

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: February 28, 2008
Time: 6:30 p.m.
Place: Lyle Shields Meeting Room
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802

**Note: NO ENTRANCE TO BUILDING
FROM WASHINGTON STREET PARKING
LOT AFTER 4:30 PM.
Use Northeast parking lot via Lierman Ave.,
and enter building through Northeast
door.**

*If you require special accommodations please notify the Department of Planning & Zoning at
(217) 384-3708*

EVERYONE MUST SIGN THE ATTENDANCE SHEET – ANYONE GIVING TESTIMONY MUST SIGN THE WITNESS FORM

AGENDA

1. Call to Order
2. Roll Call and Declaration of Quorum
3. Correspondence
4. Approval of Minutes
5. Continued Public Hearings

Case 596-AT-07 Petitioner: **Champaign County Zoning Administrator**

Request: **Amend the Champaign County Zoning Ordinance as follows:**

- A. Add as a standard condition for any Special Use Permit that all exterior lighting must be full cutoff type lighting fixtures with limited output and other relevant restrictions.
- B. Add the use “Township Highway Maintenance Garage” to Section 5.2 Table of Authorized Uses and authorize as follows:
 1. Authorize by-right in the B-1, B-4, B-5, I-1 and I-2 Zoning Districts.
 2. Authorize by-right in the AG-1, AG-2, B-2, and B-3 Zoning Districts only if:
 - (a) the use is not located within 150 feet of an existing dwelling unless separated by a public right-of-way; and
 - (b) only if located more than one and one-half-miles from the corporate boundary of a municipality that has adopted a comprehensive plan; and
 - (c) the use complies with other standard conditions that may apply to all Special Use Permits; and otherwise authorize only as a Special Use Permit.
 3. Authorize only by Special Use Permit in the CR and all R Zoning Districts.

6. New Public Hearings

***Case 603-V-08** Petitioner: **Dave Huddleston, d.b.a Wonderful World of Homes**

Request: **Authorize the establishment and use of an on-premises advertising sign that is 98 square feet in area in lieu of the required maximum of 75 square feet in area.**

Location: **Lot 2 of Warren Subdivision in Section 13 of Mahomet Township and commonly known as Wonderful World of Homes at 106 South Prairievew Road in Mahomet.**

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS
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*Case 604-V-08 Petitioner: Tom Nierman

Request: Authorize the following in the AG-2 District:

- A. The use and reconstruction of an existing porch with a front yard of 17 feet and a setback of 47 feet, six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street;
- B. The use and reconstruction of an existing shed with a front yard of eight feet, six inches and a setback of 33 feet, six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street; a side yard of eight feet in lieu of the required side yard of 10 feet for accessory structures; and a zero foot driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle;
- C. The use and reconstruction of an existing open-air plant arbor with a side yard of four feet in lieu of the required 10 feet for accessory structures and a rear yard of eight feet in lieu of the required 10 feet for accessory structures; and
- D. The use and construction of a solid opaque fence with a zero foot driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle.
- E. The use and reconstruction of an existing house with a front yard of 25 feet and a setback of 55 feet, six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street.

Location: Lot 10 of Charter Oaks Subdivision in Section 12 of Mahomet Township and commonly known as the house at 1104 Charter Oaks Circle in Mahomet.

- 7. Staff Report
 - 8. Other Business
 - 9. Audience Participation with respect to matters other than cases pending before the Board
 - 10. Adjournment
-

***Administrative Hearing. Cross Examination allowed.**

CASE NO. 603-V-08

PRELIMINARY MEMORANDUM

February 22, 2008

Champaign
County
Department of

Petitioner: **Dave Huddleston d.b.a.
Wonderful World of Homes**

Request: **Authorize the establishment
and use of an on-premises advertising
sign that is 98 square feet in area in
lieu of the required maximum of 75
square feet in area.**

**PLANNING &
ZONING**

Site Area: **3.5 acres**

Time Schedule for Development:
Immediate

Location: **Lot 2 of Warren Subdivision
in Section 13 of Mahomet Township
and commonly known as Wonderful
World of Homes at 106 South
Prairieview Road in Mahomet.**

Brookens
Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708
FAX (217) 328-2426

Prepared by: **J.R. Knight**
Associate Planner
John Hall
Zoning Administrator

BACKGROUND

Planning and Zoning was first contacted by the Petitioner's sign dealer in November 2007, and the design of the sign was generally discussed. In the beginning there was an issue with the refresh rate of the electronic reader board, but the Petitioner subsequently agreed to abide by the maximum refresh rate set in the *Zoning Ordinance*.

The Petitioner submitted Zoning Use Permit Application 339-07-01 on December 5, 2007, with an incomplete site plan. A complete site plan and diagram of the proposed sign were received on December 17, 2007. Review of the sign diagram identified that the area of the sign exceeded the Ordinance requirement. The Petitioner was made aware of the need for a variance to authorize the proposed sign and a Variance application was received on January 4, 2008.

EXTRATERRITORIAL JURISDICTION

The subject property is within the one and one-half mile extraterritorial jurisdiction (ETJ) of the Village of Mahomet. Municipalities with zoning do not have protest rights in variance cases and they are not notified of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Wonderful World of Homes	B-4 General Business
North	Casey's General Store	B-4 General Business
East	Farmland	AG-1 Agriculture
West	Single Family Dwellings	R-1 Single Family Dwelling
South	Liquor Store and Bar	B-3 Highway Business

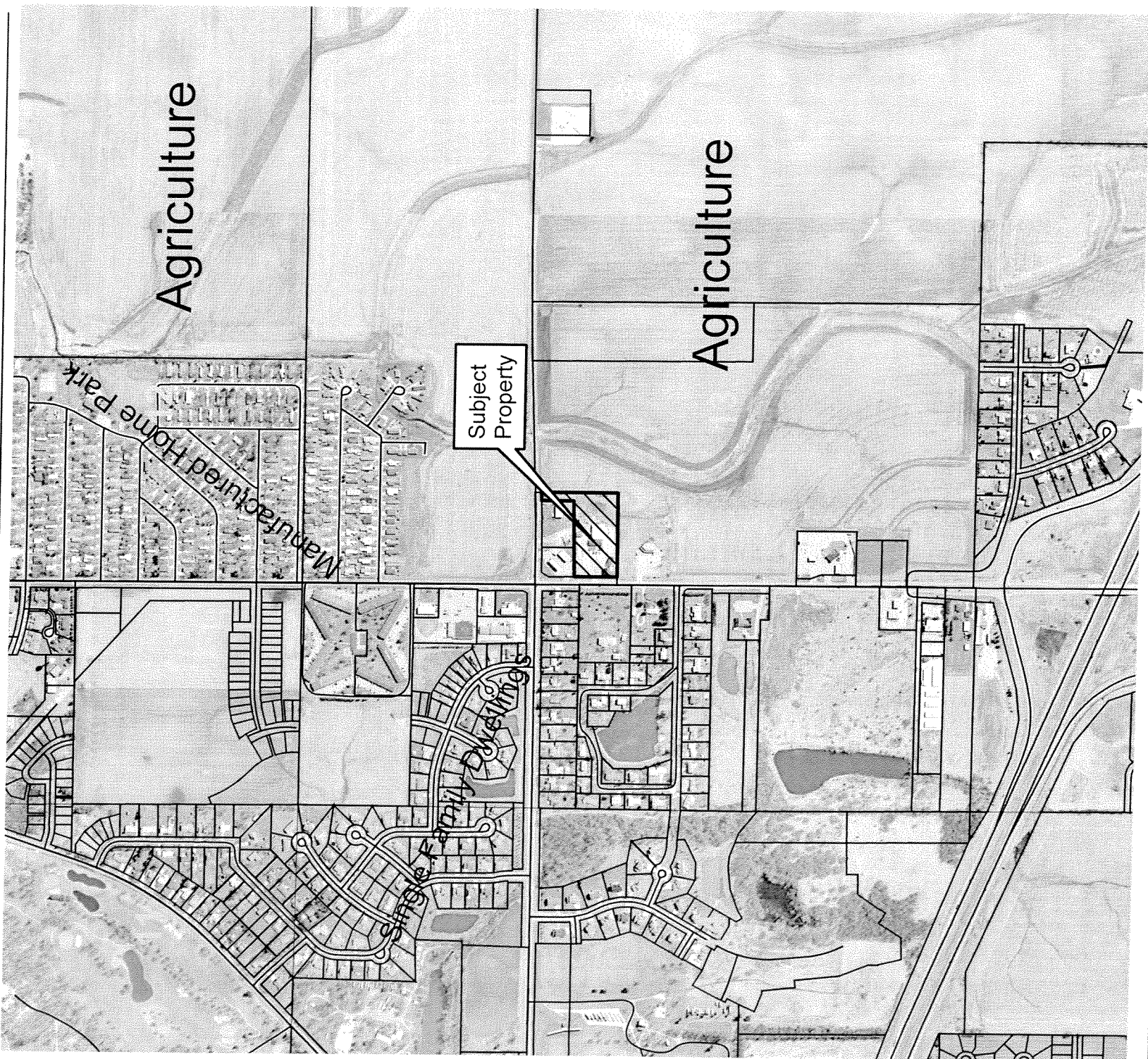
ATTACHMENTS





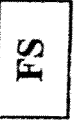

- A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received on December 17, 2007
 - C Diagram of Proposed Sign received on December 17, 2007
 - D Subsection 7.3.1 of the *Zoning Ordinance*
 - E Draft Summary of Evidence for Case 603-V-08
-

