

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **February 17, 2011**
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 (January 20, 2011)
5. Continued Public Hearings

*Note: The full ZBA packet is now available
on-line at: co.champaign.il.us.*

Case 675-AT-10 Petitioner: **Champaign County Zoning Administrator**

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

Part A.

1. **In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.**
2. **Revise 8.1.2 to authorize that NC lots may be used separately if authorized by variance.**

Part B.

1. **Revise 8.2.1 B. as follows:**
 - a. **Limit applicability to the total expansion since October 10, 1973.**
 - b. **Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4.**
 - c. **Eliminate the limit on the amount of accessory buildings.**
2. **Revise 8.2.1 C. so that the limit on expansion applies to the total since October 10, 1973.**
3. **Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.**
4. **In 8.2.3 clarify "ceases".**

Part C.

1. **Revise 8.3.1 to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorize by variance.**
2. **Revise 8.3.3 to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.**

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Case 675-AT-10 cont:

Part D.

1. **Revise 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.**
2. **In 8.4.5 clarify “abandoned” and “discontinued”.**
3. **In 8.4.6 provide for replacement of a SF dwelling that is a NC use.**

Part E.

Revise 8.6 to authorize the following:

- a. **A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1.**
- b. **A SF dwelling that is a NC use has no limit on the value of repair or replacement**
- c. **Any structure that is NC may be granted a variance to authorize a higher value of repair.**

Part F.

In 9.1.2 C. require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.

Part G.

Revise Section 3 Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

(Note: the description of the Request has been simplified from the actual legal advertisement)**

6. New Public Hearings

***Case 678-V-10** Petitioner: **Brian Lile and Myra Sully**

Request: **Authorize the use of an existing unauthorized detached accessory structure with a front yard of approximately one foot instead of the minimum required front yard of 25 feet and a setback from the center of pavement of Main Street of approximately 38 feet and 6 inches instead of the minimum required setback of 62 feet and 6 inches.**

Location: **Lots 10 and 11 of Block 3 of S.H. Busey’s 6th Addition to Penfield that is commonly known as 419 South Main Street, Penfield.**

7. Staff Report

A. January, 2011 Monthly Report

8. Other Business

A. Review of ZBA Bylaws

9. Audience Participation with respect to matters other than cases pending before the Board

10. Adjournment

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

1 **MINUTES OF REGULAR MEETING**

2 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

3 1776 E. Washington Street

4 Urbana, IL 61801

5 **DATE:** January 20, 2011

6 **PLACE:** Lyle Shields Meeting Room
1776 East Washington Street

7 **TIME:** 6:30 p.m.

8 Urbana, IL 61802

9 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Roger Miller, Eric Thorsland, Paul
10 Palmgren

11 **MEMBERS ABSENT :** Melvin Schroeder

12 **STAFF PRESENT :** Connie Berry, John Hall

13 **OTHERS PRESENT :** Herb Schildt, Sherry Schildt

14 **1. Call to Order**

15 The meeting was called to order at 6:33 p.m.

16 **2. Roll Call and Declaration of Quorum**

17 The roll was called and a quorum declared present with one member absent.

18 **3. Correspondence**

19 None

20 **4. Approval of Minutes (December 16, 2010 and January 6, 2011)**

21 **Mr. Courson moved, seconded by Mr. Miller to approve the December 16, 2010 and January 6, 2011,**
22 **minutes as submitted. The motion carried by voice vote.**

23 **5. Continued Public Hearing**

24 **Case 665-AT-10 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning**
25 **Ordinance by revising paragraph 4.3.3G as follows: A. Increase the maximum fence height allowed in**
26 **side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on**
27 **residential lots less than five acres in area in the AG-1 and AG-2 Zoning Districts; and B. Require**
28 **fencing that is higher than four feet tall to be at least 50% transparent when located in the following**
29 **areas: (1) In Residential Zoning Districts, all fencing that is in the front yard; and (2) On residential**
30 **lots less than five acres in area in the AG Districts, only fencing between the dwelling and the**

1 driveway within 25 feet of the dwelling. C. Increase the maximum allowed height of all fencing to
2 allow up to three inches of ground clearance.
3

4 Mr. Hall stated that there are no new changes since the Supplemental Memorandum dated December 30,
5 2010. He said that revised fencing diagrams were attached to the memorandum illustrating the version that
6 the Board had discussed at the December 16, 2010, public hearing. He requested final action for Case 665-
7 AT-10, at tonight’s public hearing.
8

9 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
10 regarding Case 665-AT-10 and there was no one.
11

12 Mr. Thorsland closed the witness register.
13

14 Mr. Thorsland stated that January 20, 2011, should be added to the first paragraph on Page 1 of the Finding
15 of Fact.
16

17 Mr. Thorsland said he would entertain a motion to adopt the Finding of Fact for Case 665-AT-10.
18

19 **Mr. Miller moved, seconded by Mr. Courson to adopt the Finding of Fact for Case 665-AT-10. The**
20 **motion carried by voice vote.**
21

22 Mr. Thorsland said he would entertain a motion to adopt the Summary of Evidence, Documents of Record
23 and Finding of Fact as amended.
24

25 **Mr. Miller moved, seconded by Ms. Capel to adopt the Summary of Evidence, Documents of Record**
26 **and Finding of Fact as amended. The motion carried by voice vote.**
27

28 Mr. Thorsland said he would entertain a motion to close the public hearing for Case 665-AT-10.
29

30 **Ms. Capel moved, seconded by Mr. Palmgren to close the public hearing for Case 665-AT-10. The**
31 **motion carried by voice vote.**
32

33 Mr. Thorsland informed the petitioner that one Board member was absent from tonight’s meeting therefore it
34 is at his discretion to either continue Case 665-AT-10 until a full Board is present or request that the present
35 Board move forward to the Final Determination. He informed the petitioner that four affirmative votes are
36 required for approval.
37

38 Mr. Hall requested that the present Board move forward to the Final Determination.
39

40 **Final Determination for Case 665-AT-10:**
41

42 **Ms. Capel moved, seconded by Mr. Palmgren that pursuant to the authority granted by Section 9.2 of**
43 **the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County**

determines that the Zoning Ordinance Amendment requested in Case 665-AT-10 should BE ENACTED by the County Board in the form attached hereto.

The roll was called:

Courson-no	Miller-yes	Palmgren-yes
Schroeder-absent	Capel-yes	Thorsland-yes

Mr. Hall stated that Case 665-AT-10 will be forwarded to the Committee of the Whole in February.

Case 666-AT-10 Petitioner: Champaign County Zoning Administrator Request to amend the Champaign County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11D.1. to clarify that the standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.

Mr. Hall stated that there are no new changes since the Supplemental Memorandum dated December 30, 2010. He said that the Board should add January 20, 2011, to the list of meeting dates included in the first paragraph on Page 1 of the Finding of Fact.

Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony regarding Case 666-AT-10 and there was no one.

Mr. Thorsland closed the witness register.

Mr. Hall stated that at the last meeting staff distributed an example of revised Subsection 6.1 to the Board for review.

Mr. Miller asked Mr. Hall if he was requesting final action for Case 666-AT-10 at tonight's public hearing.

Mr. Hall stated yes.

Mr. Thorsland said he would entertain a motion to adopt the Summary of Evidence, Documents of Record and Finding of Fact for Case 666-AT-10.

Mr. Courson moved, seconded by Mr. Palmgren to adopt the Summary of Evidence, Documents of Record and Finding of Fact as amended. The motion carried by voice vote.

Mr. Thorsland said he would entertain a motion to close the public hearing for Case 666-AT-10.

Ms. Capel moved, seconded by Mr. Courson to close the public hearing for Case 666-AT-10. The motion carried by voice vote.

Mr. Thorsland informed the petitioner that one Board member was absent from tonight's meeting therefore it

1 is at his discretion to either continue Case 666-AT-10 until a full Board is present or request that the present
2 Board move forward to the Final Determination. He informed the petitioner that four affirmative votes are
3 required for approval.

4
5 Mr. Hall requested that the present Board move forward to the Final Determination.

6
7 **Final Determination for Case 666-AT-10:**

8
9 **Mr. Miller moved, seconded by Ms. Capel that pursuant to the authority granted by Section 9.2 of the**
10 **Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County**
11 **determines that the Zoning Ordinance Amendment requested in Case 666-AT-10 should BE**
12 **ENACTED by the County Board in the form attached hereto.**

13
14 The roll was called:

15			
16	Miller-yes	Palmgren-yes	Schroeder-absent
17	Capel-yes	Courson-yes	Thorsland-yes
18			

19 Mr. Hall stated that Case 666-AT-10 will be forwarded to the Committee of the Whole in February.

20
21 **6. New Public Hearings**

22
23 None

24
25 **7. Staff Report**
26 **A. December, 2010 Monthly Report**

27
28 Mr. Hall distributed the December, 2010 Monthly report to the Board for review. He noted that it appears
29 that December was a very slow month but in retrospect it was no slower than December, 2009. He said that
30 at the end of December, 2010 there were seven cases pending but two of those cases were cases that should
31 have been dropped from the docket. He said that one of those dropped cases was a case that was pending in
32 December, 2009. He said that there will probably be three record setting low years for zoning cases in a row.
33 He said that one new case was filed in January, 2011 therefore things are happening and if things go well at
34 the February Committee of the Whole meeting three new text amendment cases that will be coming before
35 the ZBA in the very near future.

36
37 **8. Other Business**

38
39 Mr. Thorsland stated that staff distributed a ZBA Member Contact List for review. He requested that the
40 Board verify the information and notify staff of any changes.

41
42 Mr. Hall distributed the current docket to the Board for review. He said there is a variance case scheduled
43 for the February 17, 2011, public hearing and normally the Board would not schedule a variance as the only

1 case for a public hearing. He said that it may be necessary to continue Case 675-AT-10 to the February 17th
 2 meeting but he is hoping that this is not the case. He said that the question arises if the Board should
 3 schedule an entire ZBA meeting for one variance case. He said that the variance for Case 678-V-10 is for an
 4 existing building that was built without a permit and the Board may require an entire meeting or a substantial
 5 portion of the meeting for that case. He said that another variance case is scheduled for the March 10th
 6 public hearing which also has a whole meeting to itself and has a similar situation as Case 678-V-10. He
 7 asked if the Board believes that a variance case, which involves an existing building that was constructed
 8 without a permit, justifies one entire meeting for that case only or would the Board prefer to combine the two
 9 variance cases into one meeting. He said that a three hour meeting would be a full meeting for two such
 10 cases and the hearings for both cases would probably have to be cut short in order to give both cases
 11 adequate time at the meeting.

12
 13 Mr. Courson asked Mr. Hall if Case 677-V-10 involves the same location as a previous case with the
 14 petitioner.

15
 16 Mr. Hall stated yes.

17
 18 Mr. Courson stated that he would like to hear Case 677-V-10 and Case 678-V-10 on separate meeting dates.

19
 20 Mr. Hall stated that the cases could be combined to the same night although one of the cases will probably
 21 only be opened and continued to a later date. He said that the facts between the two cases are very different
 22 and there is a lawsuit against the builder for Case 678-V-10.

23
 24 Mr. Thorsland stated that he agrees with Mr. Courson in regards to hearing Case 677-V-10 and Case 678-V-
 25 10 on separate meeting dates.

26
 27 Mr. Palmgren stated that he would be absent from the February 3, 2011, meeting.

28
 29 Mr. Miller stated that he would be absent from the February 17, 2011, meeting.

30
 31 **9. Audience Participation with respect to matters other than cases pending before the Board**

32
 33 None

34
 35 **10. Adjournment**

36
 37 **Ms. Capel moved, seconded by Mr. Palmgren to adjourn the meeting. The motion carried by voice**
 38 **vote.**

39
 40 The meeting adjourned at 7:03 p.m.

ZBA

DRAFT SUBJECT TO APPROVAL DRAFT

1/20/11

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Respectfully submitted

Secretary of Zoning Board of Appeals

CASE NO. 675-AT-10

SUPPLEMENTAL MEMORANDUM

January 26, 2011

Champaign
County
Department of



Brookens

Administrative Center

1776 E. Washington Street

Urbana, Illinois 61802

(217) 384-3708

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**, Zoning Administrator

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

Part A

1. In the first four un-numbered paragraphs of Section 8 clarify that nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as authorized herein.
2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots or combination of lots and portions of lots that individually do not meet any dimensional, geometric, lot access or other standards are brought into common ownership, that portions of said lots may be used separately or conveyed to a different owner provided that a variance is granted.

Part B

1. Revise paragraph 8.2.1 B. as follows:
Limit applicability to the total expansion since October 10, 1973.
Revise the limit on expansion of a nonconforming single family dwelling as follows:
A nonconforming single family dwelling which had less than 1,200 square feet of building floor area may expand up to a total floor area of 1,500 square feet provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (2) A nonconforming single family dwelling which had more than 1,200 square feet of building floor area may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (3) Eliminate the limit on the amount of accessory buildings.
2. Revise par. 8.2.1 C. so that the limit on expansion applies to the total expansion since Oct. 10, 1973.
3. Revise subsection 8.2.2 to provide that nonconforming dwellings may be moved on the lot as authorized in subsection 8.4.1.
4. In Subsection 8.2.3 clarify "ceases".

Part C

1. Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.
2. Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations and standards of the district provided that the new location is authorized by variance.

Part D

1. Revise Subsection 8.4.1 and 8.4.2 as follows:
 - a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1. provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - b. Authorize that a nonconforming dwelling may be reconstructed in the existing location if authorized by zoning use permit or a different location if authorized by variance provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - c. Authorize that expansion of a nonconforming dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction.
2. In Subsection 8.4.5 clarify "abandoned" and "discontinued".
3. In Subsection 8.4.6 provide for replacement of nonconforming single family dwelling.

Part E

1. Revise Subsection 8.6 as follows:
 - a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.
 - b. Authorize that a nonconforming dwelling has no limit on the value of repair or replacement that may occur within a 365 day period and that may include bearing walls.

Part F

1. In paragraph 9.1.2 C. require that for any Zoning Use Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in general what types of principal uses are authorized as either business uses or industrial uses.

Part G

1. In Section 3 revise the definitions of "NONCONFORMING LOT, STRUCTURE or USE" and "NONCONFORMING PREMISES" to only apply to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

STATUS

The case has been readvertised and revised as indicated in Attachment A. A Draft Finding of Fact will be available at the meeting.

ATTACHMENTS

A Revised Annotated Draft Ordinance

Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

Part A

- 1. In the first four un-numbered paragraphs of Section 8 clarify that nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as authorized herein.**

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

- 2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots or combination of lots and portions of lots that individually do not meet any dimensional, geometric, lot access or other standards are brought into common ownership, that portions of said lots may be used separately or conveyed to a different owner provided that a variance is granted.**

8.1.2 Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

~~strikeout~~ indicates text to be deleted

underlining indicates text that was previously proposed to be added

double underlining indicates new text not previously proposed to be added

Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

Part B

1. Revise paragraph 8.2.1 B. as follows:

- a. Limit applicability to the total expansion since October 10, 1973.
- b. Revise the limit on expansion of a nonconforming single family dwelling as follows:
 - (1) A nonconforming single family dwelling which had less than 1,200 square feet of building floor area may expand up to a total floor area of 1,500 square feet provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (2) A nonconforming single family dwelling which had more than 1,200 square feet of building floor area may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
 - (3) Eliminate the limit on the amount of accessory buildings.

