#### Lake County Public Works – Comments by Tony Dupree

Not required. No comments

### Lake County Building Division – Comments by Bob Springer

The Building Division has no objection to the granting of this request provided that the applicant applies for all required building permits and that the buildings meet the requirements of the building codes in effect at the time the structures were constructed.

### Lake County Department of Transportation - Comments by Joe Meyer

Not required. Property fronts the Canadian Pacific Railroad and takes access from a Township Road.

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## **ADDITIONAL COMMENTS**

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The variance requests before the Zoning Board of Appeals (ZBA) require some historical context, in light of the County's past involvement with the property and the owner's actions leading up to the current property status. The historical background below is organized sequentially:

### **Rezoning**

Prior to 2011, the property was located within the Limited Industrial (LI) Zoning District and improved with a large storage building along with two other smaller storage buildings. In 2011, the applicant inquired about constructing a single-family dwelling on the property, a project which would necessitate the property's rezoning to a zoning district suitable for residential development. On April 4, 2011, the applicant presented an application before the ZBA to rezone the subject property from Limited Industrial (LI) to Agricultural (AG), in which the ZBA recommended approval. Subsequently, on May 17, 2011, the Lake County Board formally approved the rezoning request.

### **Subsequent Development of the Property**

Following the County Board's approval of the owner's rezoning request, the owner elected not to construct a single-family residence. Instead, in the Spring of 2013, Department inspectors verified that a new 80' x 100' storage building had been constructed on the north side of the property along the eastern property line without a required building permit/zoning review. Based on staff's subsequent conversations with the owner, it is staff's understanding that the owner had confused the property's new Agricultural (AG) zoning with the statutory "Agricultural Exemption" (55 ILCS 5/5-120001) from zoning (exception: setbacks) and building codes for agricultural uses and structures on unincorporated parcels 5 acres or greater. As the subject property is not used for agricultural purposes but instead storage of the owner's non-agricultural items, compliance with building codes and zoning is, in fact, required. Because the 80' x 100' storage building is not designed nor occupied as a principal residential dwelling, it would be treated as an accessory structure for purposes of height and setbacks.

### **Previous Attempts to Resolve Violations**

Given the number of accessory structures on the property, and the location and height of the 80' x 100' structure, staff concluded that three categories of violations necessitated legal action: (1) accessory structures located on a parcel absent a permitted principal use/building (in this case, a residential dwelling); (2) more than three residential accessory buildings on a zoning lot; and (3)

height and setbacks for an accessory structure. Following unsuccessful attempts to bring the property into voluntary compliance, the County proceeded with litigation. After several court appearances, the Court and parties agreed to pursue a variance process in light of the financial implications and limited benefit of the alternative remedy (demolition and/or reconstruction of the buildings on the property).

During the initial drafting stages of the applicant's variance request, the parties identified a potential opportunity to remedy the setback violation of the 80' x 100' storage building along the eastern property line. Given the property's large size and length, a "sale-and-exchange" appeared possible between the parcel and the adjacent eastern property owned by the Lake County Forest Preserve. In theory, the owner's acquisition of additional land just east of the storage building would provide additional distance to the eastern property boundary sufficient to resolve the setback violation. An equivalent amount of land could be conveyed by the owner to the Forest Preserve further to the south, thereby making both parties "whole". However, upon legal review, it was concluded that the Forest Preserve was not permitted by Illinois Statute to convey land absent the benefit of a direct public purpose, hence the setback variance request remains.

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## **RECOMMENDATION**

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As the property is a legal nonconforming lot, the setback is established by the building height. As a result, staff recommendations for building height and setback variance requests will be consolidated, and third and fourth requests to allow an increase in the maximum number of accessory structures and to permit accessory structures to remain without a principal structure will each receive a separate recommendation. Staff's recommendations are based on the following approval criteria for variations specified in Lake County Code Section 151.056(C)(4):

### Variations #1 & #2

With regard to the setback and height variance requests, staff recommends approval of the variance requests. In staff's opinion, the variance requests comply with the standards for variances in the following manner:

#### 1. Exceptional conditions peculiar to the applicant's property:

Comment: The dimension of the property is 153 sq. ft. x 1,969 sq. ft. and is 6.8 acres. While the property's size and dimensions technically has afforded sufficient space to physically accommodate the structures in compliance with the accessory structure setback restrictions, the property's immediate adjacency to a combined (and continuous use) freight and commuter rail line to the west has led to the historical "crowding" of structures as closely as possible to the opposite (east) property line, separated from the tracks by the property's driveway. The parcel's wedged configuration against an active rail line has thus created an exceptional condition peculiar to the applicant's property with respect to the safest and least disruptive placement of the structures and driveway serving them. The 80' x 100' storage building, the subject of these setback and height variances, has simply followed this historical orientation.