ATTACHMENT A. LAND USE MAP

Case 603-V-08

FEBRUARY 22, 2008



	Area of Concern	
	Single Family	
	Farmstead	

Champaign
County
Department of

**PLANNING &
ZONING**



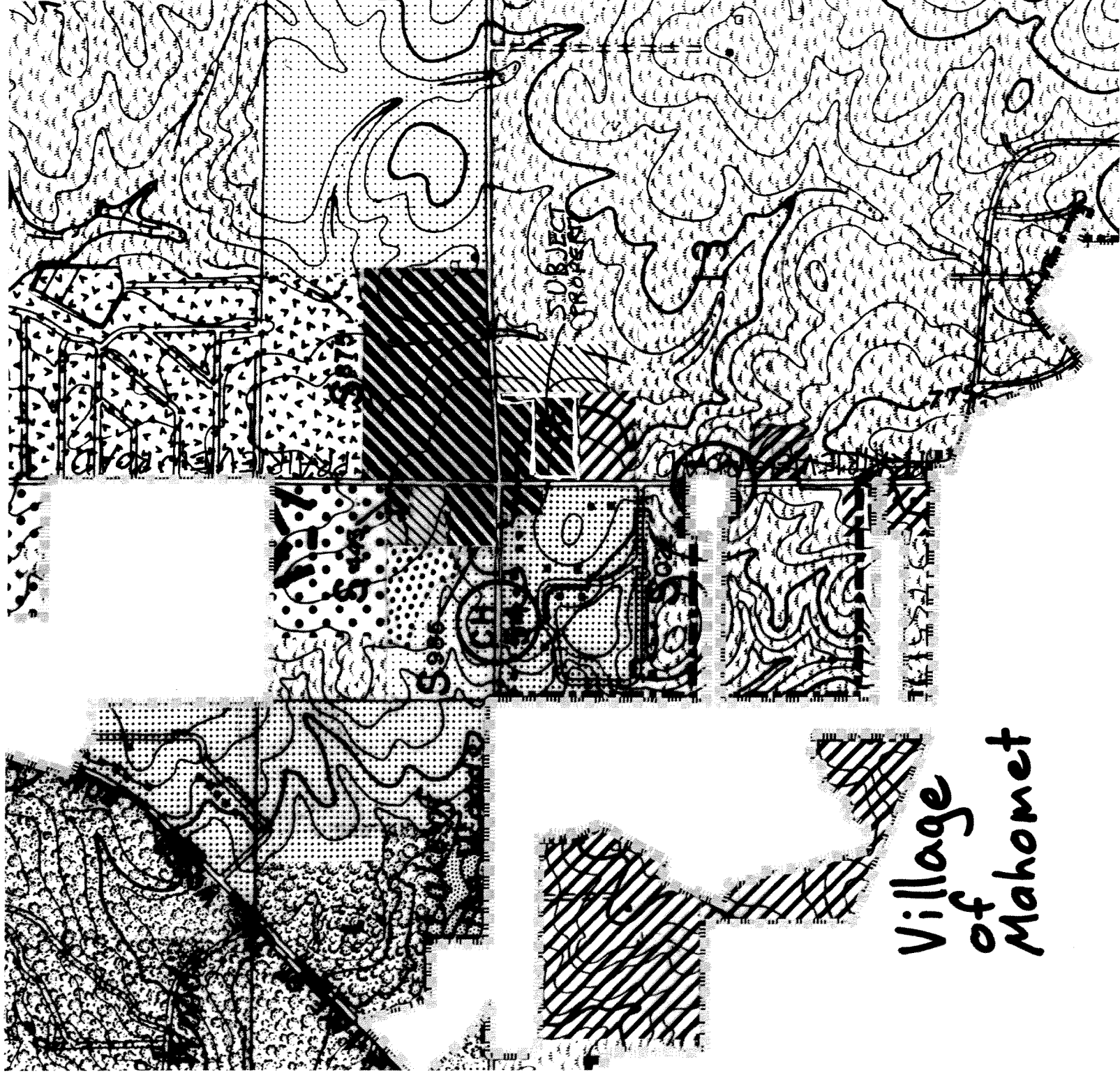
NORTH

1 inch equals 800 feet

ATTACHMENT A. ZONING MAP

Case 603-V-08

FEBRUARY 22, 2008



Village of Mahomet

Champaign County Department of PLANNING & ZONING							
	AG-1 Agriculture		R-1 Single Family Residence		B-5 Central Business		I-1 Light Industry
	AG-2 Agriculture		R-2 Single Family Residence		B-2 Neighborhood Business		I-2 Heavy Industry
	CR Conservation-Recreation		R-3 Two-family Residence		B-3 Highway Business		B-4 General Business
			R-4 Multiple Family Res.				
			R-5 Mobile Home Park				
			B-1 Rural Trade Center				

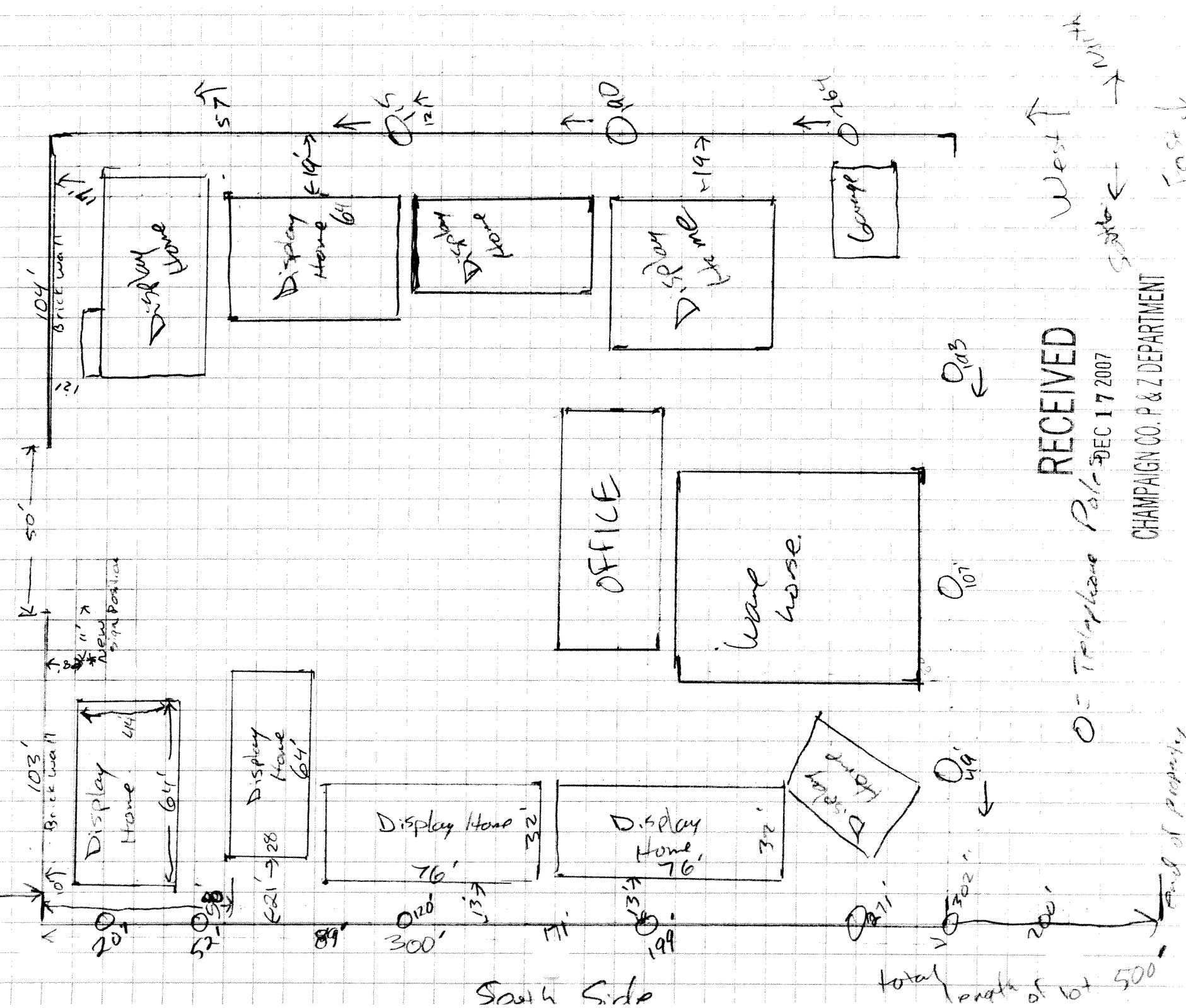


NORTH

Overall lot size 500' deep
257' wide

Center of Road
Prairieview Road

48'



RECEIVED

CHAMPAIGN POLICE DEPARTMENT
DEC 17 2007

CHAMPAIGN CO. P. & Z DEPARTMENT

West ↑

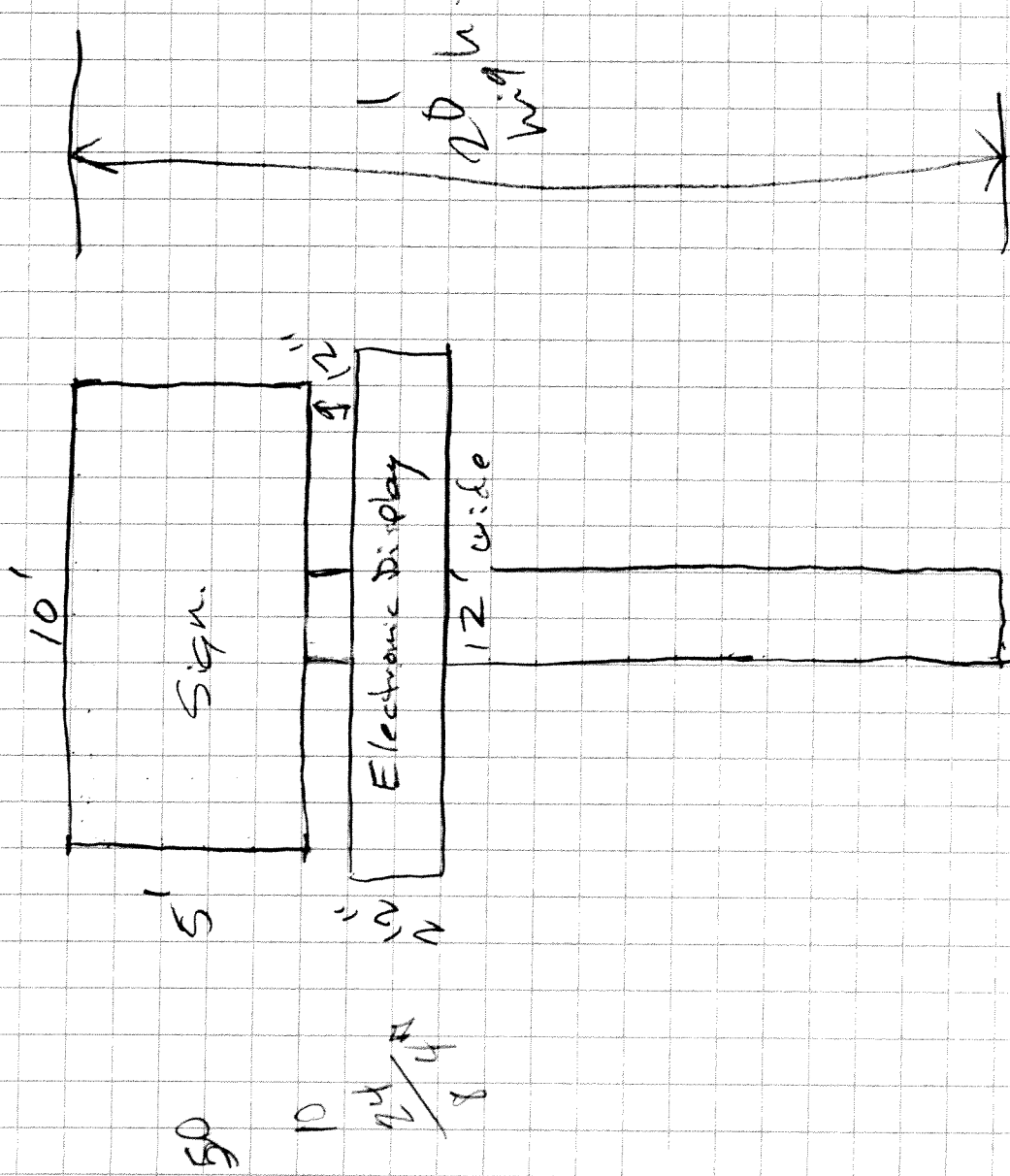
South ←

East ↓

South Side

total length of lot 500'

Sign Size



RECEIVED

DEC 17 2007

CHAMPAIGN CO. P & Z DEPARTMENT

2-sided sign

SECTION 7.2.3 ALL BUSINESS AND INDUSTRIAL DISTRICTS - CONTINUED

3. REAR YARD

The requirements of Section 5.3 shall apply except that no DETACHED ACCESSORY BUILDING shall be required to be located more than 15 feet from any REAR LOT LINE.