B. ~~ANONCONFORMING SINGLE FAMILY DWELLINGS~~ which is a NONCONFORMING USE of land may be expanded by no more than 200 square feet and by construction of no more than one new ACCESSORY BUILDING or addition to an existing ACCESSORY BUILDING provided that the total area of such ACCESSORY BUILDING is not more than 650 square feet. as follows:

1. A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
2. A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
3. Expansion of existing or construction of any new ACCESSORY BUILDING shall conform to the regulations and standards for the DISTRICT in which it is located.

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

~~strikeout~~ indicates text to be deleted

underlining indicates text that was previously proposed to be added

double underlining indicates new text not previously proposed to be added

Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

2. **Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.**

C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

3. **Revise subsection 8.2.2 to provide that nonconforming dwellings may be moved on the lot provided that a variance is granted.**

8.2.2 No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

4. **In Subsection 8.2.3 clarify “ceases”.**

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 275 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by the posting of a sign on the front LOT LINE of the property, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

Part C

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.**

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations and standards of the district provided that the new location is authorized by variance.**

* indicates changes that were specifically authorized by the Committee of the Whole on 8/30/10

~~strikeout~~ indicates text to be deleted

underlining indicates text that was previously proposed to be added

double underlining indicates new text not previously proposed to be added

Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

- 8.3.3** Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Part D

- 1. Revise Subsections 8.4.1 and 8.4.2 as follows:**
- a. Authorize that a nonconforming single family dwelling may be expanded as authorized in subsection 8.2.1. provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
 - b. Authorize that a nonconforming single family dwelling may be reconstructed in the existing location if authorized by zoning use permit or a different location if authorized by variance provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
 - c. Authorize that expansion of a nonconforming single family dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction.**
- *8.4.1** No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:
- A. A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be enlarged, constructed, reconstructed, moved, or ALTERED without changing the USE as otherwise herein provided.**
 - B. As otherwise herein provided for structures other than A SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE).**
- 8.4.2** Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.
- 2. In Subsection 8.4.5 clarify “abandoned” and “discontinued”.**

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Attachment A Annotated Draft Ordinance
JANUARY 26, 2011

8.4.5 When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by the posting of a sign on the front LOT LINE of the property, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.

3. In Subsection 8.4.6 provide for replacement of nonconforming single family dwelling.

8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

Part E

1. Revise Subsection 8.6 as follows:

- a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.**
- b. Authorize that a nonconforming dwelling has no limit on the value of repair or replacement that may occur within a 365 day period and that may include bearing walls.**

***8.6 Repairs or Maintenance**

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

A. As otherwise herein provided; and

B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

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Part F

1. In paragraph 9.1.2 C. require that for any Zoning Use Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in general what types of principal uses are authorized as either business uses or industrial uses.

C. Issuance of Zoning Use Permit

1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING which is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.
-

Part G

1. In Section 3 revise the definitions of “NONCONFORMING LOT, STRUCTURE or USE” and “NONCONFORMING PREMISES” to only apply to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.

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CASE NO. 675-AT-10

SUPPLEMENTAL MEMORANDUM

February 9, 2011

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**, Zoning Administrator

Champaign
County
Department of



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

- Part A**
1. In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.
 2. Revise 8.1.2 to authorize that NC lots may be used separately if authorized by variance.
- Part B**
1. Revise 8.2.1 B. as follows:
 - a. Limit applicability to the total expansion since October 10, 1973;
 - b. Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4.
 - c. Eliminate the limit on the amount of accessory buildings.
 2. Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.
 3. Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.
 4. In 8.2.3 clarify "ceases".
- Part C**
1. Revise 8.3.1 to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.
 2. Revise 8.3.3 to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.
- Part D**
1. Revise 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.
 2. In 8.4.5 clarify "abandoned" and "discontinued".
 3. In 8.4.6 provide for replacement of a SF dwelling that is a NC use.
- Part E**
- Revise 8.6 to authorize the following:
- a. A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1.
 - b. A SF dwelling that is a NC use has no limit on the value of repair or replacement.
 - c. Any structure that is NC may be granted a variance to authorize a higher value of repair.
- Part F**
- In 9.1.2 C. require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.
- Part G**
- Revise Section 3 Definitions so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

*** NOTE: the description of the Request has been simplified from the actual legal advertisement but there has been no change to the legal description.**

STATUS

This case was continued from the January 20, 2011, meeting.

Attachment A is a short guide to the parts of this amendment. Attachment B is the Revised Annotated Draft Ordinance with notes that review important considerations.

The Draft Finding of Fact is attached. The preliminary staff recommendations are all positive. The Summary Finding of Fact on page 14 summarizes the staff recommendations. This is somewhat different than previous text amendments but is intended to be the new standard if the Board finds it acceptable.

This case may be ready for final action.

ATTACHMENTS

- A A Guide to the Parts of Case 675-AT-10
- B Revised Annotated Draft Ordinance With Notes
- C Preliminary Draft Finding of Fact (included separately)

Attachment A A Guide to the Parts of Case 675-AT-10

DRAFT

February 9, 2011

Amendment Part	Part of Zoning Ordinance Affected	Shortened Description	Degree of change - Direction of regulatory change	Type of approval req. (in Ordinance)
A.1.	First four paragraphs in Sec. 8	In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.	Minor - no reg. change	NONE
A.2.	8.1.2	Revise to authorize that NC lots may be used separately if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
* B.1.	8.2.1B.	Revise as follows: a. Limit applicability to the total expansion since October 10, 1973; b. Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4. c. Eliminate the limit on the amount of accessory buildings.	MAJOR - Relaxation	BY RIGHT or Discretionary (ZBA)
B.2.	8.2.1C.	Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.	MODERATE – Restriction	BY RIGHT
B.3	8.2.2	Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
B.4.	8.2.3	Revise to clarify "ceases"	Minor - no reg. change	BY RIGHT
C.1.	8.3.1	Revise to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
C.2.	8.3.3	Revise to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.	MAJOR - Relaxation	Discretionary (ZBA)
* D.1.	8.4.1 & 8.4.2	Revise to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.	MAJOR - Relaxation	BY RIGHT
D.2.	8.4.5	Revise to clarify "abandoned" and "discontinued".	Minor - no reg. change	BY RIGHT
D.3.	8.4.6	Revise to provide for replacement of a SF dwelling that is a NC use.	MAJOR - Relaxation	BY RIGHT
* E.	8.6	Revise to authorize the following: a. A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1. b. A SF dwelling that is a NC use has no limit on the value of repair or replacement. c. Any structure that is NC may be granted a variance to authorize a higher value of repair.	MAJOR - Relaxation	BY RIGHT
F.	9.1.2 C.	Revise to require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.	Minor - no reg. change	BY RIGHT
G.	Sec. 3 Definitions	Revise so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment.	Minor - no reg. change	NONE

Notes

* change specifically authorized by Committee of the Whole on 9/07/10

Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part A

- ‡1. **In the first four un-numbered paragraphs of Section 8 clarify that nonconforming dwellings may be expanded as authorized herein.**

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

Notes: This change is really nothing more than Ordinance housekeeping and should have been done as part of 847-AT-93 Part C.

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part A (continued)

‡2. ~~Revise subsection 8.1.2 to authorize that once two or more contiguous lots or combination of lots and portions of lots that individually do not meet any dimensional, geometric, lot access or other standards are brought into common ownership, that portions of said lots~~ nonconforming lots may be used separately or conveyed to a different owner provided that a variance is granted. if authorized by variance.

8.1.2 Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: The Committee of the Whole did not authorize this change. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights.

Nonconforming lots of record are far more widespread than are single family dwellings that are nonconforming uses. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may to some small degree reduce the amount of best prime farmland that would otherwise be converted for development. The ability to use nonconforming lots separately make also make it easier to redevelop areas like Wilber Heights.

The Zoning Board of Appeals (ZBA) has in some instances authorized variances to allow nonconforming lots to be used separately. Two such related cases were 334-V-02 and 335-V-02 which were on property located in Penfield. The minimum lot area required in those cases in which public water was available but there was no public sewer was 20,000 square feet. Case 334-V-02 was for a proposed lot with 13,260 square feet of area (a 34% variance) and Case 335-V-02 was for a proposed lot of 17,160 square feet in area (a 14% variance) that already had a dwelling and a septic system. A handout from those cases illustrating the distribution of zoning lot sizes in Penfield was distributed at the December 16, 2010, public hearing for this case. As reviewed in the Summary of Evidence for Case 334-V-02, 50% of the 86 other properties in Penfield were smaller than the smallest proposed lot. In those cases the Board contacted the Champaign County Health Department who advised that lot size probably was not critical in Penfield given that most of the soils there were not suitable for septic systems; and a Class I Aerobic Treatment Plant was would probably be the only feasible wastewater treatment option; and a public official in the township had previously agreed to maintain a tile to serve as an outlet for a Class I Aerobic Treatment Plant. The variances were approved.

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part A. 2. (continued)

Paragraph 9.1.9 C. of the Zoning Ordinance requires that no variance can be approved unless the ZBA finds that the variance complies with six criteria and one of those criteria is the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

The Ordinance could even be further amended to require special findings for any variance for the separate use of nonconforming lots of record but even if that is not required the existing criteria related to public health, safety, or welfare will still require that the ZBA address the public health concerns.

The Supplemental Memorandum of 1/06/11 included a table that compared the existing Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). The existing Champaign County requirements are the most restrictive because McLean and Peoria have similar regulations regarding nonconforming lots but neither county prohibits this kind of variance and Sangamon County apparently has no similar requirement.

*This change should **HELP ACHIEVE** Goal 3 Prosperity and the goals and policies for both urban land use (policy 5.1.2) and agriculture (policy 4.1.4) in the Land Resource Management Plan (LRMP).*

(end of Part A)

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part B

1. Revise paragraph 8.2.1 B. as follows:

- a. Limit applicability to the total expansion since October 10, 1973.
- b. Revise Increase the limit on expansion of a ~~nonconforming~~ single family dwelling that is a nonconforming use of land as follows:

(1) ~~A nonconforming single family dwelling that is a nonconforming use that is a nonconforming use which had less than 1,200 square feet of building floor area may expand up to a total floor area of 1,500 square feet provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~

(2) ~~A nonconforming single family dwelling that is a nonconforming use which had more than 1,200 square feet of building floor area may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~

(3) Eliminate the limit on the amount of accessory buildings.

B. ~~ANONCONFORMING SINGLE FAMILY DWELLINGS~~ that is a NONCONFORMING USE of land may be expanded by no more than 200 square feet and by construction of no more than one new ~~ACCESSORY BUILDING~~ or addition to an existing ~~ACCESSORY BUILDING~~ provided that the total area of such ~~ACCESSORY BUILDING~~ is not more than 650 square feet. as follows:

1. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.

* 2. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part B. 1. (continued)

3. Expansion of existing or construction of any new ACCESSORY BUILDING or STRUCTURE shall conform to the regulations and standards for the DISTRICT in which it is located.

Notes: As reviewed in the Preliminary Memorandum, the Committee of the Whole authorized increasing this limit to "200 square feet or 25% of building floor area, whichever is greater" at their meeting on 9/07/10. Following that meeting the Zoning Administrator had a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. One of the items discussed was that many of the original homes in Wilber Heights were 10' by 50' mobile homes for which a 200 square feet addition is a very small improvement. Based on that discussion the Zoning Administrator increased the expansion to allow any single family dwelling that is a nonconforming use to expand up to 1,500 square feet in building area but a variance is required if "...there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4."

The Committee of the Whole did not authorize increasing the allowable expansion to a total of 1,500 square feet and that change is much less restrictive than what the Committee authorized.

The Committee of the Whole also did not authorize that the limit on expansion applies relative to what existed on October 10, 1973, and that change also resulted from discussions that the Zoning Administrator had with Mr. Lemke in which both agreed that the limits in the Ordinance should be as clearly stated as possible. This clarification is consistent with all of the documentation of Case 847-AT-93 Part C in which expansion of single family dwellings that are nonconforming uses was first added to the Ordinance.

The Committee of the Whole also did not authorize adding the requirement for a variance in such instances (even when the addition is only 200 square feet) and that change is more restrictive than the current Ordinance.

The Committee of the Whole also did not authorize eliminating the limit on expansion of accessory buildings and that change also resulted from discussions that the Zoning Administrator had with Mr. Lemke. In the case of Wilber Heights it is not clear why there should be any limit on accessory buildings or structures other than what is already required for the zoning district.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to the expansion of single family dwellings that are nonconforming uses, that Memorandum states the following:

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part B. 1. (continued)

- *McLean County is the least restrictive with no limits on expansion of existing nonconforming dwellings and requires no discretionary review.*
- *Peoria County also has no limit on expansion but does require a special use permit to allow a nonconforming dwelling to expand.*
- *Sangamon County limits the amount of expansion to no more than 25% of the area occupied on the effective date of the Ordinance or amendment which is similar to what is proposed here for Champaign County but Sangamon County also requires a variance (discretionary approval) by their Zoning Board of Appeals (ZBA). The Sangamon County regulations are more restrictive than what is proposed for Champaign County.*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

2. Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.

- C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: This is identical to part of the change proposed in paragraph B for single family dwellings that are nonconforming uses and is consistent with the documentation of Case 847-AT-93 Part C in which expansion of these kind of nonconforming uses was first added to the Ordinance.

The Committee of the Whole did not authorize this change but it is consistent with the intent of the Ordinance and adds an important clarification that could otherwise lead to disagreements.

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part B (continued)

‡3. **Revise subsection 8.2.2 to provide that ~~noneonforming a single family dwelling that is a nonconforming use may be moved on the lot provided that a variance is granted if authorized by variance.~~**

8.2.2 No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

Notes: The Committee of the Whole did not authorize this change but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses. In areas like Wilber Heights it is reasonable to assume that in some instances it might be better to relocate the dwelling to a different part of the property as part of any reconstruction. The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) will be taken into account and that could facilitate better neighbor relations improvements in the neighborhood.

The last sentence makes it clear that expansion authorized in subsection 8.2.1 should not be considered "relocation".

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to the expansion of single family dwellings that are nonconforming uses, the table indicates that the existing Champaign County regulations may be the most restrictive, as follows:

- *McLean County is similar to Champaign County except that McLean County apparently does not prohibit variances from this requirement.*
- *Peoria County apparently authorizes this by means of a special use permit.*
- *Sangamon County apparently has no similar provision and also does not prohibit variances in regards to nonconformities.*

*Because this change could facilitate better neighbor relations between residential and non-residential uses in areas like Wilber Heights, it will **HELP ACHIEVE** Goal 3 of the LRMP.*

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Attachment B Annotated Draft Ordinance With Notes
FEBRUARY 9, 2011

Part B (continued)

4. In Subsection 8.2.3 clarify “ceases”.

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

Notes: The Committee of the Whole did not authorize and this change adds no new requirement or change from current practice. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. This change adds an important clarification that could otherwise lead to disagreements.