With regard to the 80' x 100' building's height variance request, the property's previous Limited Industrial (LI) zoning classification permitted the construction of the taller storage building at a height of 33 feet (the structure's cupolas extend an additional 3 feet above this elevation). This taller building's continued presence on

the property following its rezoning, alongside an active railroad, has imbued the property with an exceptional “industrial” character at odds with a residential accessory height requirement.

2. Practical difficulties or particular hardship in carrying out the strict letter of the regulation:

Comment: The 80’ x 100’ building’s re-location and reconstruction to achieve compliance with the accessory structure setback and height requirement would create a hardship given the practical necessity to locate improvements as far from the active rail line as possible coupled with the limited benefit of such modifications in light of the property’s relative isolation and pre-existing industrial character.

3. Harmony with the general purpose and intent of the zoning regulations:

Comment: Given the open space nature and the limited building potential of the adjacent property to the south and east, along with the relative isolation of the property, the requested variations for building setback and height would not have an adverse impact upon the adjacent Forest Preserve property provided staff’s recommendation of additional vegetative screening between the storage building and Forest Preserve walking trail to the east and southeast was implemented (page 6).

Variation #3

For the variation request to allow accessory structures in the absence of a principal structure, staff recommends approval of the variance request. In staff’s opinion, the variance request complies with the standards for variances in the following manner:

1. Exceptional conditions peculiar to the applicant’s property:

Comment: The property’s adjacency to an active rail line imbues the property with an industrial character not customarily associated with single family residential development. Although not customary for residential occupancy, the site is suitable for accessory storage.

2. Practical difficulties or particular hardship in carrying out the strict letter of the regulation:

Comment: The property has been historically used for storage purposes. However, use of the property for residential occupancy would create a hardship given the active, daily use of the adjacent rail line and pre-existing industrial character of the property.

3. Harmony with the general purpose and intent of the zoning regulations:

Comment: Given the limited building potential of the adjacent parcels and especially in consideration of the relative isolation of the property, the requested variation to allow the existing accessory structures to remain in the absence of a principal structure would not have an adverse impact upon surrounding properties, provided staff’s recommendation of additional vegetative screening between the storage building and Forest Preserve walking trail to the east and southeast was implemented (page 6).

#### Variation #4

For the variation request to allow more than three accessory structures, staff recommends approval of the variance request. In staff's opinion, the variance request complies with the standards for variances in the following manner:

1. Exceptional conditions peculiar to the applicant's property:

Comment: The property's industrial character given its adjacency to an active rail line, coupled with its relative isolation, constitutes an exceptional condition not common to residential properties. Under the property's previous Limited Industrial zoning, the improvement of the property with more than 3 storage buildings would have been permitted by right.

2. Practical difficulties or particular hardship in carrying out the strict letter of the regulation:

Comment: Given the property's pre-existing industrial character, and relative isolation, demolition of the property's structures to meet the maximum threshold would create a practical difficulty given the limited benefit of such demolition.

3. Harmony with the general purpose and intent of the zoning regulations:

Comment: Given the relative isolation of the property, the requested variation to allow the four existing accessory structures to remain would not have an adverse impact upon the adjacent properties provided staff's recommendation of additional vegetative screening between the storage building and Forest Preserve walking trail to the east and southeast was implemented (see below).

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#### **RECOMMENDED CONDITION**

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In the event the ZBA is inclined to grant the proposed variations, staff recommends the following conditions:

1. A vegetative buffer be established at the owner's expense along or near to the eastern property line (including, if agreeable to the Forest Preserve, plantings on the adjacent Forest Preserve Property) to soften or screen the view of the structures from the walking trail to the east and southeast. Staff would further recommend as part of such condition that the location, variety, and intensity of such screening shall be determined by staff, in consultation with the Forest Preserve staff.
2. All applicable building permit applications shall be applied for by the applicant. This includes the Certificate of Occupancy approval upon the completion of the building permit review process.