B. DETACHED ACCESSORY STRUCTURE

1. FRONT YARD

The minimum FRONT YARD dimension shall be determined according to the SETBACK LINE provisions specified in Section 5.3 except for those DETACHED ACCESSORY STRUCTURES enumerated in Section 4.3.3 B.

2. SIDE YARD

The requirements of Section 5.3 shall apply.

3. REAR YARD

The requirements of Section 5.3 shall apply.

C. No SIDE or REAR YARD shall be required where a STRUCTURE abuts a railroad siding, if such siding is used in the day-to-day operation of an industrial USE.

7.3 SIGNS

7.3.1 Area of SIGN

The area of a SIGN shall be computed as follows:

A. Flat SIGN

The area of the smallest geometric figure (circle, ellipse, triangle, square, rectangle, or other quadrilateral); or

SECTION 7.3.1 AREA OF SIGN -- CONTINUED

B. Volumetric SIGN

The area of the smallest geometric figure encompassing the maximum projected area of the volume on a flat plane which completely encloses the extreme limits of the SIGN including any frame, structural trim or other material forming an integral part of the display as used to differentiate such SIGN from the background against which it is placed. Such measurement shall exclude the necessary supports or uprights on which the SIGN is placed unless the supports or uprights constitute part of the display.

~~7.3.2 Standards~~

~~OFF-PREMISES SIGNS shall conform to the standards provided in Section 7.3.5. ON-PREMISES SIGNS shall conform to standards provided in Sections 7.3.6 and 7.3.7.~~

~~7.3.3 SIGNS allowed in all DISTRICTS without a permit~~

~~SIGNS specified in this subsection are permitted in addition to the SIGNS permitted in the respective USE DISTRICT, but are subject to the conditions and limitations set forth herein.~~

~~A. Public SIGNS~~

~~SIGNS of a public, non-commercial nature, to include safety SIGNS, danger SIGNS, trespassing SIGNS, traffic SIGNS, SIGNS indicating scenic or historical points of interest, memorial plaques, and the like, and all SIGNS erected by or on order of a public officer in the performance of a public duty.~~

~~B. Flags~~

~~Flags bearing the official design of a nation, state, municipality, or educational institution.~~

~~C. Identification SIGNS~~

~~SIGNS which identify the business, OWNER, manager, or resident and set forth the address of the PREMISES where the SIGN is located, and which contain no other material. There may be two per PREMISES, not to exceed one square foot each in area, and, if the SIGN is FREESTANDING, the total HEIGHT may not exceed five feet.~~

PRELIMINARY DRAFT

603-V-08

**SUMMARY OF EVIDENCE, FINDING OF FACT,
AND FINAL DETERMINATION**

of
Champaign County Zoning Board of Appeals

Final Determination: **{ GRANTED / GRANTED WITH SPECIAL CONDITIONS / DENIED }**

Date: February 28, 2008

Petitioners: Dave Huddleston d.b.a. Wonderful World of Homes

Request: Authorize the establishment and use of an on-premises advertising sign that is 98 square feet in area in lieu of the required maximum of 75 square feet in area

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **February 28, 2008**, the Zoning Board of Appeals of Champaign County finds that:

1. The Petitioner, Dave Huddleston, d.b.a. Wonderful World of Homes, owns the subject property.
2. The subject property is Lot 2 of Warren Subdivision in Section 13 of Mahomet Township and commonly known as Wonderful World of Homes at 106 South Prairieview Road in Mahomet.
3. The subject property is located within the one and one-half mile extraterritorial jurisdiction of the Village of Mahomet. Municipalities do not have protest rights in variance cases and are not notified of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Regarding land use and zoning on the subject property and adjacent to it:
 - A. The subject property is zoned B-4 General Business, and is in use as Wonderful World of Homes, a modular home sales lot.
 - B. Property to the North of the subject property is zoned B-4 General Business and is in use as a Casey's General Store, a convenience store and gas station, and a manufactured home repair business.
 - C. Property to the East of the subject property is zoned AG-1 Agriculture and is in use as farmland.
 - D. Property to the South of the subject property is zoned B-3 Highway Business and is in use as a liquor store and bar.
-

PRELIMINARY DRAFT

- E. Property to the West of the subject property is zoned R-1 Single Family Dwelling and is in use as single family dwellings.

GENERALLY REGARDING THE PROPOSED SITE PLAN

- 5. Generally regarding the proposed site plan, the subject property is in use as a modular home sales lot, and the Petitioner proposes to construct a sign near the west end of the property, as follows:
 - A. There are four display homes located in a row along the north edge of the property, with a garage located just east of them.
 - B. There is another row of five display homes along the south edge of the property.
 - C. There are two buildings located between the two rows of display homes, an office building located well back from Prairieview Road and a warehouse east and immediately behind the office. There is also some outdoor storage located northeast of the warehouse.
 - D. The proposed location for the new sign is eight feet west of the brick wall which marks the west property line and 11 feet south of the edge of the entrance drive from Prairieview Road.
 - E. The sign itself is proposed to be 20 feet tall overall and comprised of two separate panels, as follows:
 - (1) The top panel is a typical sign five feet by 10 feet, or 50 square feet total.
 - (2) The lower panel is located one foot beneath the top panel and is an electronic reader board that will display different messages at different times. The reader board is two feet, two inches tall and 12 feet wide, or 26 square feet. In conversation with staff the Petitioners have stated they will comply with *Zoning Ordinance* regulations regarding how often the messages on the reader board may change.
 - (3) The total area of the sign is calculated by finding the area of the smallest geometric shape that encompasses the entire sign. This gives a total overall area of 98 square feet

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

- 6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
 - A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variance (capitalized words are defined in the Ordinance):
 - (1) “ACCESSORY BUILDING” is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE or the main or principal USE, either detached from or attached to the MAIN OR PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN OR PRINCIPAL STRUCTURE, or the main or principal USE.
 - (2) “ACCESSORY USE” is a USE on the same LOT customarily incidental and subordinate to the main or principal USE or MAIN or PRINCIPAL STRUCTURE.

- (3) “BUILDING, MAIN or PRINCIPAL” is the BUILDING in which is conducted the main or principal USE of the LOT on which it is located. (2) “FRONTAGE” is that portion of a LOT abutting a STREET or ALLEY.
- (4) “SIGN” is any name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a BUILDING, STRUCTURE or land which is placed out-of-doors and in view of the general public and which directs attention to a product, place, activity, person, institution, or business.
- (5) “SIGN, FREESTANDING” is a SIGN which is completely or principally self-supported by posts or other supports independent of any BUILDING or other STRUCTURE.
- (6) “SIGN, ON-PREMISES” is a SIGN which relates solely to a USE, business or profession conducted upon, or to a principal commodity, service, or entertainment sold, provided, or offered upon the PREMISES where the sign is located or on a LOT adjacent to the PREMISES advertised. Such SIGNS shall be ACCESSORY USES of a PROPERTY.
- (7) “VARIANCE” is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning Board of Appeals are permitted to grant.
- B. Paragraph 7.3.1.A. of the *Zoning Ordinance* specifies that the area of a flat sign is the area of the smallest geometric figure (circle, ellipse, triangle, square, rectangle, or other quadrilateral).
- C. Subsection 7.3.2 of the *Zoning Ordinance* establishes that ON-PREMISES SIGNS must conform to all the standards in Subsections 7.3.6 and 7.3.7.
- (1) Section 7.3.6 summarizes the standards for Maximum Number of Signs; Maximum Area of per Sign; Maximum Height per Sign; Location; and Miscellaneous Provisions, as follows:
- (a) The Maximum Number of Signs allowed in this case is one (1) per property frontage.
 - (b) The Maximum Area is determined by amount of frontage, which, in this case, is 257 feet, which permits the maximum allowable area of 75 feet.
 - (c) The Maximum Height is determined by the amount of setback from the property line, which, in this case, is eight feet, for a maximum height of 24 feet.
 - (d) The footnote to Section 7.3.6 states:

If a sign is primarily directed towards the user of an interstate highway; within a B-4 Zoning District; within 2,000 feet of the centerline of an interstate highway; and more than 500 feet from any residential district, school, park, hospital, or nursing home it may rise to the height necessary to be visible from within one-half mile distance each way along the

PRELIMINARY DRAFT

interstate measured from the nearest exiting intersection, not to exceed 75 feet.

- (e) The proposed sign is not directed towards the users of an interstate highway; therefore, the footnote does not apply in this case.
- E. The Department of Planning and Zoning measures yards and setbacks to the nearest wall line of a building or structure and the nearest wall line is interpreted to include overhanging balconies, projecting window and fireplace bulkheads, and similar irregularities in the building footprint. A roof overhang is only considered if it overhangs a property line.
- E. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - (a) That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - (b) That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - (c) That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - (d) That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.
 - (e) That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
 - (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9D.2.
- F. Paragraph 9.1.9.E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.
-

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
 - A. The Petitioner has testified on the application that, **“We are trying to install this sign to attract more attention to our business. The actual sign is slightly bigger than the stated 75 feet maximum requirement.”**
 - B. Regarding the area of the sign:
 - (1) The design the Petitioner has proposed uses two separate panels. The actual area of the two panels of the sign is 76 square feet which is only one square foot over the required maximum.
 - (2) Paragraph 7.3.1.A. of the *Zoning Ordinance* specifies that the area of a flat sign is the area of the smallest geometric figure (circle, ellipse, triangle, square, rectangle, or other quadrilateral). The smallest geometric figure encompassing the proposed sign is a 12 feet by eight feet, two inches rectangle that has an area of 98 square feet.
 - C. The speed limit in front of the subject property is 40 miles per hour.

GENERALLY REGARDING ANY PRACTICAL DIFFICULTIES OR HARDSHIPS RELATED TO CARRYING OUT THE STRICT LETTER OF THE ORDINANCE

8. Generally regarding the Zoning Ordinance requirement of a finding that practical difficulties or hardships related to carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot:
 - A. The Petitioner has testified on the application that, **“We would need to get a different sign design and the sign would be smaller than desired. The sign is slightly oversized.”**
 - B. Alternatives to the requested variance and any practical difficulties preventing reasonable use include the following:
 - (1) Eliminating or reducing the 12 inch clear space between the two panels and installing the sign panels closer together or next to each other.

At this time it is not clear whether or not the sign panels can be installed next to each other or if a minimum separation is required for some practical reason. This would not completely eliminate the need for the variance but it could reduce the amount of variance by reducing the area of the sign from 98 square feet to as little as 86 square feet.
 - (2) Changing the length and height of the panels to eliminate the clear space at the sides of the top panel by making both panels the same length and at the same time changing the height of the panels so that the total area does not exceed 75 square feet.

PRELIMINARY DRAFT

At this time it is not clear whether or not the sign panels are only available in these specific dimensions.

- (3) Some combination of the above alternatives.

GENERALLY PERTAINING TO WHETHER OR NOT THE PRACTICAL DIFFICULTIES OR HARDSHIPS RESULT FROM THE ACTIONS OF THE APPLICANT

9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:
 - A. The Petitioner has testified on the application that, “**No.**”
 - B. The method of measuring sign area has been part of the *Zoning Ordinance* since it was first adopted on October 10, 1973.