Note that compared to previous versions of the Draft Amendment, this version has been revised so that posting a sign on the front property line is not the only means of actively marketing a property for sale or rent. However, this change makes it clear that there must be some verifiable means of proof that the property is being marketed in order to protect the nonconforming rights. In this revised version this change adds no new requirement or change from current practice.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). All three counties have requirements that are similar to Champaign County’s Sec. 8.3 but none of those counties prohibit variances from those requirements.

(end of Part B)

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Part C

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.**

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: The Committee of the Whole did not authorize this change but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses.

Section 8.3 establishes the regulations for “nonconforming structures” which are structures that do not meet some regulation or standard related to the structure itself rather than what the structure may be used for. Subsection 8.3.2 has always authorized variances to rebuild nonconforming structures.

It seems reasonable to give the ZBA the authority to approve this kind of variance since in the future single family dwellings that are nonconforming uses may be rebuilt. This authority may be of particular importance in areas like Wilber Heights with small lots and a mixture of residential and industrial uses. Under such conditions it might be better to relocate the dwelling to a different part of the property as part of any reconstruction and given the small nonconforming lot sizes and narrow lot widths it may be impossible to relocate without increasing nonconformity.

The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) will be taken into account.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement the table indicates the following:

- *All three counties have requirements similar to Champaign County except that none of those counties appear to prohibit variances from the requirement.*
- *Additionally, Peoria County authorizes that a nonconforming structure may be allowed to continue or expand if authorized by special use permit.*

*The flexibility provided by this change would make it possible to improve the overall environment in areas like Wilber Heights which would benefit both residential and non-residential uses and thus it will **HELP ACHIEVE** Goal 3 of the LRMP.*

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FEBRUARY 9, 2011

Part C (continued)

‡2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations and standards of the district provided that the new location is if authorized by variance.**

8.3.3 Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Notes: The Committee of the Whole did not authorize this change.

The background and justification for this change are similar to those for #C.1. above. The comparison to other Illinois counties is also similar except that Sangamon County apparently has no similar requirement and none of those counties prohibit variances from this requirement.

(end of Part C)

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Part D

‡1. Revise Subsections 8.4.1 and 8.4.2 as follows:

- a. ~~Authorize that a nonconforming single family dwelling that is a nonconforming use may be expanded as authorized in subsection 8.2.1. provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~
- b. ~~Authorize that a nonconforming single family dwelling that is a nonconforming use may be reconstructed in the existing location if authorized by zoning use permit or a different location if authorized by variance provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.~~
- c. ~~Authorize that expansion of a nonconforming single family dwelling that is a nonconforming use as authorized in subsection 8.2.1 may occur at the same time as reconstruction. to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.~~

*8.4.1 No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:

- A. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be enlarged, constructed, reconstructed, moved, or ALTERED without changing the USE to a permitted USE and may also be enlarged or moved without changing the USE as otherwise herein provided.
- B. As otherwise herein provided for structures used for other than A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE).

8.4.2 Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.

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FEBRUARY 9, 2011

Part D. 1. (continued)

Notes: As reviewed in the Preliminary Memorandum to this case, the Committee of the Whole authorized changing subsection 8.4.1. The change proposed here is somewhat different in format but the intention is the same. The change to 8.4.2 is necessary for consistency with subsection 8.2 since that subsection authorizes expansion which is literally "extending a use to occupy land outside of the structure".

Subsection 8.4 establishes the regulations for structures that are used for nonconforming uses whereas subsection 8.2 establishes the regulations for the nonconforming use of land. A single family dwelling that is a nonconforming use can be both (1) a nonconforming use of land and also (2) a structure that is used for a nonconforming use. The regulations by which a single family dwelling that is a nonconforming use can be enlarged, constructed, reconstructed, moved, or altered without changing the use are proposed in subsection 8.2 and subsection 8.6 and should not be repeated here but simply referenced. The proposed text is somewhat vague but that is purposefully done so as not to make unintentional changes.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement the Memorandum and table make clear that the existing Champaign County requirement is the most restrictive because each of the other three counties all allow nonconforming dwellings to be reconstructed to some degree as follows:

- *McLean County allows a nonconforming dwelling to be reconstructed for any reason and without either a variance or a special use permit (see note M3 in the table).*
- *Peoria County requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the table).*
- *Sangamon County only allows nonconforming dwellings to be reconstructed if damaged due to catastrophe and if the dwelling is owner occupied (see notes S4, S5, and S7 in the table).*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

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Part D. (continued)

2. In Subsection 8.4.5 clarify “abandoned” and “discontinued”.

8.4.5 When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.

Notes: The Committee of the Whole did not authorize this change and this change adds no new requirement or change from current practice.

This change is nearly identical to the change proposed in Part B. 4 and the background and justification for this change are similar to those.

3. In Subsection 8.4.6 provide for replacement of a ~~nonconforming~~ single family dwelling that is a nonconforming use.

8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

Notes: The Committee of the Whole did not authorize and this but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses.

*The Zoning Ordinance defines “premises” as a lot or tract of land and any structure located thereon. In areas like Wilber Heights many properties consist of nonconforming lot(s) of record and a nonconforming structure. **If this change is not made the rights to the nonconforming use would be lost during the effort to reconstruct the dwelling as authorized in subsection 8.2.***

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement, the table indicates that all three counties are less restrictive than the current Champaign County regulations, as follows:

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Part D. (continued)

- *Sangamon County allows nonconforming dwellings to be reconstructed if damaged due to catastrophe and if the dwelling is owner occupied (see notes S4, S5, and S7 in the table).*
- *McLean County allows a nonconforming dwelling to be reconstructed for any reason and without either a variance or a special use permit (see note M3 in the table).*
- *Peoria County requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the table).*

(end of Part D)

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Part E

‡1. Revise Subsection 8.6 to authorize as the following:

- a. ~~Authorize that a noneonforming single family dwelling that is a nonconforming use may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.~~
- b. ~~Authorize that a noneonforming single family dwelling that is a nonconforming use has no limit on the value of repair or replacement that may occur within a 365 day period and that may include bearing walls.~~
- c. Any structure that is nonconforming may be granted a variance to authorize a higher value of repair or replacement including for bearing walls or other structural features.

*8.6 Repairs or Maintenance

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

- A. As otherwise herein provided; and
- B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.
- C. On any STRUCTURE that is NONCONFORMING a VARIANCE may be granted by the BOARD to authorize a higher value of repair or replacement including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

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Part E. (continued)

Notes: As reviewed in the Preliminary Memorandum to this case, the Committee of the Whole authorized changing subsection 8.6. The change proposed here in paragraphs A and B are somewhat different in format but the intention is the same.

*The change in paragraph C. is actually consistent with the current provisions of the Ordinance. **Subsection 8.3.2 has always authorized variances to rebuild nonconforming structures** but for some reason this limitation on repair has always applied. The limit on repair of nonconforming structures contradicts subsection 8.3.2 which has always given the ZBA the ability to grant a variance to rebuild a nonconforming structure.*

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this comparison the Memorandum and table make clear that the existing Champaign County requirement is the most restrictive because none of the other counties limit the amount of repair authorized on nonconforming dwellings, as follows:

- *McLean County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note M3).*

- *Peoria County does not limit the value of remodeling for a nonconforming dwelling provided that a special use permit is granted (see note P4 in the table).*

- *Sangamon County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note S8).*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

(end of Part E)

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Part F

‡1. ~~In paragraph 9.1.2 C. require that for any Zoning Use Permit authorizing construction as authorized in Section 8 on a single family dwelling in a zoning district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in general what types of principal uses are authorized as either business uses or industrial uses. to provide a notice of nonconforming zoning on any permit for a single family dwelling in a district in which a single family dwelling is not an authorized principal use.~~

C. Issuance of Zoning Use Permit

1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.

Notes: The Committee of the Whole did not authorize and the only requirement that this change adds is on the County Zoning Administrator.

This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. This change adds an important notice to permits for additions, expansions, or reconstruction of a single family dwelling that is a nonconforming use. The notice is intended to make the homeowner aware of the nonconformities in the zoning so that the chance for future problems or surprises is reduced.

The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). No other county had a similar requirement to this.

(end of Part F)

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Part G

- ‡1. In Section 3 ~~revise the definitions of “NONCONFORMING LOT, STRUCTURE or USE” and “NONCONFORMING PREMISES” to only apply~~ Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.

Notes: The Committee of the Whole did not authorize this change and this change adds no new requirement.

This change is consistent with the approved changes.

The Supplemental Memorandum of 1/06/11 reviewed a comparison of the ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). Sangamon and Peoria counties have definitions that are similar to the proposed but McLean uses a definition similar to the existing ordinance.

(end of Part G)

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PRELIMINARY DRAFT

675-AT-10

**FINDING OF FACT
AND FINAL DETERMINATION
of**

Champaign County Zoning Board of Appeals

Final
Determination: **{RECOMMEND ENACTMENT / RECOMMEND DENIAL}**

Date: **February 17, 2011**

Petitioner: **Zoning Administrator**

Request:

Amend the Champaign County Zoning Ordinance as follows*:

- Part A**
- 1.** In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.
 - 2.** Revise 8.1.2 to authorize that NC lots may be used separately if authorized by variance.
- Part B**
- 1.** Revise 8.2.1 B. as follows:
 - a.** Limit applicability to the total expansion since October 10, 1973;
 - b.** Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4.
 - c.** Eliminate the limit on the amount of accessory buildings.
 - 2.** Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.
 - 3.** Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.
 - 4.** In 8.2.3 clarify “ceases”.
- Part C**
- 1.** Revise 8.3.1 to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.
 - 2.** Revise 8.3.3 to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.
- Part D**
- 1.** Revise 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.
 - 2.** In 8.4.5 clarify “abandoned” and “discontinued”.
 - 3.** In 8.4.6 provide for replacement of a SF dwelling that is a NC use.
- Part E**
- Revise 8.6 to authorize the following:
- a.** A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1.
 - b.** A SF dwelling that is a NC use has no limit on the value of repair or replacement.
 - c.** Any structure that is NC may be granted a variance to authorize a higher value of repair.
- Part F**
- In 9.1.2 C. require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.
- Part G**
- Revise Section 3 Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

*** NOTE: the description of the Request has been simplified from the actual legal advertisement.**

PRELIMINARY DRAFT FINDING OF FACT

FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 16, 2010; January 6, 2011; January 20, 2011; and February 17, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
 - A. The Wilber Heights neighborhood is an area of approximately 36 acres located in Section 31 of Somer Township.
 - B. Wilber Heights is characterized by highly intermixed residential, commercial, and industrial land uses. The area was developed as a single family residence development in 1928 in what was then a semi-rural location.
 - C. Under the City of Champaign's 1961 zoning ordinance existing single family residences were made nonconforming but mobile homes were permitted in the City's industrial classifications.
 - D. The County zoned the western three-quarters of the area I-1 Light Industry and the eastern quarter I-2 Heavy Industry in 1973 following the pattern established by the City of Champaign.
 - E. The County's decision to zone the area industrial extended the nonconforming status of the residential uses in Wilbur Heights. Nonconforming uses may not be expanded or relocated on a lot. Consequently homeowners in Wilber Heights may not add to their residences or construct accessory buildings. The intent of these restrictions on nonconforming uses is to discourage their survival so that sooner or later they will be abandoned and the land converted to more appropriate conforming land uses.
 - F. The zoning of the Wilber Heights neighborhood was reconsidered in a rezoning case filed in 1977 (Case 236-AM-77). That case sought to rezone the entire neighborhood to R-2 Single Family Residence. The rezoning was denied due to its impact on the numerous commercial and industrial uses in the neighborhood by rendering them nonconforming.
 - G. Despite being made nonconforming almost 40 years ago many residential uses survive in Wilber Heights. Abandonment and conversion of these nonconformities is proceeding very slowly. This is likely due to the poor condition of infrastructure in the area, the lack of sanitary sewer, and the very small size of the residential lots. This area is entirely surrounded by land, developed or zoned for intense commercial or industrial use.

* ***BOLD ITALICS WITH ASTERISK*** indicate staff recommendation that the ZBA must either approve or modify

Item 2 (continued)

- H. A front page article appeared in the Sunday, July 25, 2010, edition of *The News Gazette* regarding Wilber Heights and the problems that the Champaign County Zoning Ordinance has caused for the residents.
 - I. ELUC discussed Wilber Heights in August of 1992, however, two important zoning problems were not mentioned in the staff memo to ELUC from August 6, 1992. These two problems were the focus of the News Gazette article, as follows:
 - (1) The prohibition on reconstruction of a dwelling that is a nonconforming use; and
 - (2) The annual limit on ordinary repairs to no more than 10% of the current replacement value for a dwelling that is a nonconforming use.
 - K. At their September 7, 2010, meeting the Champaign County Committee of the Whole authorized a text amendment to the Champaign County Zoning Ordinance that would remove the limit on annual maintenance and authorize reconstruction of single family dwellings that are nonconforming uses.
 - J. The proposed amendment will change the Zoning Ordinance requirement for any SINGLE FAMILY DWELLING which is a NONCONFORMING USE and not just those in Wilber Heights.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

SUMMARY OF THE PROPOSED AMENDMENT

- 4. The proposed amendment is attached to the Finding of Fact as it will appear in the Zoning Ordinance.

GENERALLY REGARDING THE LRMP GOALS, OBJECTIVES, AND POLICIES

- 5. The *Champaign County Land Resource Management Plan* (LRMP) was adopted by the County Board on April 22, 2010. The LRMP Goals, Objectives, and Policies were drafted through an inclusive and public process that produced a set of ten goals, 42 objectives, and 100 policies, which are currently the only guidance for amendments to the *Champaign County Zoning Ordinance*, as follows:
 - A. The Purpose Statement of the LRMP Goals, Objectives, and Policies is as follows:
 - “It is the purpose of this plan to encourage municipalities and the County to protect the land, air, water, natural resources and environment of the County and to encourage the use of such resources in a manner which is socially

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PRELIMINARY DRAFT FINDING OF FACT

Item 5 (continued)

and economically desirable. The Goals, Objectives and Policies necessary to achieve this purpose are as follows:”

- B. The LRMP defines Goals, Objectives, and Polices as follows:
 - (1) Goal: an ideal future condition to which the community aspires
 - (2) Objective: a tangible, measurable outcome leading to the achievement of a goal
 - (3) Policy: a statement of actions or requirements judged to be necessary to achieve goals and objectives
- C. The Background given with the LRMP Goals, Objectives, and Policies further states, “Three documents, the *County Land Use Goals and Policies* adopted in 1977, and two sets of *Land Use Regulatory Policies*, dated 2001 and 2005, were built upon, updated, and consolidated into the LRMP Goals, Objectives and Policies.”

REGARDING LRMP GOALS

- 6. LRMP Goal 1 is entitled “Planning and Public Involvement” and states that “Champaign County will attain a system of land resource management planning build on broad public involvement that supports effective decision making by the County.” The proposed amendment appears to **HELP ACHIEVE** * Goal 1 for the following reason:

- A. The only objective under Goal 1 that is related to the proposed amendment is Objective 1.1 that is entitled “Guidance on Land Resource Management Decisions”, and states, “Champaign County will consult the LRMP that formally establishes County land resource management policies and serves as an important source of guidance for the making of County land resource management decisions.”

The proposed amendment appears to **HELP ACHIEVE** * objective 1.1.

- 7. LRMP Goal 2 is entitled “Governmental Coordination” and states “Champaign County will collaboratively formulate land resource and development policy with other units of government in areas of overlapping land use planning jurisdiction.” Goal 2 is relevant to the proposed amendment to the extent that municipalities with comprehensive plans are able to protest any proposed amendment to the Zoning Ordinance and those protests must either be defeated by a supermajority of the County Board or alternatively the County Board and protesting municipality find a compromise that has no municipal protest and that is acceptable to a simple majority of the County Board. Any disagreements over land use policy must be settled by elected bodies and those bodies can only be heard late in the text amendment process.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

Item 7 (continued)

It is assumed that any disagreements that arise over the proposed text amendment will be settled through what amounts to a collaborative process and at this time the proposed amendment appears to provisionally warrant a **HELP ACHIEVE** for goal 2.

8. LRMP Goal 3 is entitled “Prosperity” and states “Champaign County will encourage economic growth and development to ensure prosperity for its residents and the region.” Goal 3 has three objectives and no policies. The proposed amendment appears to **HELP ACHIEVE** * Goal 3 for the following reasons:

A. Regarding the Wilber Heights neighborhood specifically:

- (1) The industrial designation for Wilber Heights was apparently consistent with Champaign City zoning because at the time the City zoning ordinance apparently authorized mobile homes in industrial zoning districts.
- (2) As documented in Zoning Case 236-AM-77 in which Wilber Heights was proposed to be rezoned to the R-2 Single Family Residence District and which ultimately failed, retaining the industrial zoning designation for Wilber Heights was intended to protect existing businesses and that is directly related to the general goal of prosperity.

B. Regarding all areas similar to Wilber Heights in which single family dwellings are nonconforming uses:

- (1) There are likely many reasons why areas like Wilber Heights have not been converted to all industrial or business uses. Small nonconforming lots of record are typically found in such areas and small lot sizes generally make redevelopment very difficult because while property owners can theoretically sell their properties for industrial development it generally requires many multiple lots to provide an adequate area for a modern business or industrial use. At the August 13, 1992, Environment and Land Use Committee meeting the Champaign County Zoning Administrator stated the following in regard to Wilber Heights in particular:

The area was platted into small residential lots but individual properties are usually too small to be used for permitted commercial or industrial uses so this keeps people from selling their individual property for these uses, and realizing the full value of their property unless someone was able to assemble a number of these parcels to offer for commercial or industrial use.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Item 8.B. (continued)

- (2) Over time the effect of the Zoning Ordinance regulations regarding nonconforming uses has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in areas similar to Wilber Heights. The overall effect has been to lessen prosperity.
 - C. The proposed amendment is intended to eliminate the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning- no new residences can be constructed and existing residences can have only limited expansion. Considered in that context, parts B, C, D, and E of the proposed amendment **HELP ACHIEVE** *Goal 3.
 - D. It may also be that the provisions of Part A.2. of the proposed amendment that authorizes that nonconforming lots of record may be used separately if authorized by variance, will also **HELP ACHIEVE** *the Goal for Prosperity by making redevelopment of areas like Wilber Heights easier.
9. LRMP Goal 4 is entitled “Agriculture” and states, “Champaign County will protect the long term viability of agriculture in Champaign County and its land resource base.” The proposed amendment appears to **HELP ACHIEVE** * Goal 4 for the following reasons:
- A. Part A.2. of the proposed amendment authorizes that nonconforming lots of record may be used separately if authorized by variance. The greatest concentrations of nonconforming lots of record are in the unincorporated areas surrounding the larger municipalities and within existing unincorporated settlements such as Dewey, Penfield, Seymour, etc. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may in some small degree reduce the amount of best prime farmland that would otherwise be converted for development. In regards to Agriculture this amendment should **HELP ACHIEVE*** the following policy:
 - (1) Policy 4.1.4 that states as follows:

The County will guarantee landowners of one or more lawfully created lots that are recorded and lawfully conveyed and are considered a good zoning lot (ie, a lot that meets County zoning requirements in effect at the time the lot is created) the by right development allowance to establish a single family dwelling or non-agricultural land use on each such lot, provided that current public health, safety, and transportation standards are met.

Item 9.A. (continued)

- (2) Public health and safety concerns are reviewed under item 11 of this Finding of Fact. That discussion finds that these concerns are adequately addressed by the proposed amendment.
10. LRMP Goal 5 is entitled “Urban Land Use” and states, “Champaign County will encourage urban development that is compact and contiguous to existing cities, villages, and existing unincorporated settlements.” The proposed amendment appears to **HELP ACHIEVE** * Goal 5 for the following reasons:
 - A. Urban land is defined in the Appendix of Volume 2 of the LRMP as land within the County that is either within municipal corporate limits or unincorporated land that is designated for future urban land use on an adopted municipal comprehensive plan, adopted intergovernmental plan or special area plan and served by or located within the service area of a public sanitary sewer system.
 - B. Part A.2. of the proposed amendment authorizes that nonconforming lots of record may be used separately if authorized by variance. The greatest concentrations of nonconforming lots of record are in the unincorporated areas surrounding the larger municipalities and within existing unincorporated settlements such as Dewey, Penfield, Seymour, etc. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may in some small degree reduce the amount of best prime farmland that would otherwise be converted for development. In regards to Urban Land Use this amendment should **HELP ACHIEVE*** the following policy:
 - (1) Policy 5.1.2 that states as follows:
 - a. The County will encourage that only compact and contiguous discretionary development occur within or adjacent to existing villages that have not yet adopted a municipal comprehensive plan.
 - b. The County will require that only compact and contiguous discretionary development occur within or adjacent to existing unincorporated settlements.
11. LRMP Goal 6 is entitled “Public Health and Safety” and states “Champaign County will ensure protection of the public health and public safety in land resource management decisions.” The proposed amendment appears to **HELP ACHIEVE** * Goal 6 for the following reasons:
 - A. Policy 6.1.2 of the LRMP states that the County will ensure that the proposed wastewater disposal and treatment systems of discretionary development will not endanger public health, create nuisance conditions for adjacent uses, or negatively impact surface or groundwater quality.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Item 11.A. (continued)

The proposed amendment appears to **HELP ACHIEVE** * policy 6.1.2 for the following reasons:

- (1) Part B1 of the proposed amendment allows very small single family dwellings that are nonconforming uses to be expanded so as to provide a more modern home but a variance is required if "...there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4."
 - (2) Most areas like Wilber Heights are not served by a sanitary sewer and development of the property must provide for an adequate septic system particularly if there is more than one principal use on the property.
 - (3) Requiring a variance allows the Zoning Board of Appeals (ZBA) to make sure that building expansion does not result in a septic problem that could have been avoided.
12. LRMP Goal 7 is entitled "Transportation" and states "Champaign County will coordinate land use decisions in the unincorporated area with the existing and planned transportation infrastructure and services." Goal 7 is **NOT RELEVANT*** to the proposed amendment because it does not address transportation infrastructure nor should the proposed amendment create any problems for existing transportation infrastructure.
13. LRMP Goal 8 is entitled "Natural Resources" and states, "Champaign County will strive to conserve and enhance the County's landscape and natural resources and ensure their sustainable use." Goal 8 is **NOT RELEVANT*** to the proposed amendment because the proposed amendment does not address natural areas or natural resources nor should it lead to the decline of County's landscape and natural resources.
14. LRMP Goal 9 is entitled "Energy Conservation" and states "Champaign County will encourage energy conservation, efficiency, and the use of renewable energy sources." The proposed amendment appears to **HELP ACHIEVE** * Goal 9 for the following reasons:
- A. Objective 9.3 of the LRMP states the County will encourage land use and transportation planning policies that maximize energy conservation and efficiency. The proposed amendment appears to **HELP ACHIEVE** * objective 9.3 for the following reasons:
 - (1) Part D of the proposed amendment eliminates the prohibition in section 8.4 on replacement of a single family dwelling that is a nonconforming use thus making it possible to replace an older energy inefficient home with a newer more energy efficient home.

Item 14. A. (continued)

- (2) Part E of the proposed amendment eliminates the limit on repair in section 8.6 so that there are no limits on repair of a single family dwelling that is a nonconforming use thus making it possible to upgrade an older energy inefficient home with energy efficient remodeling unconstrained by the Zoning Ordinance.
15. LRMP Goal 10 is entitled “Cultural Amenities” and states “Champaign County will promote the development and preservation of cultural amenities that contribute to a high quality of life for its citizens.” Goal 10 is **NOT RELEVANT*** to the proposed amendment because the proposed amendment only relates to existing non-conforming structures and properties.

REGARDING THE PURPOSE OF THE ZONING ORDINANCE

16. The proposed amendment appears to **HELP ACHIEVE *** the purpose of the Zoning Ordinance as established in Section 2 of the Ordinance for the following reasons:
- A. Paragraph 2.0 (b) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to conserve the value of land, BUILDINGS, and STRUCTURES throughout the COUNTY.
 - (1) As reviewed in Finding of Fact item 8, the likely effect of the original and existing Zoning Ordinance regulations regarding single family dwellings that are NONCONFORMING USES has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in the area.
 - (2) The Champaign County Zoning Ordinance does not have to be so restrictive regarding repair and replacement of single family dwellings that are NONCONFORMING USES. Relevant considerations are the following:
 - (a) There is nothing in the Illinois Compiled Statutes that requires a county zoning ordinance to be so restrictive in terms of single family dwellings that are NONCONFORMING USES.
 - (b) It is difficult to generalize from Illinois case law but at this time there is no obvious reason in Illinois case law for a county zoning ordinance to be so restrictive in terms of single family dwellings that are NONCONFORMING USES.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Item 16. A. (continued)

- (c) The Zoning Administrator compared the existing Champaign County Zoning Ordinance restrictions on single family dwellings that are **NONCONFORMING USES** to the restrictions on nonconforming dwellings in three comparable Illinois counties (McLean County, Peoria County, and Sangamon County) in the Supplemental Memorandum dated January 26, 2011. The comparison revealed the following:
- i. The other three counties all allow nonconforming dwellings to be reconstructed to some degree whereas Champaign County does not.
 - ii. The other three counties do not limit the amount of annual repair authorized on nonconforming dwellings although Peoria County does require a Special Use Permit and Champaign County limits the annual repair to no more than 10% of the replacement value.
 - iii. Two of the counties (McLean and Peoria) have no limit on the expansion of nonconforming dwellings unlike Champaign County which currently limits the expansion to 200 square feet. Sangamon County requires a variance to allow a nonconforming dwelling to expand and also limits the expansion to 25% of the area occupied on the effective date of the Ordinance or amendment. Sangamon County could be considered somewhat more restrictive than Champaign County because if the original dwelling was a small home (or small mobile home) of no more than 800 square feet the 25% limit is comparable or less than the current Champaign County limit of 200 square feet and the variance requires a public hearing. However, for nonconforming dwellings that were originally larger than 800 square feet this will result in a greater square footage expansion than currently allowed by Champaign County.

- (3) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the January 6, 2011, public hearing as follows:
- (a) He said that the value of the properties in the neighborhood is going down because the homes and accessory buildings cannot be rebuilt or expanded.
 - (b) He said that no one is going to purchase property in Wilber Heights if they are not able to rebuild a structure that is destroyed.

B. Paragraph 2.0 (e) of the Ordinance states that one purpose of the zoning regulations and standards have been adopted and established to promote the public health, safety, comfort, morals, and general welfare.

- (1) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the December 16, 2010, public hearing as follows:

* ***BOLD ITALICS WITH ASTERISK*** indicate staff recommendation that the ZBA must either approve or modify

Item 16. B. (continued)

- (a) He asked the Board what they were supposed to do if their house was destroyed by fire and they were not allowed to rebuild it.
 - (2) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the January 6, 2011, public hearing as follows:
 - (a) He said that the property owners in the neighborhood are in a no-win situation and it has been this way for years.
 - (3) As reviewed in Finding of Fact item 8, the likely effect of the original and existing Zoning Ordinance regulations regarding single family dwellings that are **NONCONFORMING USES** has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in the area. The combined effects of less allowable maintenance and no possible replacement can be that buildings fall into a permanent state of disrepair.
 - (4) The proposed amendment will eliminated the limit on repair of single family dwellings that are **NONCONFORMING USES** and also allow complete replacement of single family dwellings that are **NONCONFORMING USES**.
- C. Paragraph 2.0 (j) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to divide the entire County into districts of such number, shape, area, and such different classes according to the use of land, buildings, and structures, intensity of the use of lot area, area of open spaces, and other classification as may be deemed best suited to carry out the purpose of the ordinance.

The proposed amendment will not change the status quo in that areas like Wilber Heights will retain their non-residential designation and new non-residential land uses can continue to be established.

- D. Paragraph 2.0 (k) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to fix regulations and standards to which buildings, structures, or uses therein shall conform.

The proposed amendment will not change the status quo and areas like Wilber Heights will retain their non-residential designation with specific regulations and standards but it will change parts of the Ordinance that have resulted in long standing problems for owners of single family dwellings that are **NONCONFORMING USES**

PRELIMINARY DRAFT FINDING OF FACT

Item 16. (continued)

- E. Paragraph 2.0 (l) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prohibit uses, buildings, or structures incompatible with the character of such districts.

The proposed amendment will not change the status quo and areas like Wilber Heights will retain their non-residential designation and the establishment of additional dwellings will continue to be prohibited.

The proposed amendment will change parts of the Ordinance that have resulted in long standing problems for owners of single family dwellings that are **NONCONFORMING USES**.