GENERALLY PERTAINING TO WHETHER OR NOT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE

10. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance is in harmony with the general purpose and intent of the Ordinance:
 - A. The Petitioner has testified on the application that, “**The proposed sign is slightly larger than the maximum allowed by existing zoning regulations. I believe granting the variance would not create any negative impact on the area.**”
 - B. The Zoning Ordinance does not clearly state the considerations that underlay the sign area requirements. In general, the restriction on sign area is presumably intended to minimize aesthetic impacts of sign structures including the following related considerations:
 - (1) Securing adequate light for adjacent properties.
 - (2) Conserving the value of adjacent land, buildings, and structures.
 - (3) Promoting the public comfort, morals, and general welfare.
 - (4) Regulating and limiting the intensity of use of lot area.
 - (5) Classifying, regulating, and restricting the location of structures for specified land uses.
 - (6) Fixing regulations and standards to which structures shall conform.
 - (7) Prohibiting structures incompatible with the character of the zoning district.
 - C. The proposed sign area of 98 square feet is 130.6% of the maximum allowed 75 square feet for a variance of 30.6%. The actual sign area of 76 square feet is 101.3% of the maximum allowed 75 square feet, which would result in a variance of 1.3%.
 - D. The requested variance is not prohibited by the *Zoning Ordinance*.

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GENERALLY PERTAINING TO THE EFFECTS OF THE REQUESTED VARIANCE ON THE NEIGHBORHOOD AND THE PUBLIC HEALTH, SAFETY, AND WELFARE

11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
 - A. The Petitioner has testified on the application that, **“The proposed sign is slightly larger than the zoning regulations allow. The area is very open and I can not imagine how it could be injurious or detrimental to the neighborhood.”**
 - B. The Fire Protection District has received notice of this variance, but no comments have been received.
 - C. The Township Highway Commissioner has received notice of this variance, but no comments have been received.
 - D. There is no other evidence that the proposed sign would be injurious to the public health, safety, or welfare.
-

DOCUMENTS OF RECORD

1. Variance application from Dave Huddleston, d.b.a. Wonderful World of Homes, received on January 4, 2008, with site plan
 2. Preliminary Memorandum for Case 603-V-08, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received on December 17, 2007
 - C Diagram of Proposed Sign received on December 17, 2007
 - D Draft Summary of Evidence for Case 603-V-08
-

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **603-V-08** held on **February 28, 2008**, the Zoning Board of Appeals of Champaign County finds that:

1. Special conditions and circumstances **{DO / DO NOT}** exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because:

2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied **{WILL / WILL NOT}** prevent reasonable or otherwise permitted use of the land or structure or construction because:

3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:

4. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}** in harmony with the general purpose and intent of the *Ordinance* because:

5. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {WILL / WILL NOT}** be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because:

6. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}** the minimum variation that will make possible the reasonable use of the land/structure because:

7. **{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE COMPLIANCE WITH THE CRITERIA FOR SPECIAL USE PERMITS AND FOR THE PARTICULAR PURPOSES DESCRIBED BELOW.}**

PRELIMINARY DRAFT

FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements of Section 9.1.9.C **{HAVE/HAVE NOT}** been met, and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Variance requested in Case **603-V-08** is hereby **{GRANTED/GRANTED WITH CONDITIONS/DENIED}** to the petitioner, **Dave Huddleston, d.b.a. Wonderful World of Homes**, to authorize **the establishment and use of an on-premises advertising sign that is 98 square feet in area in lieu of the required maximum of 75 square feet in area.**

{SUBJECT TO THE FOLLOWING CONDITION(S):}

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Debra Griest, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

CASE NO. 604-V-08

PRELIMINARY MEMORANDUM

February 22, 2008

Champaign
County

Petitioner: **Thomas W. Niermann**

Department of

**PLANNING &
ZONING**

Site Area: **0.75 acres**

Time Schedule for Development:
Immediate

Brookens

Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708
FAX (217) 328-2426

Prepared by: **J.R. Knight**
Associate Planner
John Hall
Zoning Administrator

Request: **Authorize the following in the AG-2 Agriculture District:**

- A. The use and reconstruction of an existing porch with a front yard of 17 feet and a setback of 47 feet and six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street;
- B. The use and reconstruction of an existing shed with a front yard of eight feet, six inches and a setback of 33 feet and six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street; a side yard of eight feet in lieu of the required side yard of 10 feet for accessory structures; and a zero foot driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle;
- C. The use and reconstruction of an existing open-air plant arbor with a side yard of four feet in lieu of the required 10 feet for accessory structures and a rear yard of eight feet in lieu of the required 10 feet for accessory structures; and
- D. The use and reconstruction of an existing solid opaque fence with a zero feet driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle.
- E. The use and reconstruction of an existing house with a front yard of 25 feet and a setback of 55 feet and six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street.

Location: **Lot 10 of Charter Oaks Subdivision in Section 12 of Mahomet Township and commonly known as the house at 1104 Charter Oaks Circle in Mahomet.**

BACKGROUND

The existing house on the subject property was constructed in 1988 under Zoning Use Permit Application (ZUPA) 104-88-01. It now appears that the house was incorrectly permitted at that time due to Fogel Road being incorrectly identified as a minor street, when it was a collector street. The house was constructed too close to Fogel Road and now requires a variance if it ever needs to be rebuilt. When the Petitioner purchased the property they completed two additions to the original house, a screened porch in 1992 under ZUPA 34-92-04 and a room addition in 1998 under ZUPA 35-98-01.

The Petitioner applied for ZUPA 17-08-02 on January 17, 2008, and while reviewing the permit application with the Petitioner, staff became aware of several structures on the subject property that had not been permitted. The Petitioner amended the site plan to include these structures which indicated the need for most of the variances.

When staff visited the site before sending public notices for the case they became aware of an opaque fence which extended along the northeast lot line all the way to the front lot line along Fogel Road. The neighbor's driveway is located immediately on the other side of this lot line, so the fence blocks the visibility triangle for the neighbor's driveway.

EXTRATERRITORIAL JURISDICTION

The subject property is within the one and one-half mile extraterritorial jurisdiction (ETJ) of the Village of Mahomet. Municipalities with zoning do not have protest rights in variance cases and they are not notified of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Single Family Dwelling	AG-2 Agriculture
North	Single Family Dwelling	AG-2 Agriculture
East	Single Family Dwelling	AG-2 Agriculture
West	Single Family Dwelling	AG-2 Agriculture
South	Single Family Dwelling	AG-2 Agriculture

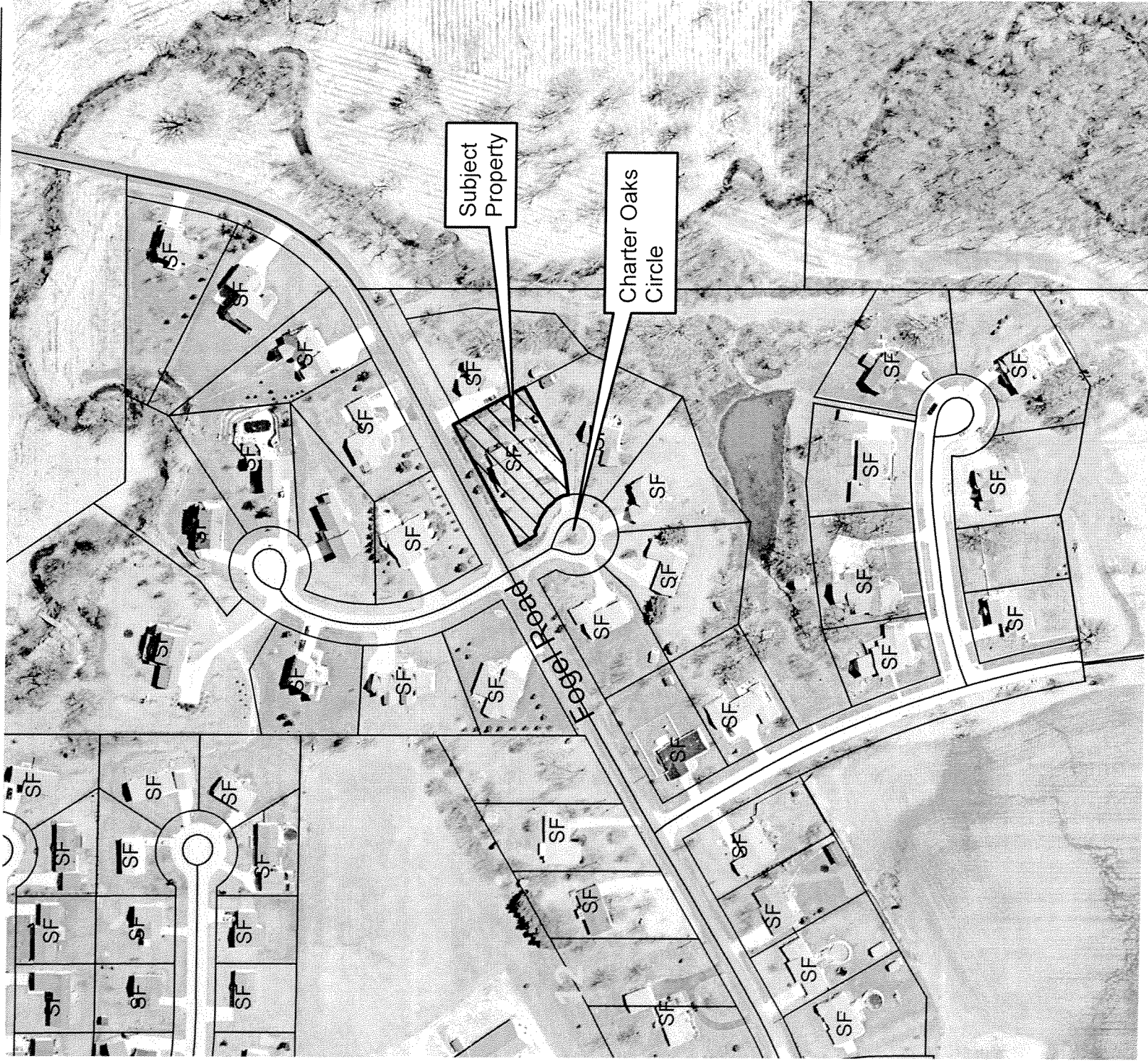
ATTACHMENTS







- A Case Maps (Location, Land Use, Zoning)
- B Petitioner's comments received on January 22, 2008
- C Petitioner's Photographic Exhibits A-D received on January 22, 2008
- D Site Plan received on January 22, 2008
- E Annotated Site Plan
- F Excerpt of Major Street Plan of Village of Mahomet Comprehensive Plan
- G Draft Summary of Evidence for Case 604-V-08

ATTACHMENT A. LAND USE MAP


Case 604-V-08

FEBRUARY 22, 2008



	Area of Concern	
	Single Family	
	Farmstead	

Champaign
County
Department of
**PLANNING &
ZONING**



NORTH

1 inch equals 200 feet



Village of Mahomet

Champaign County Department of PLANNING & ZONING				
AG-1 Agriculture	B-2 Neighborhood Business	R-4 Multiple Family Res.	B-5 Central Business	NORTH
AG-2 Agriculture	B-3 Highway Business	R-5 Mobile Home Park	I-1 Light Industry	
CR Conservation-Recreation	B-4 General Business	B-1 Rural Trade Center	I-2 Heavy Industry	
R-1 Single Family Residence				
R-2 Single Family Residence				
R-3 Two-family Residence				

January 22, 2008

Dear Champaign County Zoning Board of Appeals,

Attached please find my Application for Variance. I wanted to take a few moments of your time to provide some background to our situation before answering the questions on the Application for Variance form.

Two times in the past we have in good faith submitted applications for and been granted building permits, for room additions to our home. My wife and I wish to express our sincerest apologies for not realizing that building permits were required for the projects noted in the Application for Variance. As a nearly 20 year member of our community, a Deacon and Adult Sunday School Instructor for our Church, and as a Sr. Manager of a large employer in the Champaign area, I would never have intentionally modified my property without the necessary building permits had I thought any were needed.

It is our sincere desire to work the Zoning Board of Appeals to rectify these errors in full accordance with the Champaign County Zoning Ordinance.

Our current situation is as follows. Due to a spinal cord injury at age 43 (8 years ago), my wife became permanently and totally disabled. She is unable to hold a job and lives in severe pain from head to toe 24/7. Her pain can best be described as pins and needles, electrical shocking and the feeling of someone pouring hot lava over her skin, all at the same time. This combined with chronic and constant muscle stiffness and cramping in her neck and other medical complications to numerous to mention, is what she lives with. There is no hope for a cure as her spinal cord damage is permanent and beyond repair. She has done the best she can for herself these past eight years, however her condition has reached the point where we need to move our master bedroom and bathroom to the first floor of our home. Thus the Building Permit Application we recently submitted. The first floor bathroom addition we are planning for our home is a Fair Housing Compliant bathroom with full wheel chair access to all of the bathroom facilities – a medically necessary addition to our home.

Now that it has become necessary to move our master bedroom and bathroom to the first floor (thus completely vacating the second story of our home), our son, his wife and their soon to be born daughter volunteered to move into the second story of our home so as to be available to assist my wife with her daily duties, and to assist with the care of our property. While assisting the family, my son plans to continue his education online. My son is a graduate of the U of I Architecture program – and will be graduating with a Masters of Architecture in May of 2008. He will be taking online courses from our home in pursuit of a Masters of Divinity – a step toward his overall goal of becoming a Professor of Theology with a small Architecture firm on the side. This produces a win-win situation for our family as my wife will get some of the help she needs, while through providing housing for my son and his family we have a chance to contribute to their goal of serving God with their lives. Since my wife needs to move to the first floor

of our home now, and since my son graduates in May of 2008 and will need housing at that time, we had hoped to build our new master bathroom in the March – May 2008 time frame.

We realize that there is a Variance process we must go through and that it is our own fault for having to go through this process. However, I need to humbly ask for your consideration of one major hardship we will endure if the variance process goes beyond the end of February. At that point the appeals process will begin to delay our March – May construction time-line, meaning we won't be able to properly prepare our home for the transitions we face in mid-May.

I am of course hopeful that variances can be approved for all four of my situations, however also need to formally request that given the situation described above, I be allowed to correct any unapproved variances simultaneously along with the construction of the bathroom. This will enable us to complete the construction process before my son's May 11, 2008.

One last thought. Having learned what I have during this Variance process, I have a much better understanding of the Zoning Ordinances. As a result any future projects I pursue will be processed through the proper channels. That having been said however, due to our age and the fact that after this bathroom project we will have completed our vision for this property, I likely won't need to be applying for any future building permits.

My answers to the questions on the Application for Variance Form are as follows;

6A. Special Conditions or Circumstances

West Side Landscaping: The special condition or circumstance applicable to this part of our land (which is only applicable to a few similarly situated lots in our zoning district), is the fact that the lot has two street frontages without curbs. The unfortunate phenomenon that came along with our lot having two street frontages without curbs is that before placing the landscaping where it is, people frequently drove through our lawn to short cut the corner. This caused severe damage to the lawn each and every time as you can well imagine. This was the very reason that we added landscaping in this area. The design of the landscaping successfully put a stop to this problem, yet has not caused any safety issues for the neighborhood in the 12 plus years it has been in place. As demonstrated by Exhibit A, there is a clear view of Fogel Road from Charter Oak Circle, in the direction of this landscaping feature.

Garden Shed: Although I now realize that the size shed I built requires a variance, I am confident that this structure does not pose any problems relating to neighborhood safety. With regard to the triangle of safety in the NE corner of our lot, I have tested this myself by pulling out of the neighbor's driveway and onto Fogel Road. In doing so I have experienced the fact that the shed does not block our neighbor's line of sight as he exits his driveway onto Fogel Road. As you can see in Exhibits C & D, the shed is up on a hill - higher up than the line of sight required for safe entrance onto Fogel Road. More specifically it is up on a hill 22' back from the edge of the road at its NW corner and 26'

back from the edge of the road at its NE corner. It should therefore never cause a safety, health or welfare problem for our neighbors.

Plant Arbor: Although I am still confused as to why this open air plant arbor would require a building permit and/or variance, I am confident that this structure does not pose any problems relating to neighborhood safety. Exhibit B demonstrates that the arbor does not have a roof per-say, only widely open rafters.

Porch: Although I now realize that the porch expansion project requires a variance, I am confident that due to its location on the lot, this structure does not pose any problems relating to neighborhood safety.

6B. Practical Difficulties or Hardships

In order to build the medically necessary Fair Housing Compliant bathroom addition onto our home, we obtained a Home Equity Line of Credit from an area banker. We were barely able to get the amount of credit necessary for this project so using any of these funds to make modifications to the landscaping, shed, plant arbor or porch would be detrimental to the bathroom project – an absolute necessity in our lives.

Additionally, as mentioned earlier, any unapproved variances that might delay our March – May construction time line would cause hardships regarding our ability to prepare our home in time to allow my son and his family to move into the second story of our home in mid May.

Beyond that, the following additional practical difficulties and hardships will be created by carrying out the strict letter of the regulations sought to be varied, and/or would prevent reasonable use of the land, structures or construction on the lot.

West Side Landscaping:

Financial and timing hardships already mentioned above.

Garden Shed:

Given the fact that my wife has not been able to hold a job for the past 8 years, and the fact that she will never be able to hold a job in the future, the main reason for building the shed was to make room in the garage so that I could begin to use my woodworking hobby as a second income. I have been blessed with a four-year opportunity to build 225 pieces of custom furniture for a U of I dormitory so that plan has worked out well. Not having the shed would cause a hardship in that I would not have the room necessary to use part of my garage as a work shop for our second income.

Since I have taken on the burden of caring for my wife and property (inside and out including housekeeping and yard work), while working a full and part-time job, my mother-in-law was gracious enough to purchase a riding lawn mower for me last year to help mitigate the amount of yard work I have to do. Another reason for building the shed was to house the new garden tractor. Therefore another major hardship that we would

suffer if we did not have the shed is the fact that I would not have a place to store the garden tractor, unless I used my garage which then affects my wood working business. You might call it the domino affect.

One of the few remaining joys left in my wife's life is her life long hobby of gardening. She will never again be able to ride a bike, row a canoe, fly in an airplane to see her distant grandchildren, jog through the park etc. Granted gardening for her is nothing like it was before her disability, however it is very therapeutic for her to be able to clip the tops off of flowers with a scissors for example. Her new shed or "garden house" as she calls it is part of that joy and having to remove the shed would be devastating to her.

The last significant hardship is the fact that the shed is built on a poured foundation as opposed to setting on skids. The shed could not be physically moved without completely tearing it down. The shed is a \$10,000 investment – an amount equal to approximately one-third of the equity line of credit needed to build our bathroom. We cannot afford to do both, and the later is medically necessary.

Plant Arbor:

One blessing that has come from my wife's health condition is that she is able to minister to other suffering women in our community. Much of this ministry takes place on the porch swings under this plant arbor. It is the perfect setting for this type of ministry. Taking away the porch swing that my wife uses to enjoy the outdoors while ministering to friends would be devastating to my wife.

Porch:

None other than the financial and time sensitive hardships mentioned above.

6C. Wholly or Partly from actions I have taken?

Yes, the need for the variances under consideration result wholly from actions I have taken. In general, my assumption all along was that building permits were required if you were adding a room onto your home, in which case I applied for two permits in the past, and now a third permit for the 2008 bathroom addition.

West Side Landscaping:

I would have never thought that adding a mulch bed and some shrubbery in the front yard would require a building permit.

Garden Shed:

I would have never thought that adding a garden shed in the back yard like I have seen nearly my entire neighborhood do, would require a building permit.

Plant Arbor:

I would have never thought that an open-air plant arbor would require a building permit.

Porch:

I would have never thought that extending a covered porch that had been part of the building permit for the original structure, would require a new building permit.

6D. Granted Variance in Harmony with General Intent of the Zoning Ordinance

I am not familiar with the particulars of the Zoning Ordinance, however assuming that the general intent of the ordinance is to ensure the safety, health and welfare of neighborhood; I do believe that we are in harmony with that intent as discussed in my answers to 6E below.

6E. Factors ensuring safety, health and welfare of neighborhood.

West Side Landscaping:

Prior to adding this landscape feature, drivers would cut through the corner of our lot, thus endangering their own safety and the safety of anyone else driving along Fogel Road. This practice completely ceased about 12 years ago when we added this landscape feature, and the neighborhood has been a safer place as a result.

As demonstrated by Exhibit A, there is a clear view of Fogel Road from Charter Oak Circle, in the direction of this landscaping feature.

Without this landscaping, drivers will once again have the opportunity to cut the corner of our lot, thus endangering their own safety and the safety of anyone else driving along Fogel Road.

Garden Shed:

As demonstrated by Exhibits C & D, the shed is not obstructing the view of Fogel Road as you drive out of the neighbor's driveway. The shed is up on a hill and back out of the way. More specifically it is up on a hill 22' back from the edge of the road at its NW corner and 26' back from the edge of the road at its NE corner. It should therefore never cause a safety, health or welfare problem for our neighbors.

Plant Arbor:

As demonstrated by the aerial pictures of the lot, and Exhibit B, the open-air plant arbor is in a corner of our lot that realistically would never cause a safety, health or welfare problem for our neighbors.

Porch:

As demonstrated by the aerial pictures of the lot, due to the location on the lot, the porch extension realistically would never cause a safety, health or welfare problem for our neighbors.