- F. Paragraph 2.0 (m) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prevent additions to and alteration or remodeling of existing buildings, structures, or uses in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

The proposed amendment will lawfully establish new regulations that are less restrictive than the current regulations but it will still prevent additions to and alteration or remodeling of existing buildings, structures, or uses in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

DOCUMENTS OF RECORD

1. Memo to Champaign County Board Committee of the Whole dated August 30, 2010
2. Application for Text Amendment from Zoning Administrator, dated March 11, 2010
3. Preliminary Memorandum for Case 675-AT-10 with attachments:
 - A Memo to Champaign County Board Committee of the Whole dated August 30, 2010 (included separately) with attachments
 - B Section 8 of Champaign County Zoning Ordinance (included separately)
 - C Paragraph 9.1.9 B of the Champaign County Zoning Ordinance
 - D Excerpted Definitions from Zoning Ordinance
 - E Proposed Draft Amendment
4. Handout at the December 16, 2010, public hearing from Cases 334-V-02 and 335-V-02 illustrating the distribution of zoning lot sizes in Penfield
5. Supplemental Memorandum for Case 675-AT-10 dated December 30, 2010, with attachment:
 - A Revised Draft Amendment
6. Supplemental Memorandum for Case 675-AT-10 dated January 6, 2011, with attachment:
 - A Comparison Of Certain Existing Champaign County Zoning Ordinance Requirements For Nonconformities With Other Counties
7. Supplemental Memorandum for Case 675-AT-10 dated January 26, 2011, with attachment:
 - A Revised Annotated Draft Ordinance
8. Supplemental Memorandum for Case 675-AT-10 dated February 10, 2011, with attachments:
 - A A Guide to the Parts of Case 675-AT-10
 - B Revised Annotated Draft Ordinance With Notes
 - C Preliminary Draft Finding of Fact (included separately)

* ***BOLD ITALICS WITH ASTERISK*** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

SUMMARY FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 16, 2010; January 6, 2011; January 20, 2011; and February 17, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The proposed Zoning Ordinance text amendment will **HELP ACHIEVE*** the Land Resource Management Plan because:
 - A. The proposed Zoning Ordinance text amendment will **HELP ACHIEVE*** the following LRMP goals:
 - Goal 1 Planning and Public Involvement
 - Goal 2 Governmental Coordination (provisional)
 - Goal 3 Prosperity
 - Goal 4 Agriculture
 - Goal 5 Urban Land Use
 - Goal 6 Public Health and Public Safety.
 - B. The proposed Zoning Ordinance text amendment **WILL NOT IMPEDE *** the achievement of other LRMP goals.
2. The proposed text amendment **WILL IMPROVE*** the Zoning Ordinance because it will:
 - A. **HELP ACHIEVE*** the purpose of the Zoning Ordinance.
 - B. **CORRECT ERRORS*** in the text of the Zoning Ordinance.
 - C. **RELAX UNREASONABLE REQUIREMENTS*** of the Zoning Ordinance.
 - D. **PROVIDE FLEXIBILITY*** in the Zoning Ordinance for land owners in Champaign County.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Amendment requested in **Case 675-AT-10** should ***{BE ENACTED / NOT BE ENACTED}*** by the County Board in the form attached hereto.

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

SIGNED:

Eric Thorsland, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

PRELIMINARY DRAFT FINDING OF FACT

Part A

- 1. In the first four paragraphs of Section 8 clarify that nonconforming dwellings may be expanded as authorized herein.**

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

- 2. Revise subsection 8.1.2 to authorize that nonconforming lots may be used separately if authorized by variance.**

8.1.2 Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Part B

1. Revise paragraph 8.2.1 B. as follows:

- a. **Limit applicability to the total expansion since October 10, 1973.**
- b. **Increase the limit on expansion of a single family dwelling that is a nonconforming use of land provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.**
- c. **Eliminate the limit on the amount of accessory buildings.**

B. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land may be expanded as follows:

1. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
2. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
3. Expansion of existing or construction of any new ACCESSORY BUILDING or STRUCTURE shall conform to the regulations and standards for the DISTRICT in which it is located.

2. Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.

- C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

3. **Revise subsection 8.2.2 to provide that a single family dwelling that is a nonconforming use may be moved if authorized by variance.**

8.2.2 No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

4. **In Subsection 8.2.3 clarify “ceases”.**

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

Part C

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.**

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations if authorized by variance.**

8.3.3 Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

Part D

1. **Revise Subsections 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.**
 - 8.4.1 No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:
 - A. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be constructed, reconstructed, or ALTERED without changing the USE to a permitted USE and may also be enlarged or moved without changing the USE as otherwise herein provided.
 - B. As otherwise herein provided for structures used for other than A SINGLE FAMILY DWELLING.
 - 8.4.2 Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.
2. **In Subsection 8.4.5 clarify “abandoned” and “discontinued”.**
 - 8.4.5 When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.
3. **In Subsection 8.4.6 provide for replacement of a single family dwelling that is a nonconforming use.**
 - 8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

* **BOLD ITALICS WITH ASTERISK** indicate staff recommendation that the ZBA must either approve or modify

PRELIMINARY DRAFT FINDING OF FACT

Part E

1. **Revise Subsection 8.6 to authorize the following:**
 - a. **a single family dwelling that is a nonconforming use may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.**
 - b. **a single family dwelling that is a nonconforming use has no limit on the value of repair or replacement.**
 - c. **Any structure that is nonconforming may be granted a variance to authorize a higher value of repair or replacement .**

8.6 Repairs or Maintenance

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

- A. As otherwise herein provided; and
- B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.
- C. On any STRUCTURE that is NONCONFORMING a VARIANCE may be granted by the BOARD to authorize a higher value of repair or replacement including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Part F

1. **In paragraph 9.1.2 C. require the Zoning Administrator to provide a notice of nonconforming zoning on any permit for a single family dwelling in a district in which a single family dwelling is not an authorized principal use.**

C. Issuance of Zoning Use Permit

1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.

Part G

1. **In Section 3 revise Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.**

NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.

CASE NO. 678-V-10

PRELIMINARY MEMORANDUM

February 10, 2011

Petitioners: **Brian Lile and Myra Sully**

Request: **Authorize the use of an existing unauthorized detached accessory structure in the R-2 District with a front yard of one foot instead of the minimum required front yard of 25 feet and a setback of 38 feet and 6 inches instead of the minimum required setback of 62 feet and 6 inches.**

Champaign
County
Department of



Site Area: **17,160 square feet**

Time Schedule for Development:
Already constructed

Prepared by: **John Hall**
Zoning Administrator

Location: **Lots 10 and 11 of Block 3 of S.H. Busey's 6th Addition to Penfield that is commonly known as 419 South Main Street, Penfield.**

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

(217) 384-3708

BACKGROUND

The following is a short history of this case:

1. While doing inspections in Penfield on August 25, 2010, the Zoning Officer noticed that the subject garage was closer to the front lot line than authorized by the Ordinance.
2. After reviewing records in the Department of Planning and Zoning the Zoning Officer found no evidence that a zoning use permit application had ever been made for the garage. The Zoning Officer sent a letter to the owners on September 14, 2010, advising them of the need for both a variance and a zoning use permit.
3. An application for variance was received on October 1, 2010. In the cover letter submitted with the variance application the petitioners state that their contractor's representative assured them that the permit had been completed and that the location was largely determined by the existing gas line (indicated on the site plan). The petitioners also provide evidence that the garage contractor has a legal case against the former employee (contractor representative). See the pages from the Circuit Clerk's website.
4. The existing site plan received on October 1, 2010, does not appear to indicate the correct measurement to the property line because the dimension is shown at an angle rather than perpendicular to the property land and the center of the street. And, unfortunately, no one from the Planning and Zoning Department has yet had an opportunity to measure the front yard and setback and therefore **the legal advertisement does not represent the actual conditions and overstates the amount of variance required.**
5. Additionally, the Zoning Ordinance allows for averaging of front yards on blocks where at least 25% of the lots were developed on the adoption of zoning (10/1/73) and this block meets that standard. Staff uses the 1973 aerial photo for that averaging but the averaging was not completed in time for the legal advertisement. The average of the front yards that existed on this block on 10/1/73 are 10 feet and the average of the setbacks are 44 feet six inches so the **legal advertisement also overstates the amount of variance in that regard.**

Staff should have an accurate measurement of the actual required variance by the meeting time.

EXTRATERRITORIAL JURISDICTION

The subject property is not within the one and one-half mile extraterritorial jurisdiction of any municipality.

COMMENT FROM TOWNSHIP HIGHWAY COMMISSIONER

The Compromise Township Highway Commissioner, Mr. Marvin Johnson, called the Zoning Administrator on February 9, 2011, and stated that he has no concerns in regards to the variance in Case 678-V-10 and he feels this property is an asset to the community.

EXISTING LAND USE AND ZONING

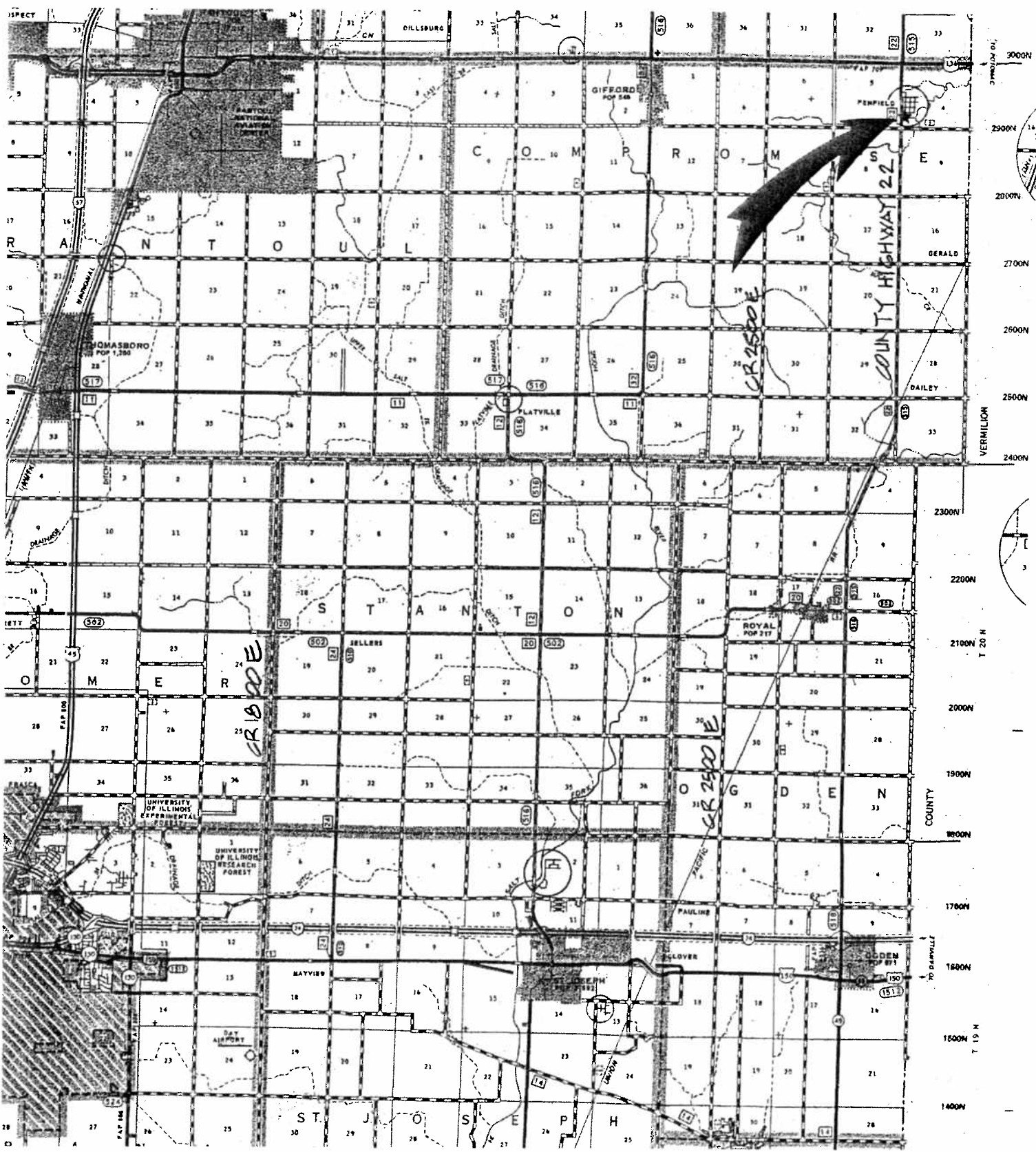
Table 1. Land Use and Zoning in the Vicinity

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

ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Petitioner's variance application cover letter received on October 1, 2010
- C Existing site plan received on October 1, 2010
- D Property photos received on October 1, 2010
- E Two pages from Circuit Clerk website regarding Case #10CF000714 received on October 1, 2010
- F Draft Summary of Evidence, Finding of Fact, and Final Determination for Case 652-V-09