7. Other Circumstances which Justify the Variance.

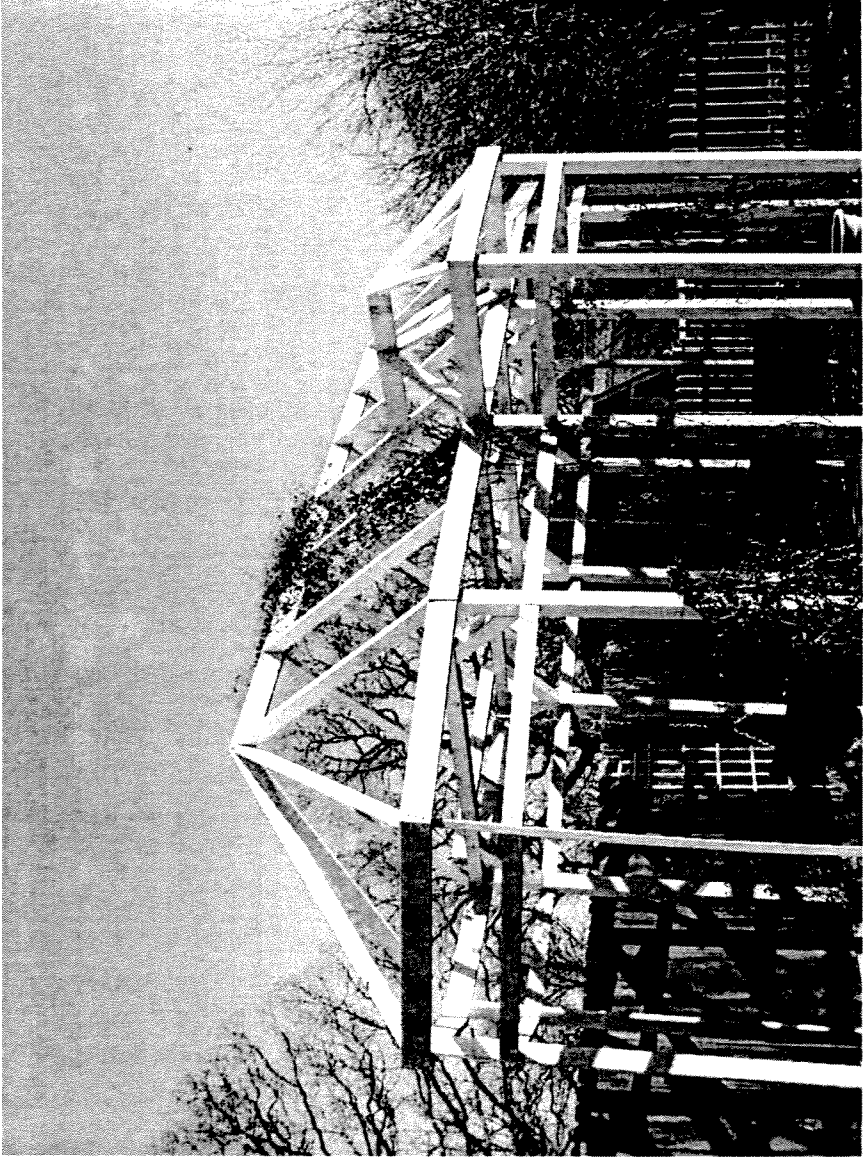
I cannot think of any other circumstances beyond those already discussed above.

Exhibit A



This photo demonstrates that the landscaping in the front corner of the lot does not interfere with the safety visibility triangle. You can clearly see Fogel Road from Charter Oak Circle.

Exhibit B



This photo demonstrates that the structure in the southeast corner of the lot is an open-air plant arbor without an enclosed roof.

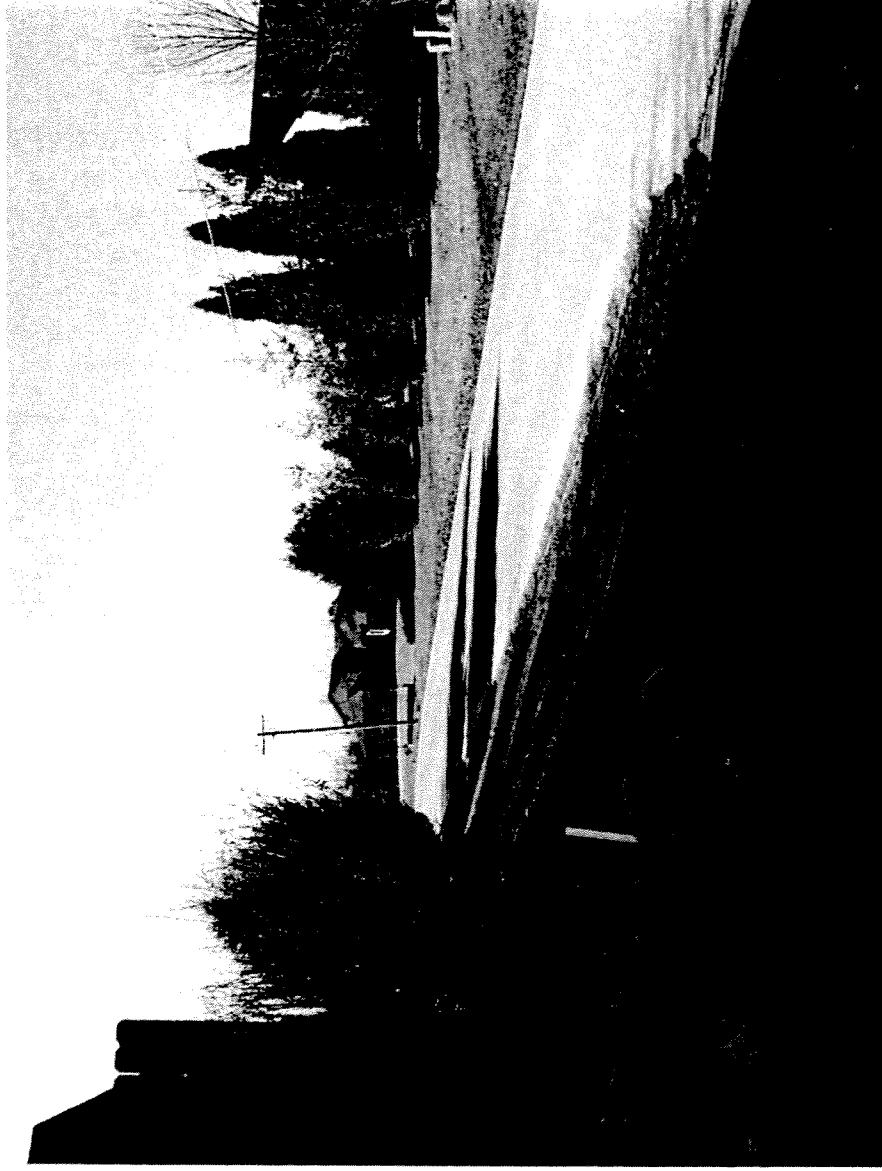
Exhibit C



This view of the neighbors driveway on the East side of our lot shows that there is 20' of wide open space for a car to pause, look left and right for traffic and then safely enter onto Fogel Drive, without visual obstruction.

The back corner of the shed can be seen in the upper right hand corner of this photo. As you can see the shed is not obstructing the view of Fogel Road as you drive out of the neighbor's driveway. The shed is up on a hill and back out of the way. More specifically it is up on a hill 22' back from the edge of the road at its NW corner and 26' back from the edge of the road at its NE corner. It should therefore never cause a safety, health or welfare problem for our neighbors.

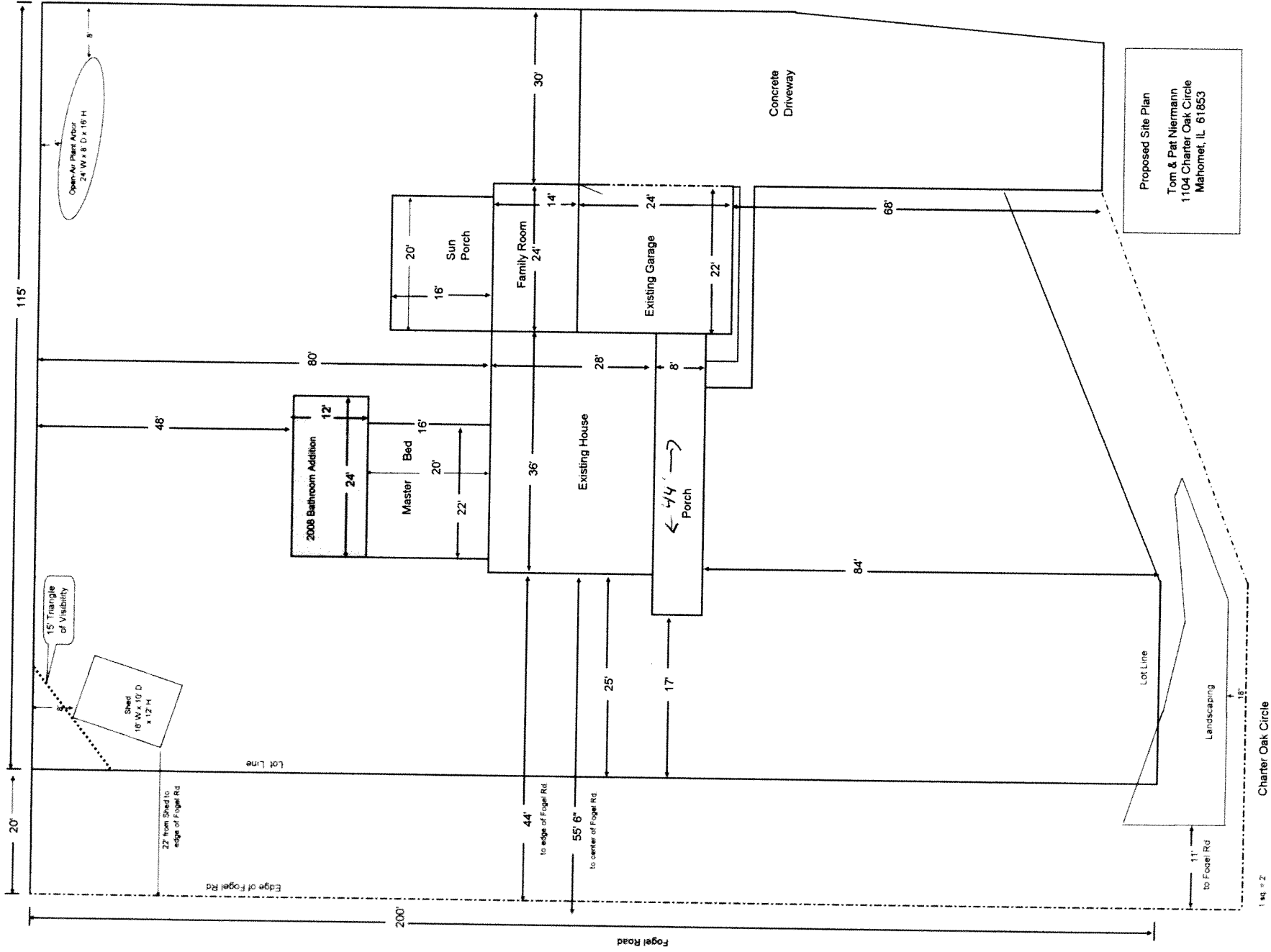
Exhibit D



This view from the East side neighbor's driveway looking West onto Fogel Road, shows that since the corner of our lot is up on a hillside and 20' from the road side, there is plenty of visibility to safely pull onto Fogel Road.

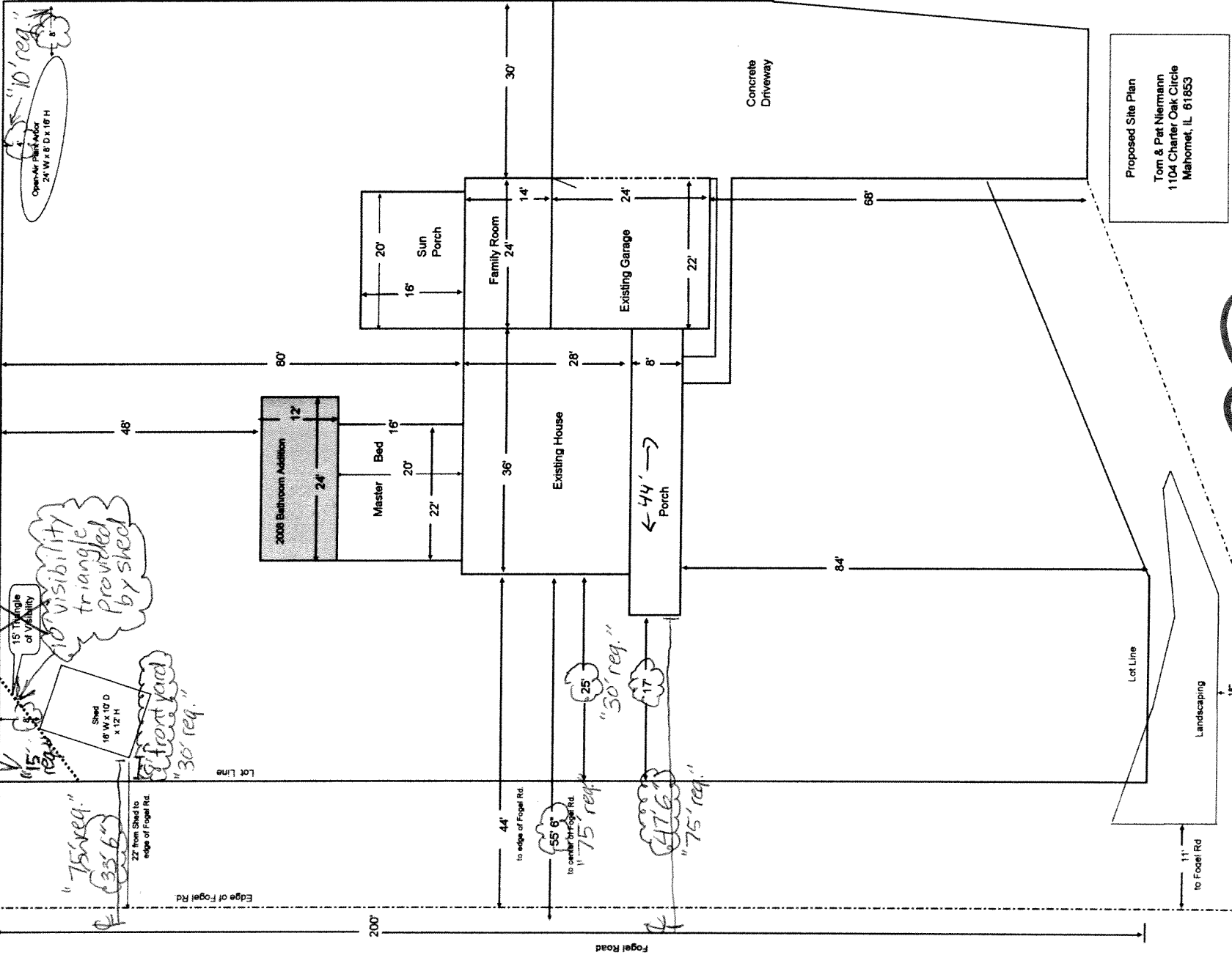
Even so, to improve upon this view for our neighbor, by the time the Board meets to discuss this case we will have voluntarily removed the two large evergreen trees on the left side of the road that you can see on the hillside, and that you can see as shadows on the road.

The back corner of the shed can be seen in the upper left hand corner of this photo. As you can see the shed is not obstructing the view of Fogel Road as you drive out of the neighbor's driveway. The shed is up on a hill and back out of the way. More specifically it is up on a hill 22' back from the edge of the road at its NW corner and 26' back from the edge of the road at its NE corner. It should therefore never cause a safety, health or welfare problem for our neighbors.



10' visibility triangle provided by fence

solid, opaque fence



Proposed Site Plan
 Tom & Pat Niermann
 1104 Charter Oak Circle
 Mahomet, IL 61853

ANNOTATED

☁️ = required variance



PRELIMINARY DRAFT

604-V-08

**FINDING OF FACT
AND FINAL DETERMINATION**
of
Champaign County Zoning Board of Appeals

Final Determination: **{GRANTED / GRANTED WITH SPECIAL CONDITIONS / DENIED}**

Date: February 28, 2008

Petitioner: Thomas W. Niermann

Request:

Authorize the following in the AG-2 Agriculture District:

- A. The use and reconstruction of an existing porch with a front yard of 17 feet and a setback of 47 feet and six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street;
- B. The use and reconstruction of an existing shed with a front yard of eight feet, six inches and a setback of 33 feet and six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street; a side yard of eight feet in lieu of the required side yard of 10 feet for accessory structures; and a zero foot driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle;
- C. The use and reconstruction of an existing open-air plant arbor with a side yard of four feet in lieu of the required 10 feet for accessory structures and a rear yard of eight feet in lieu of the required 10 feet for accessory structures; and
- D. The use and reconstruction of an existing solid opaque fence with a zero foot driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle.
- E. The use and reconstruction of an existing house with a front yard of 25 feet and a setback of 55 feet and six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street.

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **February 28, 2008**, the Zoning Board of Appeals of Champaign County finds that:

PRELIMINARY DRAFT

1. The Petitioner, Thomas W. Niermann, owns the subject property.
2. The subject property is Lot 10 of Charter Oaks Subdivision in Section 12 of Mahomet Township and commonly known as the house at 1104 Charter Oaks Circle in Mahomet.
3. The subject property is located within the one and one-half mile extraterritorial jurisdiction of the Village of Mahomet. Municipalities do not have protest rights in variance cases and are not notified of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Regarding land use and zoning on the subject property and adjacent to it:
 - A. The subject property and all the property surrounding it is zoned AG-2 Agriculture.
 - B. The subject property and all the property surrounding it is in use as single family dwellings.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Generally regarding the proposed site plan, there are several existing buildings on the subject property, some of which were constructed without permits and some that require variances, as follows:
 - A. The original house was constructed in 1988 under ZUPA 104-88-01, which was approved incorrectly allowing the house to be constructed too close to Fogel Road. The house has been expanded with two additions under ZUPA's 34-92-04 and 35-98-01. A new addition is also proposed at this time, but requires no variances. The porch on the front of the house was expanded at some point without a permit and now requires a variance for front yard and setback with regard to Fogel Road.
 - B. A garden shed located in the northeast corner of the property was constructed without a permit and too close to the front lot line along Fogel Road and the northeast side lot line. The shed also appears to encroach into the 15 feet visibility triangle for the neighbor's driveway.
 - C. A plant arbor located in the southeast corner of the subject property was constructed without a permit and too close to the northeast side lot line and the rear lot line.
 - D. A solid, opaque fence was constructed on the northeast lot line all the way to the front lot line along Fogel Road, which encroaches fully into the 15 feet visibility triangle required for the neighbor's driveway.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
 - A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variance (capitalized words are defined in the Ordinance):
 - (1) "ACCESSORY BUILDING" is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE or the main or principal USE, either detached from or attached to the MAIN OR PRINCIPAL STRUCTURE, and subordinate to and used for

purposes customarily incidental to the MAIN OR PRINCIPAL STRUCTURE, or the main or principal USE.

- (2) "ACCESSORY STRUCTURE" is a STRUCTURE on the same LOT with the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either DETACHED from or ATTACHED to the MAIN or PRINCIPAL STRUCTURE, subordinate to and USED for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
 - (3) "BUILDING, MAIN or PRINCIPAL" is the BUILDING in which is conducted the main or principal USE of the LOT on which it is located.
 - (4) "BUILDING RESTRICTION LINE" is a line usually parallel to the FRONT, side, or REAR LOT LINE set so as to provide the required YARDS for a BUILDING or STRUCTURE.
 - (5) "LOT" is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (6) "LOT, CORNER" is a LOT located:
 - (a) At the junction of and abutting two or more intersecting STREETS; or
 - (b) At the junction of and abutting a STREET and the nearest shoreline or high water line of a storm or floodwater runoff channel or basin; or
 - (c) At and abutting the point of abrupt change of a single STREET where the interior angle is less than 135 degrees and the radius of the STREET is less than 100 feet.
 - (7) "LOT LINES" are the lines bounding a LOT.
 - (8) "LOT LINE, FRONT" is a line dividing a LOT from a STREET or easement of ACCESS. On a CORNER LOT or a LOT otherwise abutting more than one STREET or easement of ACCESS only one such LOT LINE shall be deemed the FRONT LOT LINE.
 - (9) "LOT LINE, REAR" is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE or to a tangent to the midpoint of the FRONT LOT LINE. In the case of a triangular or gore shaped LOT or where the LOT comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at the maximum distance from the FRONT LOT LINE or said tangent.
 - (10) "RIGHT-OF-WAY" is the entire dedicated tract or strip of land that is to be used by the public for circulation and service.
 - (11) "SETBACK LINE" is the BUILDING RESTRICTION LINE nearest the front of and across a LOT establishing the minimum distance to be provided between a line of a STRUCTURE located on said LOT and the nearest STREET RIGHT-OF-WAY line.
-

PRELIMINARY DRAFT

- (12) “STREET” is a thoroughfare dedicated to the public within a RIGHT-OF-WAY which affords the principal means of ACCESS to abutting PROPERTY. A STREET may be designated as an avenue, a boulevard, a drive, a highway, a lane, a parkway, a place, a road, a thoroughfare, or by other appropriate names. STREETS are identified on the Official Zoning Map according to type of USE, and generally as follows:
- (a) MAJOR STREET: Federal or State highways
 - (b) COLLECTOR STREET: COUNTY highways and urban arterial STREETS.
 - (c) MINOR STREET: Township roads and other local roads.
- (13) “VARIANCE” is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning Board of Appeals are permitted to grant.
- (14) “YARD” is an OPEN SPACE, other than a COURT, of uniform depth on the same LOT with a STRUCTURE, lying between the STRUCTURE and the nearest LOT LINE and which is unoccupied and unobstructed from the surface of the ground upward except as may be specifically provided by the regulations and standards herein.
- (15) “YARD, FRONT” is a YARD extending the full width of a LOT and situated between the FRONT LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT. Where a LOT is located such that its REAR and FRONT LOT LINES each abut a STREET RIGHT-OF-WAY both such YARDS shall be classified as FRONT YARDS.
- (16) “YARD, REAR” is a YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
- (17) “YARD, SIDE” is a YARD situated between a side LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT and extending from the rear line of the required FRONT YARD to the front line of the required REAR YARD.
- B. Minimum setbacks from the centerline of a street and minimum front yards in the R-2 District are established in Section 5.3 and Subsection 4.3.2 of the *Zoning Ordinance* as follows:
- (1) The minimum setback from a collector street is listed in Section 5.3 and Subsection 4.3.2 as 75 feet.
 - (2) The minimum setback from a minor street is listed in Section 5.3 and Subsection 4.3.2 as 55 feet.
 - (3) The minimum front yard in regards to a minor street is listed in Footnote 3 of Section 5.3 and Subsection 4.3.2 as 25 feet.
- C. Section 7.2.1. paragraphs B and C specify the required minimum side and rear yards for detached accessory buildings or structures in the AG-1, AG-2, and CR Districts as follows:
- (1) SIDE YARD

PRELIMINARY DRAFT

No DETACHED ACCESSORY BUILDING or STRUCTURE shall be located less than 10 feet from any side LOT LINE.

(2) REAR YARD

No DETACHED ACCESSORY BUILDING or STRUCTURE shall be located less than 10 feet from any REAR LOT LINE.

D. Section 4.3.3 F. of the Zoning Ordinance requires a visibility triangle on corner lots and on either side of driveways on all lots as follows (capitalized words are defined in the Ordinance):

(1) On a CORNER LOT nothing shall be CONSTRUCTED, erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between the HEIGHT of two and one-half feet and 6 feet above the centerline grades of intersecting STREETS in an area bounded by the STREET RIGHT OF WAY lines of CORNER LOTS and a straight line joining points along said STREET RIGHT OF WAY lines 50 feet from the nearest point of intersection (capitalized words are defined in the Ordinance).