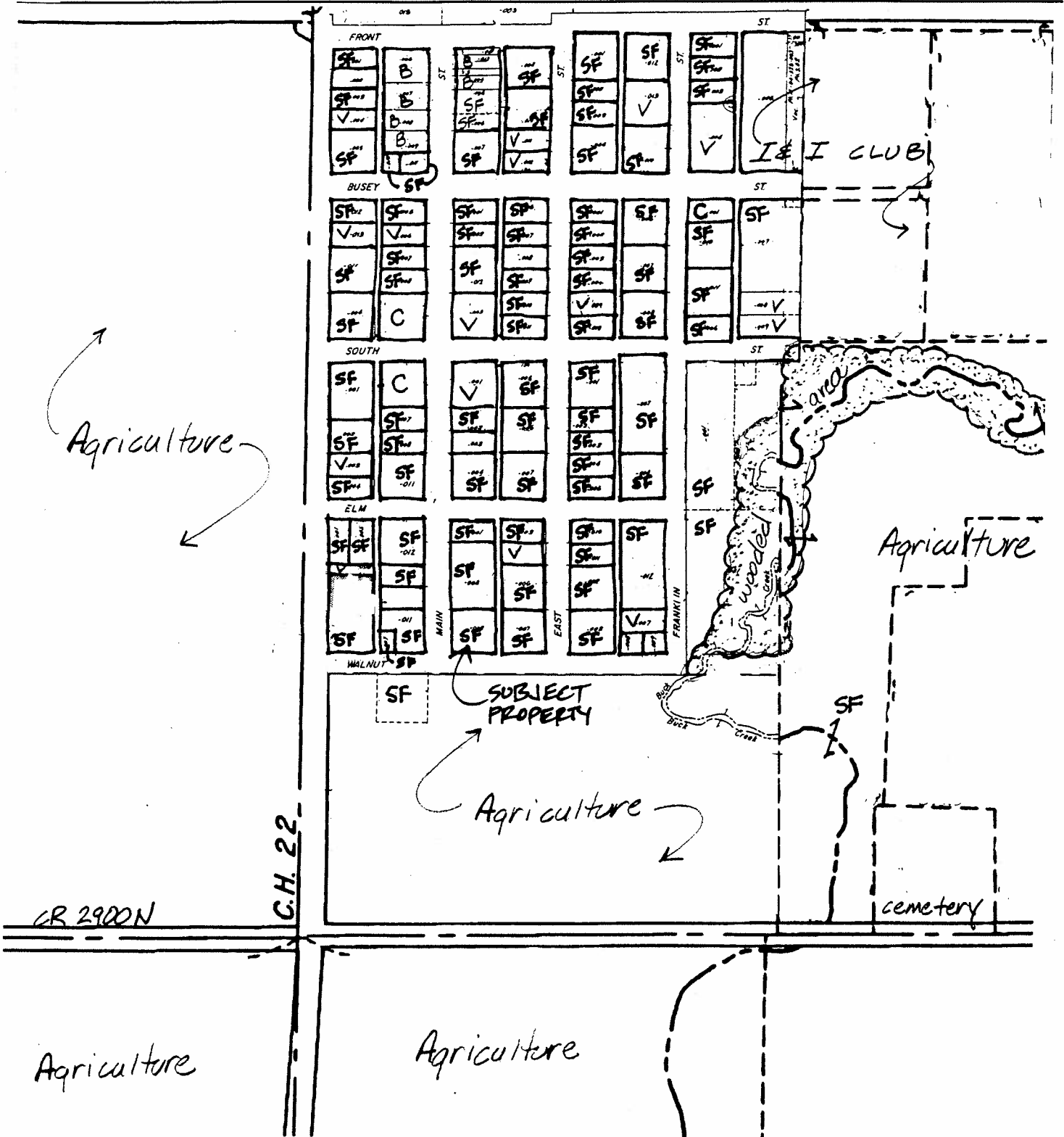
LOCATION



Area of Concern



Champaign
County
Department of
**PLANNING &
ZONING**



Area of Concern



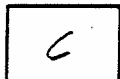
Single Family



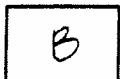
Farmstead



VACANT



CHURCH



BUSINESS

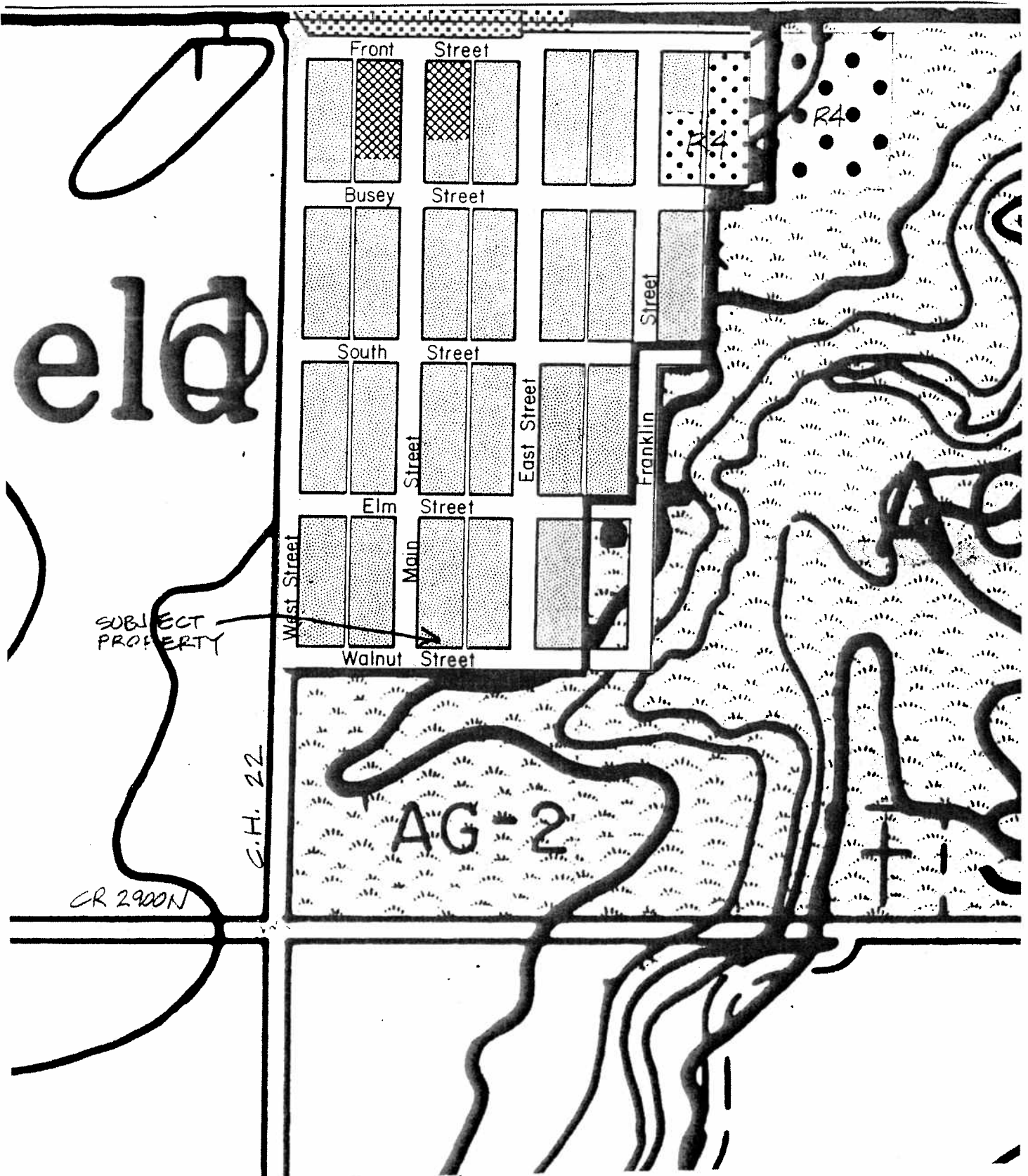


NORTH

Champaign
County
Department of

PLANNING &
ZONING

ZONING



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



Champaign
County
Department of
**PLANNING &
ZONING**

Brian Lile & Myra Sully

419 S Main St.

Penfield, IL 61862

October 1, 2010

To whom it may concern:

We are requesting a variance for the new construction garage that was built on our property. We contracted Bullock Garages and were informed by our representative, Scott Walden that the price included the filing of the permit to have the building constructed. Before they started construction we had asked him if the permit was completed and were there any problems. He indicated everything was fine. The garage was put in this location and it was the best possibility to make the property buildings look proportionate to each other and to help increase the value and looks of the property. We were unable to go back any further with the building due to the gas line that runs to the back of the house from the street.

We were not aware there were any problems with where the garage was built. Penfield is a very small town and our house is located on a corner double lot at the end of town. There is a grassy area and farm land on the south side and it is not a very traveled street by our home. At the most on a weekend there is maybe 6 cars that travel by our house and that would be including ours.

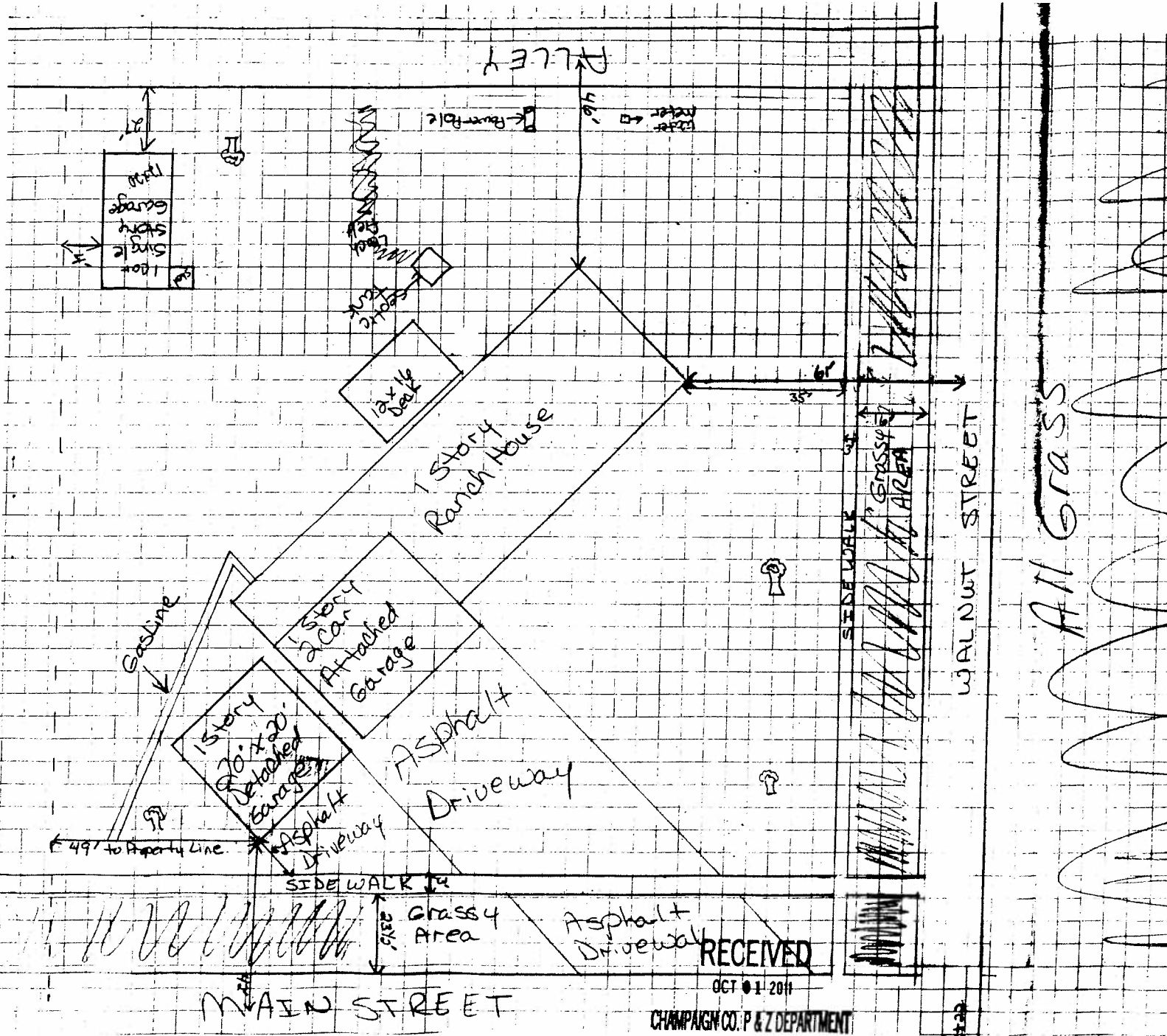
This building in its location, does not create any problems to the traffic or the neighborhood. If there were a fire or storm it would not affect the neighbors buildings as they are not close to their property. The visibility is not a problem and would not create any injurious to the neighborhood or public health and safety.

Unfortunately we found out a couple of months ago there is a fraud case with the State's Attorney office and Scott Walden & Bullock Garages. The representative, Scott Walden, stole clients and funds from Bullock. This case is still ongoing.

We hope this will all help in the consideration of providing us with the variance.

Sincerely,

Brian Lile and Myra Sully



All Grass

RECEIVED

OCT 01 2011

CHAMPAIGN CO. P & Z DEPARTMENT

13



from edge of neighbor's property

14



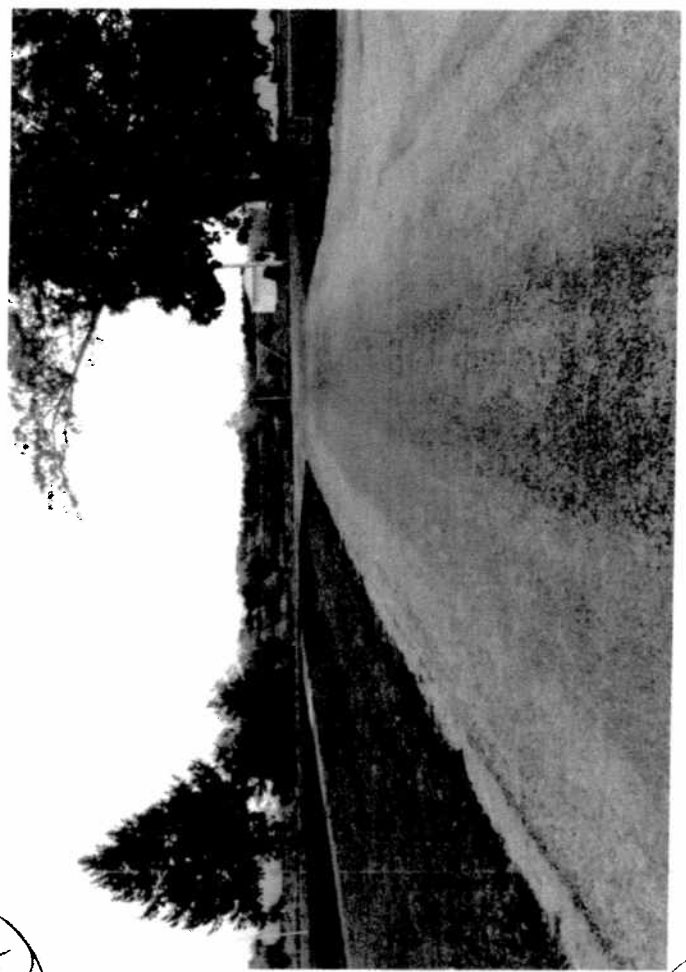
from in front of neighbor's house

15

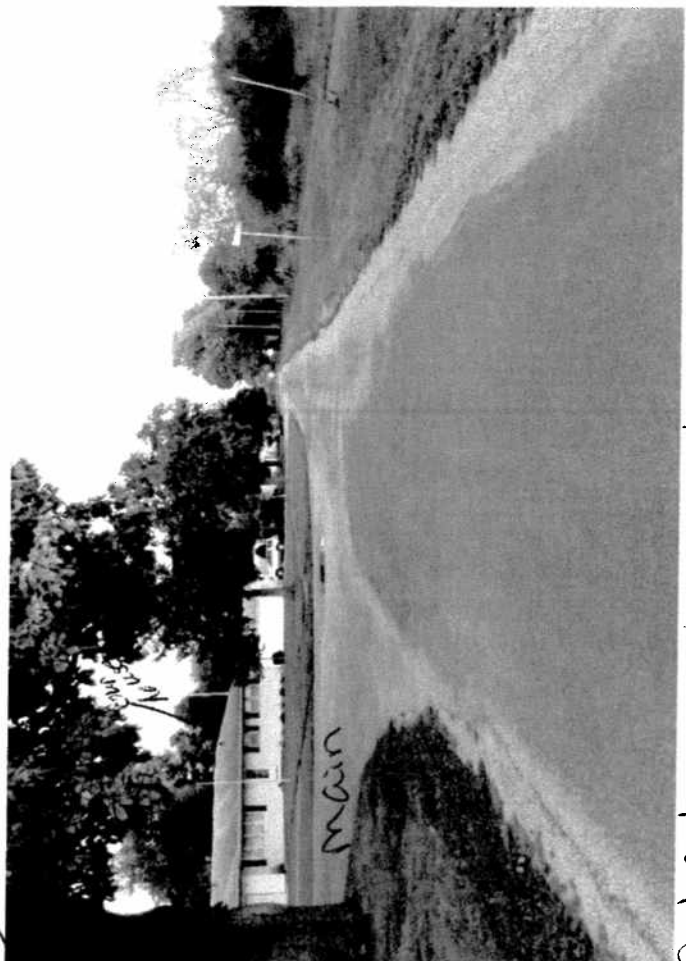


Angle view from Elm Street

9



10



11



12 heading east on walnut



Same as 3 + 5

House on corner of Main & Elm.
Porch is about same distance as Scout garage

⑤



Same as #3

⑦



View from Walnut looking at mainst.

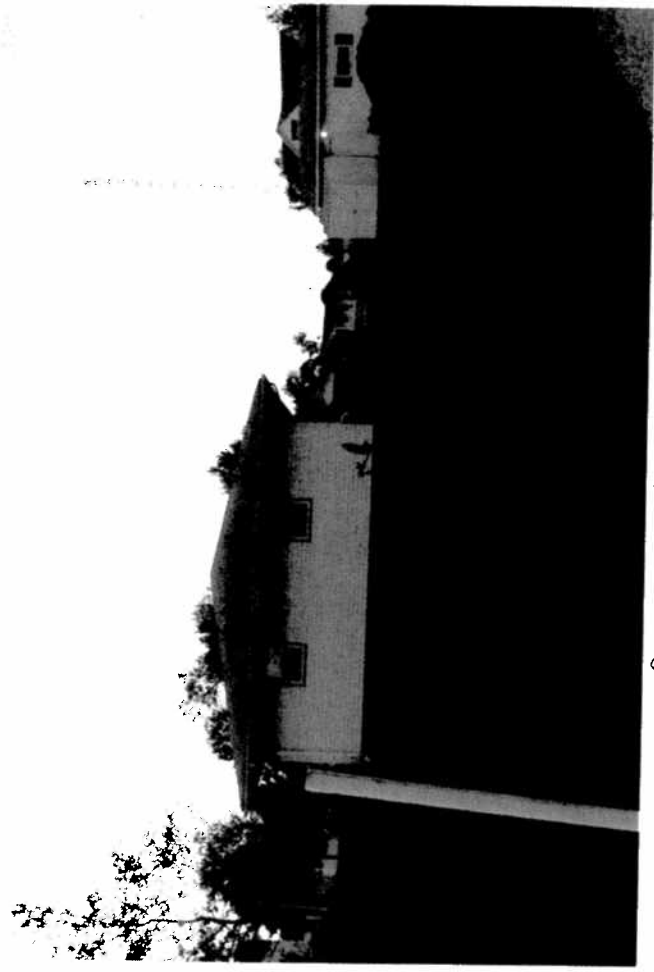
⑥

House



Back yard view

⑧



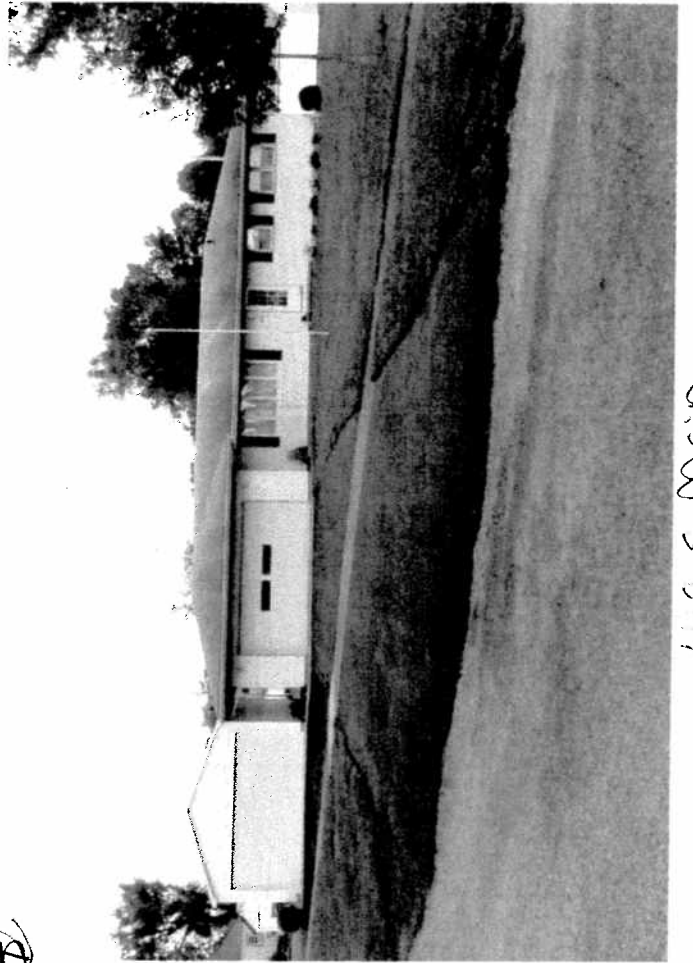
View of property from Walnut at Alley

2



walnut Street from Alley way

4



419 S. Main.

1



photo from intersection North of our house

3

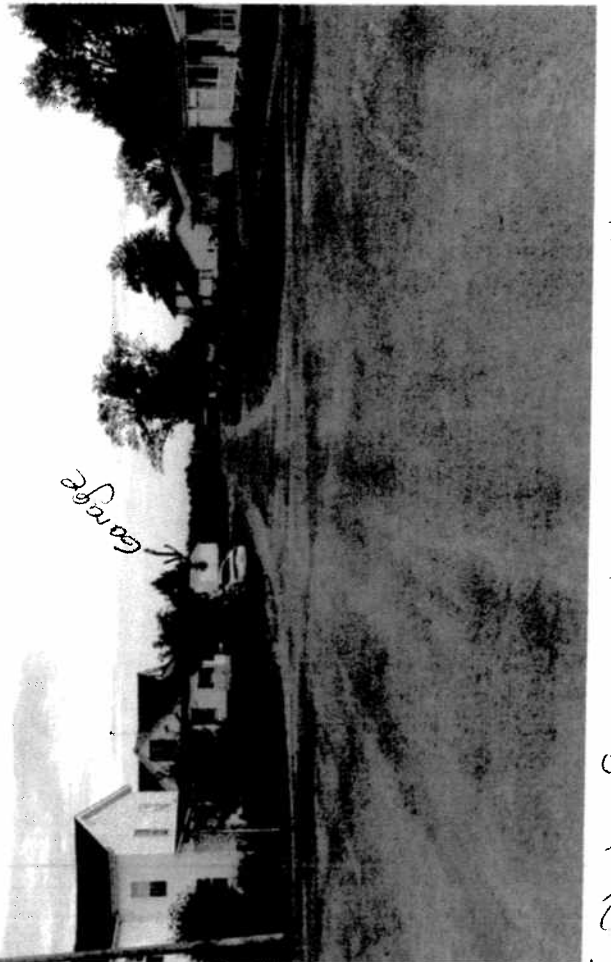


Photo from intersection North of our house

Linda S. Frank

Clerk of the Circuit Court
Champaign County, Illinois

Case Lookup

Name List

LOGOFF

CRIMINAL CASE LOOKUP FOR CASE #10CF000714

Defendant

WALDEN SCOTT
1167 KAREN DR
MONTICELLO IL 61856

Plaintiff

PEOPLE OF ILLINOIS

Information:

File Date: 04/28/10
Court Room: A
Next Appearance: 11/02/10 09:00
Birth Date: 07/14/62
DEFENDANT: WALDEN SCOTT

CHARGES INFORMATION

as of 9-22-2010 10:00PM

Count	Description
1	HM RPR FRAUD/CONTRACT >\$1000
2	FORGERY/ISSUE/DELIVER DOCUMENT
3	HM RPR FRAUD/CONTRACT >\$1000
4	THEFT DECEPTION INTENT 300<10K
5	FORGERY/ISSUE/DELIVER DOCUMENT
6	THEFT DECEPTION INTENT 300<10K
7	FORGERY/ISSUE/DELIVER DOCUMENT

DOCKET INFORMATION

as of 9-22-2010 10:00PM

04-28-10

Charge 01 Count 001 HM RPR FRAUD/CONTRACT >\$1000
 Statute 815 515/3(a)(1) Class 4 Orig.
 Agency: CHAMPAIGN COUNTY SHERIFF Charge Instr: Information

Charge 02 Count 002 FORGERY/ISSUE/DELIVER DOCUMENT
 Statute 720 5/17-3(a)(2) Class 3 Orig.
 Agency: CHAMPAIGN COUNTY SHERIFF Charge Instr: Information

Charge 03 Count 003 HM RPR FRAUD/CONTRACT >\$1000
 Statute 815 515/3(a)(1) Class 4 Orig.
 Agency: CHAMPAIGN COUNTY SHERIFF Charge Instr: Information

Charge 04 Count 004 THEFT DECEPTION INTENT 300<10K
 Statute 720 5/16-1(a)(2)(A) Class 3 Orig.
 Agency: CHAMPAIGN COUNTY SHERIFF Charge Instr: Information

Charge 05 Count 005 FORGERY/ISSUE/DELIVER DOCUMENT
 Statute 720 5/17-3(a)(2) Class 3 Orig.
 Agency: CHAMPAIGN COUNTY SHERIFF Charge Instr: Information

Charge 06 Count 006 THEFT DECEPTION INTENT 300<10K
 Statute 720 5/16-1(a)(2)(A) Class 3 Orig.
 Agency: CHAMPAIGN COUNTY SHERIFF Charge Instr: Information

Charge 07 Count 007 FORGERY/ISSUE/DELIVER DOCUMENT
 Statute 720 5/17-3(a)(2) Class 3 Orig.
 Agency: CHAMPAIGN COUNTY SHERIFF Charge Instr: Information

Cause set for arraignment on
 Created and properly labeled permanent case file.
 Warrant issued.

Verified information on file. Witness sworn. Evidence heard.
Probable cause to arrest determined, warrant issued. Bond set in the amount of \$10,000.00.
Warrant issued.

06-09-10

• 9/23/2010

<https://secure.jtsmith.com/clerk/vvtt331s...>

Defendant arraigned. On Defendant's motion, cause is continued for appearance of counsel. Defendant is admonished as to trial and sentencing in absentia. Bond to continue.
Warrant served. Service fees \$52.55

06-10-10
06-17-10

People appear by Andrea I. Bergstrom. Defendant appears personally together with private counsel, Donald R. Parkinson. Defendant is arraigned. Defendant waives preliminary hearing, enters a plea of not guilty and requests a trial by jury. Pre-trial orders entered. Defendant admonished as to trial and sentencing in absentia. Motion for Release on Recognizance filed instanter. Cause called for hearing on said motion. Objection by the People. Motion is denied. Bond to continue. See Expanded Record.
Sheriff Booking Fee
Discovery filed.

06-28-10
06-30-10
07-23-10

Motion to Withdraw as Counsel filed with Notice of Hearing.

08-03-10

Assistant State's Attorney Stephanie Weber appears for the People. Defendant appears together with attorney Mark Lipton on behalf of attorney Donald Parkinson. Court notes the Motion to Withdraw as Counsel filed by attorney Donald Parkinson. No objection by the Defendant. Motion allowed. Appearance of attorney Donald Parkinson as Defendant's counsel is withdrawn. Order of Withdrawal entered. Motion by the Defendant for appointment of counsel. Affidavit in Support of said motion tendered to the Court. Motion allowed. Office of the Public Defender is appointed to represent the Defendant. Cause continued to pretrial 9:00 a.m., 8/31/2010 in Courtroom A. Bond of the Defendant continues.

08-06-10

Certificate of Service of Order of Withdrawal filed.

08-10-10

Receipt for Discovery Materials filed.

08-31-10

Appearance of the State's Attorney. Defendant appears personally and by Counsel. Motion by the Defendant for Continuance. Motion allowed. Cause reallocated for the trial term immediately following the pre-trial date.

09-01-10

Order Modifying Bond on file.

Assistant State's Attorney Stephanie Weber appears for the People. Assistant Public Defender Melinda Licciardello appears. Agreed Order Modifying Bond entered.

09-20-10

Appearance of the State's Attorney. Defendant appears personally and by Counsel. Motion by the Defendant for Continuance. Motion allowed. Cause reallocated for the trial term immediately following the pre-trial date.

The PASS system is intended to be a summary of information for the public. It does not take the place of the legal information that is held in the actual Court file. The Clerk of the Circuit Court of Champaign County accepts no liability for discrepancies between these electronic versions and the official printed documents.

Case Lookup Name List

Locate

Zoning Case 678-V-10
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 17, 2011**

Petitioners: **Brian Lile and Myra Sully**

Request: **Authorize the use of an existing unauthorized detached accessory structure in the R-2 District with a front yard of one foot instead of the minimum required front yard of 25 feet and a setback of 38 feet and 6 inches instead of the minimum required setback of 62 feet and 6 inches.**

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **February 17, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioners Brian Lile and Myra Sully own the subject property.
2. The subject property is Lots 10 and 11 of Block 3 of S.H. Busey's 6th Addition to Penfield that is commonly known as 419 South Main Street, Penfield.
3. The subject property is not located within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning. 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 R-2 Single Family Dwelling, and is in use as a single family dwelling.
 - B. Land to the north, east, and west of the subject property is zoned R-2 Single Family Dwelling and is in use as single family dwellings.
 - C. Land to the south of the subject property is zoned AG-2 Agriculture and is in use as farmland.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the existing site plan received on October 1, 2010:

{EVIDENCE TO BE ADDED}

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 variances (capitalized words are defined in the Ordinance):

- (1) “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.
- (2) “DWELLING, SINGLE FAMILY” is a DWELLING containing one DWELLING UNIT.
- (3) “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.
- (4) “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.
- (5) “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.
- (6) “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.
- (7) “VARIANCE” is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or Zoning Board of Appeals are permitted to grant.

Item 6.A. (continued)

- (8) “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.
 - (9) “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.
 - (10) “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. In the *Zoning Ordinance*, setback requirements are established in two sections, as follows:
- (1) Subsection 4.3.2. Setback Line states, “All BUILDINGS and all MAIN or PRINCIPAL STRUCTURES shall be positioned in conformance with the SETBACK LINE regulations and standards specified hereinafter for the DISTRICT in which they are located,” and drawings in 4.3.2 further specify that in the case of a MINOR STREET the required setback is 55 feet with a front yard of 25 feet.
 - (2) Section 5.3 is the Schedule of Area, Height, and Placement Regulations by District and indicates that the setback from a MINOR STREET is 55 feet and footnote 3 further specifies the following:
 - (a) In no case shall the FRONT YARD be less than 25 feet from a MINOR STREET.
 - (b) Footnote 3 provides that where 25% or more of the lots within a block abutting streets other than federal or state highways, were occupied by main or principal structures prior to the effective date of this ordinance (10/1/73), the average of the setback lines of such structures shall be the minimum setback lines of the remaining vacant lots within such block except where the public health, safety, comfort, morals, or welfare are endangered.
- D. 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.

PRELIMINARY SUMMARY OF EVIDENCE & FINDINGS OF FACT

ITEM 6. CONTINUED

- 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 as follows:
- (1) The application states **“Due to requirements for back yard and there is an alley. There would be no easy access, plus building would be in middle of yard. There are also power line poles, septic tank and leach field in the back where the building could have gone.”**

Item 7.A. (continued)

- (2) A cover letter received with the application on October 1, 2010, states as follows:
- (a) **“We contracted with Bullock Garages and were informed by our representative, Scott Walden, that the price included the filing of the permit to have the building constructed.”**
 - (b) **“Before they started construction we had asked him if the permit was completed and if there were any problems. He indicated everything was fine.”**
 - (c) **“The garage was put in this location and it was the best possibility to make the property buildings look proportionate to each other and to help increase to value and looks of the property. We were unable to go back any further with the building due to the gas line that runs back to the back of the house from the street.”**
 - (d) **“We were not aware there were any problems with where the garage was built.”**
 - (e) **“Unfortunately we found out a couple of months ago there is a fraud case with the State’s Attorney Office and Scott Walden & Bullock Garages. The representative, Scott Walden, stole clients and funds from Bullock. The case is ongoing.”**

{ADDITIONAL EVIDENCE TO BE ADDED}

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, **“Would have been very close to leach field. There is also a tree in the back yard and the building would have to be in the middle of the yard very near the leach field and no easy access.”**
 - B. The subject property is a nonconforming lot of record with an overall area of 17,160 square feet and an average lot width of 130 feet. A connected PUBLIC WATER SUPPLY SYSTEM exists in Penfield but there is no connected PUBLIC SANITARY SEWER SYSTEM. As required in paragraph 4.3.4 B. of the Zoning Ordinance the minimum required lot area in Penfield is 20,000 square feet with a minimum average lot width of 100 feet.