(2) On all other LOTS, in order to prevent obstruction of sight lines, nothing shall be CONSTRUCTED, erected, placed, planted, or allowed to grow in such a manner as to materially impede vision in the driveway visibility triangle defined as an area bounded by the FRONT or SIDE LOT LINE, each side of any driveway, and a straight line joining points on the lot line measured 15 feet from the driveway and points along the driveway measured from the lot line. Trees within this visibility triangle shall be trimmed so that the lower foliage line is maintained at least six feet above the crown of the adjoining pavement, except trees need not be trimmed in excess of one-third of their total HEIGHT. Fences may consist of a chain link, wire mesh, or split rail type fence, or other design which does not materially impede vision in the visibility triangle.

E. The Department of Planning and Zoning measures yards and setbacks to the nearest wall line of a building or structure and the nearest wall line is interpreted to include overhanging balconies, projecting window and fireplace bulkheads, and similar irregularities in the building footprint. A roof overhang is only considered if it overhangs a property line.

F. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:

(1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:

(a) That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.

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- (b) That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - (c) That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - (d) That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.
 - (e) That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
- (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9D.2.
- G. Paragraph 9.1.9.E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
- A. The Petitioner included extensive comments with their application, which are attached to the Preliminary Memorandum as Attachment B, and can be summarized regarding this criterion as follows: *{SUMMARY OF PETITIONER COMMENTS WILL BE AVAILABLE AT THE MEETING}*
 - B. Regarding the setback and front yard in regard to Fogel Road for the house, porch, and garden shed, the *Zoning Ordinance* anticipates a right-of-way width of 80 feet for collector streets, but the Fogel Road right-of-way is only 60 feet wide at the point where it passes the subject property.
 - C. The original house was improperly approved by ZUPA 104-88-01 without the minimum required front yard and setback for an urban arterial street.
 - D. Regarding the driveway visibility triangle for the garden shed and fence, the driveway visibility triangle is intended to ensure pedestrian safety, however, there are no sidewalks in the neighborhood of the subject property.
 - E. Regarding the location of the garden shed, it is located well away from any other structures on the subject property or the neighboring lot.

- F. Regarding the plant arbor, it is an open-air structure without walls or a roof, and the house on the neighboring property is located 20 feet from the common lot line.

GENERALLY REGARDING ANY PRACTICAL DIFFICULTIES OR HARDSHIPS RELATED TO CARRYING OUT THE STRICT LETTER OF THE ORDINANCE

- 8. Generally regarding the Zoning Ordinance requirement of a finding that practical difficulties or hardships related to carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot:
 - A. The Petitioner included extensive comments with their application, which are attached to the Preliminary Memorandum as Attachment B, and can be summarized regarding this criterion as follows: *{SUMMARY OF PETITIONER COMMENTS WILL BE AVAILABLE AT THE MEETING}*
 - B. The existing right-of-way of Fogel Road is narrower than is expected by the *Zoning Ordinance*.
 - C. The Petitioner has stated that gardening is an important part of his and his wife's life and the location of the plant arbor and the garden shed maximize the amount of yard area they have available to them for gardening activities.
 - D. The purpose of the fence is to screen the subject property from the neighboring property and if it were modified to provide a 15 feet visibility triangle it would not provide as much screening.

GENERALLY PERTAINING TO WHETHER OR NOT THE PRACTICAL DIFFICULTIES OR HARDSHIPS RESULT FROM THE ACTIONS OF THE APPLICANT

- 9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:
 - A. The Petitioner included extensive comments with their application, which are attached to the Preliminary Memorandum as Attachment B, and can be summarized regarding this criterion as follows: *{SUMMARY OF PETITIONER COMMENTS WILL BE AVAILABLE AT THE MEETING}*
 - B. The right-of-way of Fogel Road was dedicated as part of the platting process of Charter Oaks Subdivision, which occurred in May 1986, and apparently before the Village of Mahomet had its current right-of-way standards.
 - C. The space available for the Petitioner to use as a garden is restricted because the subject property is a corner lot and is not any larger than neighboring lots, thus providing less building space and limiting placement of the Petitioner's house.

GENERALLY PERTAINING TO WHETHER OR NOT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE

- 10. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance is in harmony with the general purpose and intent of the Ordinance:

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- A. The Petitioner included extensive comments with their application, which are attached to the Preliminary Memorandum as Attachment B, and can be summarized regarding this criterion as follows: *{SUMMARY OF PETITIONER COMMENTS WILL BE AVAILABLE AT THE MEETING}*
- B. The Zoning Ordinance does not clearly state the considerations that underlay the setback and front yard requirements. In general, the setback is presumably intended to ensure the following:
- (1) Right of way acquisition: Charter Oaks Subdivision was platted at a time when the Village of Mahomet did not have their current right-of-way standards for arterial streets, therefore, purchase of additional right-of-way may be necessary in the future.
 - (2) Off-street parking: The subject property provides the required amount of off-street parking outside of the setback.
 - (3) Aesthetics: Aesthetic benefit may be a consideration for any given front yard and setback but can be very subjective.
- C. The Zoning Ordinance does not clearly state the considerations that underlay the side and rear yard requirements. In general, the side yard is presumably intended to ensure the following:
- (1) Adequate light and air: The structures in question are accessory structures which do not noticeably affect the amount of light and air available on the large lots in this neighborhood.
 - (2) Separation of structures to prevent conflagration: Structures in the rural zoning districts are generally located farther from fire protection stations than structures in the urban districts and the level of fire protection service is generally somewhat lower given the slower response time. The subject property is within the Corbel Fire Protection District and the station is 4.3 road miles from the subject property.
 - (3) Aesthetics may also play a part in minimum yard requirements.
- D. The driveway visibility triangle is intended to provide safety for pedestrians, however, there are no sidewalks in this neighborhood so the presence of pedestrians is not anticipated.
- E. The proposed site plan indicates the following required amounts of variance:
- (1) In Part A of the proposed variance the front yard of 17 feet is 56.7% of the required minimum of 30 feet for a variance of 43.3% and the setback of 47 feet and six inches is 63.3% of the required 75 feet for a variance of 36.7%.
 - (2) In Part B of the proposed variance the front yard of eight feet and six inches is 28.3% of the required 30 feet for a variance of 71.7%; the setback of 33 feet and six inches is 44.8% of the required 75 feet for a variance of 55.2%; the side yard of the eight feet is 80% of the required 10 feet for a variance of 20%; and the visibility triangle of 10 feet is 66.7% of the required 15 feet for a variance of 33.3%.
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- (3) In Part C of the proposed variance the side yard of four feet is 40% of the required 10 feet for a variance of 60% and the rear yard of 8 feet is 80% of the required 10 feet for a variance of 20%.
 - (4) In Part D of the proposed variance the zero feet visibility triangle is 0% of the required 15 feet visibility triangle for a variance of 100%.
 - (5) In Part E of the proposed variance the front yard of 25 feet is 83.3% of the required 30 feet for a variance of 16.7% and the setback of 55 and six inches is 74% of the required 75 feet for a variance of 26%.
- F. The requested variance is not prohibited by the *Zoning Ordinance*.

GENERALLY PERTAINING TO THE EFFECTS OF THE REQUESTED VARIANCE ON THE NEIGHBORHOOD AND THE PUBLIC HEALTH, SAFETY, AND WELFARE

- 11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
 - A. The Petitioner included extensive comments with their application, which are attached to the Preliminary Memorandum as Attachment B, and can be summarized regarding this criterion as follows: *{SUMMARY OF PETITIONER COMMENTS WILL BE AVAILABLE AT THE MEETING}*
 - B. The Fire Protection District has received notice of this variance, but no comments have been received.
 - C. The Township Highway Commissioner has also received notice of this variance, but no comments have been received.

GENERALLY REGARDING ANY SPECIAL CONDITIONS OF APPROVAL

- 12. There are two proposed special conditions of approval, as follows:
 - A. There are currently no sidewalks in the neighborhood of the subject property, if sidewalks are ever constructed the visibility triangle for the neighbor's driveway will be necessary. The following condition requires a visibility triangle to be provided in that case:

The solid, opaque fence running along the northeast lot line of the subject property must be modified to provide a 15 foot driveway visibility triangle if sidewalks are ever constructed along Fogel Road;

to ensure:

Pedestrian safety when there is a sidewalk.

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B. The right-of-way for Fogel Road, where it passes the subject property, is narrower than the Village of Mahomet or Champaign County requires for arterial streets. If the right-of-way is ever widened to meet the standard the garden shed will extend two feet into the right-of-way. The following condition specifies that the owner of the subject property will be responsible for relocating the shed in that case:

The owner of the subject property will be responsible for relocating the garden shed to the required minimum setback if the right-of-way for Fogel Road is ever widened;

to ensure that:

the government agency responsible for widening Fogel Road does not have to relocate the shed.

DOCUMENTS OF RECORD

1. Variance application from Thomas W. Niermann, received on January 22, 2008, with attachments:
2. Preliminary Memorandum for Case 598-V-07, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Petitioner's comments received on January 22, 2008
 - C Petitioner's Photographic Exhibits A-D received on January 22, 2008
 - D Site Plan received on January 22, 2008
 - E Excerpt of Major Street Plan of Village of Mahomet Comprehensive Plan
 - F Draft Summary of Evidence for Case 604-V-08

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FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **604-V-08** held on **February 28, 2008**, the Zoning Board of Appeals of Champaign County finds that:

1. Special conditions and circumstances **{DO / DO NOT}** exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because:

2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied **{WILL / WILL NOT}** prevent reasonable or otherwise permitted use of the land or structure or construction because:

3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:

4. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}** in harmony with the general purpose and intent of the *Ordinance* because:

5. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {WILL / WILL NOT}** be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because:

6. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}** the minimum variation that will make possible the reasonable use of the land/structure because:

7. **{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE COMPLIANCE WITH THE CRITERIA FOR SPECIAL USE PERMITS AND FOR THE PARTICULAR PURPOSES DESCRIBED BELOW;}**

FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements of Section 9.1.9.C *{HAVE/HAVE NOT}* been met, and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Variance requested in Case 604-V-08 is hereby *{GRANTED/GRANTED WITH CONDITIONS/DENIED}* to the petitioner, **Thomas W. Niermann**, to authorize the following in the AG-2 Agriculture District:

- A. The use and reconstruction of an existing porch with a front yard of 17 feet and a setback of 47 feet, six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street;
- B. The use and reconstruction of an existing shed with a front yard of eight feet, six inches and a setback of 33 feet, six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street; a side yard of eight feet in lieu of the required side yard of 10 feet for accessory structures; and a zero foot driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle;
- C. The use and reconstruction of an existing open-air plant arbor with a side yard of four feet in lieu of the required 10 feet for accessory structures and a rear yard of eight feet in lieu of the required 10 feet for accessory structures; and
- D. The use and reconstruction of an existing solid opaque fence with a zero foot driveway visibility triangle in lieu of the required 15 feet driveway visibility triangle.
- E. The use and reconstruction of an existing house with a front yard of 25 feet and a setback of 55 feet, six inches in lieu of the required 30 feet front yard and 75 feet setback in regard to Fogel Road, a collector street.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Debra Griest, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date