{ADDITIONAL EVIDENCE TO BE ADDED}

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, **“We hired Bullock Garages to build the garage and we were informed the permit was filed and there were no problems with the location of the building. This is now a fraudulent (sic) case with the State’s Attorney’s office.”**

{ADDITIONAL EVIDENCE TO BE ADDED}

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, **“It will not obstruct or cause traffic issues or an issue with any other structures.”**
- 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: Main Street in Penfield is a minor street that already has a 75 feet wide right of way. It is unlikely to be widened in the future.
- (2) Off-street parking: (3) Aesthetics: Aesthetic benefit may be a consideration for any given front yard and setback but can be very subjective.
- C. The requested variance is not prohibited by the *Zoning Ordinance*.

{ADDITIONAL EVIDENCE TO BE ADDED}

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 **“This building location in no way would be injurious to the neighborhood. We believe this is beneficial to the neighborhood by increasing property value and makes the neighborhood look better.”**
- B. The Compromise Township Highway Commissioner, Mr. Marvin Johnson, called the Zoning Administrator on February 9, 2011, and stated that he has no concerns in regards to the variance in Case 678-V-10 and he feels this property is an asset to the community.

Item 11. (continued)

C. The Fire Protection District and Drainage District have also been notified of this variance but no comments have been received.

12. On the application the Petitioner has also testified that, **“This is the most feasible and makes the property look better than a building in the middle of the back yard.”**

GENERALLY PERTAINING TO WHETHER OR NOT THE PROPOSED VARIATION IS THE MINIMUM NECESSARY TO MAKE POSSIBLE THE REASONABLE USE OF THE LAND OR STRUCTURE INVOLVED

13. Generally regarding the Zoning Ordinance requirement for a finding that the proposed variation is the minimum necessary to make possible the reasonable use of the land or structure involved:

{ADDITIONAL EVIDENCE TO BE ADDED}

GENERALLY REGARDING PROPOSED CONDITIONS OF APPROVAL

14. No special conditions of approval are proposed at this time.

DOCUMENTS OF RECORD

1. Variance application received on October 1, 2010, with attachments:
 - A Petitioner's variance application cover letter with attachments:
 - (1) Property photos
 - (2) Bing Map showing location
 - (3) Two pages from Circuit Clerk website regarding Case #10CF000714
 - B Site plan

2. Preliminary Memorandum for Case 650-V-09, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Petitioner's variance application cover letter received on October 1, 2010
 - C Existing site plan received on October 1, 2010
 - D Property photos received on October 1, 2010
 - E Two pages from Circuit Clerk website regarding Case #10CF000714 received on October 1, 2010
 - F Draft Summary of Evidence, Finding of Fact, and Final Determination for Case 652-V-09

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **678-V-10** held on **February 17, 2011**, 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: _____

FINAL DETERMINATION

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 **678-V-10** is hereby **{GRANTED/GRANTED WITH CONDITIONS/DENIED}** to the petitioners, **Brian Lile and Myra Sully**, to authorize **the use of an existing unauthorized detached accessory structure in the R-2 District with a front yard of one foot instead of the minimum required front yard of 25 feet and a setback of 38 feet and 6 inches instead of the minimum required setback of 62 feet and 6 inches.**

{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:

Eric Thorsland, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals
Date

BY-LAWS

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

As Amended August 25, 2005

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ARTICLE 1 - AUTHORITY

- 1.1 The authority to establish the Zoning Board of Appeals is set forth under the *Illinois Counties Code*, Chapter 55, Section 5/5-12007 *et seq*, herein referred to as the County Enabling Legislation. Powers and duties are delegated to the Zoning Board of Appeals by the Champaign County Board, herein referred to as the Governing Body, pursuant to Section 9.1.6(B) of the Champaign County Zoning Ordinance, Resolution Number 971, dated September 11, 1973 and as amended, in accordance with the County Enabling Legislation.

ARTICLE 2 - GENERAL PROVISIONS

- 2.1 These rules are supplementary to the provisions of the Champaign County Zoning Ordinance as they relate to procedures of the Zoning Board of Appeals. If there is a conflict between these rules and the Zoning Ordinance, the Zoning Ordinance shall prevail.
- 2.2 Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change the Zoning Ordinance, including the Zoning Map, which authority is granted to the Governing Body, except as provided in Section 4.1.6 of the Zoning Ordinance.
- 2.3 The State's Attorney shall be consulted regarding questions of law. The Zoning Administrator shall be consulted regarding provisional interpretations of the Zoning Ordinance.
- 2.4 The Office of the Zoning Board of Appeals shall be located in The Champaign County Department of Planning and Zoning.

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ARTICLE 3 - APPOINTMENT AND TERMS OF MEMBERS

- 3.1 Appointment of the Zoning Board of Appeals shall be as provided for by the Governing Body pursuant to Section 9.1.6(A) of the Zoning Ordinance.
- 3.2 Applications for appointment to the Zoning Board of Appeals may be submitted to the Office of the Champaign County Board, 1776 East Washington Street, Urbana Illinois, 61802, on forms provided by the Office of the County Board.
- 3.3 For each meeting attended, members shall be compensated in a manner established by the Governing Body.
- 3.4 The Governing Body shall have the power to remove any member of the Board for cause only after a public hearing. Such hearing shall be held no less than 10 days after the member concerned has been given written notice of the charges against him or her. The Chairperson may make a recommendation to the Governing Body for removal of a Zoning Board member due to malfeasance, misfeasance, or nonfeasance generally, and in particular:
 - a) Failure to disclose any conflict of interest pursuant to Section 7.8 herein;
 - b) Failure to disclose any substantial or material *ex-parte* communications at the earliest opportunity subsequent to any such communications pursuant to Section 5.8 herein;
 - c) Failure to attend two meetings within a period of one year, without recorded consent of the Chairperson; or
 - d) Repeated or excessive tardiness, as determined by the Chairperson.
- 3.5 Upon death, removal for cause, or resignation of a Board member, the Secretary shall promptly notify the Governing Body that a vacancy exists. If a member becomes incapacitated permanently or for what appears likely to be a protracted period, or moves from the jurisdiction, or becomes for any other reason no longer qualified to serve, and does not resign, the Chairperson shall promptly notify the Governing Body. The Chairperson may also request that the Governing Body declare that member's seat vacant.

ARTICLE 4 - CHAIRPERSON

- 4.1 All proceedings and administrative functions of the Board shall be directed by a Chairperson, who shall preside over all meetings of the Board and shall otherwise supervise the affairs of the Board as outlined in Section 4.3 herein.
- 4.2 The Governing Body shall designate the Chairperson pursuant to Section 9.1.6(A)3 of the Zoning Ordinance. In the event of death, removal for cause, or resignation of the Chairperson, successor(s) shall also be named by the Governing Body. Upon vacancy of the Chairperson, the Board may vote to recommend a current serving member to the Governing Body for appointment as Chairperson of the Zoning Board.
- 4.3 If present and able, the Chairperson shall supervise the affairs of the Board and shall:
 - a) preside at all hearings and meetings of the Board;
 - b) assure and maintain proper order and decorum of the Board, staff, and the public in all proceedings of the Board;

Article 4 – continued

- c) decide all points of procedure or order in accordance with these and other applicable rules;
 - d) provide for the oath or affirmation to be administered to all witnesses in cases before the Board pursuant to Section 6.6 herein; and shall
 - e) take such actions and exercise such powers as are specifically outlined herein.
- 4.4 The Board shall elect from among its members an Acting Chairperson to serve at any meeting where the Chairperson is absent or is otherwise unable to supervise the affairs of the Board. An Acting Chairperson, in the absence or disability of the Chairperson, shall perform all duties and exercise all powers of the Chairperson.

ARTICLE 5 - MEETINGS

- 5.1 No less than two regular meetings shall be held each month at a place authorized in Section 9.2.1(E) of the Zoning Ordinance, except under the following circumstances:
- a) the Chairperson determines that cancellation of a regular meeting is appropriate under Section 5.2 herein; or
 - b) the Secretary determines that the cancellation of a regular meeting is appropriate under Section 5.3 herein; or
 - c) the regular meeting falls of a designated County Holiday, in which case the Board shall vote as to whether such a meeting shall proceed as scheduled, be cancelled, or be rescheduled.
- 5.2 Regular meetings may be canceled by the Chairperson, or with the oral approval of a quorum of the Board. Meetings may be cancelled when there are no cases pending, or in the event that the requirements of these By-laws or the Zoning Ordinance prevent the Board from conducting any business, or in the event of hazardous or inclement weather. In the event of hazardous or inclement weather, the Champaign County Sheriff's Department may be consulted as to road conditions and other factors which may affect transportation to and from the meeting place. Upon cancellation, the Secretary shall make a reasonable attempt to notify the members of the Board, the petitioners, and other interested parties.
- 5.3 In the event that after all publications of scheduled public hearings pursuant to Sections 5.5 and 6.2 have been made, but prior to the scheduled meeting of the Board, all petitioners of all scheduled hearings have requested continuances or withdrawn their cases, the Secretary shall have the authority to cancel the scheduled meeting of the Board. Upon making the decision to cancel a scheduled meeting of the Board, the Secretary shall make a reasonable attempt to notify the members of the Board and all other interested parties of record, and shall post the meeting place with a notice of cancellation.
- 5.4 Special meetings may be called only with the oral approval of no less than a quorum of the Board, provided that no less than 24 hours notice is given to each member, and provided that all notice requirements have been met pursuant to Section 5.4 herein.
- 5.5 All meetings shall be open to the public, noticed, and posted in accordance with the *Illinois Open Meetings Act*, (5 ILCS 120/1.01 *et seq.*).

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Article 5 – continued

- 5.6 A quorum shall consist of four members for any regular or special meeting, and is required for any decision, determination, or official action by the Board.
- 5.7 Any meeting of more than two Board members where matters pending before the Board would be discussed, including but not limited to visits to subject properties, shall be prohibited except as properly noticed and posted in accordance with the *Illinois Open Meetings Act*, (5 ILCS 120/1.01 *et seq.*).
- 5.8 **Communications.**
- a) Communications regarding any pending item before the Board with any individual outside of the public hearing, including communications with any other Board member, or any member of the Governing Body, or any employee of Champaign County, except for purely procedural matters or legal subjects specifically approved by the State’s Attorney’s Office, are considered *ex-parte* communications.
 - b) If a member of the Board has participated in a substantial or material *ex-parte* communication, that member shall disclose the following information to the Board at the earliest public hearing subsequent to any such communication:
 - 1) the person or persons with whom the Board member has spoken;
 - 2) the circumstances under which the communication(s) took place;
 - 3) the general content of the communication(s); and
 - 4) any response given to the person or persons by the Board member.
- 5.9 Public hearings shall not be held by less than a quorum of the Board. Public hearings may be conducted by a bare quorum, however, all hearings shall then be continued, and shall not be closed other than at a meeting where at least five Board members are present.
- 5.10 Meetings of the Board shall proceed as follows:
- a) Introduction and Explanatory Comments by the Chairperson
 - b) Announcement of Witness Register requirement for persons wishing to testify to any agenda item
 - c) Roll call and declaration of quorum
 - d) Correction and approval of minutes of previous meeting(s)
 - e) Communications
 - f) Continued Public Hearings
 - g) New Public Hearings
 - h) Other Business
 - i) Staff Report
 - j) Audience Participation with respect to matters other than cases pending before the Board
 - k) Adjournment
- 5.11 All regular meetings of the Board shall begin at 6:30 p.m. Central Standard Time, or at 7:00 p.m. Central Daylight Savings Time, whichever applies. All meetings of the Board shall last no more than 3 hours unless the Board shall vote to extend the meeting to a specified time.

ARTICLE 6 - PROCEDURE

- 6.1 Applications shall be docketed on a first come-first serve basis, strictly based upon receipt of a completed application and its required fee. In no case shall an application be docketed for a public hearing before the Board if the application is received less than 22 days in advance of the hearing date. In the event that four cases are docketed for a meeting of the Board, no additional cases shall be docketed for that meeting without prior approval of the Chairperson.

- 6.2 The Secretary shall provide notice of the general location of the subject property, a brief statement of the nature of the petition, and the date, time, and place of the first scheduled public hearing for the petition. In addition to all statutorily required notices pursuant to the County Enabling Legislation, notice shall also be mailed by regular U.S. Mail no less than 15 days but no more than 30 days prior to the date of the first public hearing as follows:
 - a) Notice of all petitions shall be provided to:
 - 1) the petitioner(s), applicant(s), or appellant(s) and their representative or counsel;
 - 2) the lot owner(s) of record of all property within 250 feet in each direction of the subject property. The lot owners of record shall be identified as those appearing in the authentic tax records of Champaign County. The measurements of right-of-way(s) for public streets, alleyways, and other public ways shall be excluded in calculating the 250 foot notification distance. In the event that the subject property is part of a larger tract, such 250 foot distance shall be calculated from the exterior boundaries of the larger tract;
 - b) In addition to the notices required above, in the case of Map Amendments and Special Use Permits, notice shall also be provided to:
 - 1) the clerk of any zoned municipality with corporate limits within one and one-half miles of the subject site;
 - 2) the planning staff or planning consultant for any municipality with corporate limits within one and one-half miles of the subject site;
 - 3) the Supervisor of the Township within which the subject site is located;
 - 4) no less than one commissioner of the drainage district within which the subject site is located, if applicable;
 - 5) any provider of public sanitary sewer or public water service, if applicable; and
 - 6) the Chief of the Fire Protection District within which the subject site is located, if applicable.

- 6.3 The Board shall decide all matters presented during administrative proceedings and proposed amendments in accordance with Sections 9.1.7 and 9.2 of the Zoning Ordinance.

- 6.4 At the time of the public hearing before the Board, the Petitioner may appear in his or her own behalf, or he or she may be represented by counsel or agent.

- 6.5 In the event that parties other than the petitioner retain counsel or other agent to represent them at a hearing before the Board, then such representative shall state that he or she has been so retained, by whom, and shall also disclose the extent of their authorization.

- 6.6 All witnesses shall swear or affirm in written form on the Witness Register to the truthfulness of their oral or written testimony and any exhibits they submit. The Witness Register shall contain the witnesses(s) printed name, signature, and address, and shall be confirmed and signed by the Chairperson of the Board.

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Article 6 – continued

- 6.7** ***Order of Evidence.*** Evidence shall be presented in the following order unless altered by the Chairperson or by Motion:
- a) Announcement by the Chairperson that all testimony is given under oath or affirmation pursuant to the signing of the Witness Register for each agenda item;
 - b) The Petitioner or representative shall make a statement outlining the nature of his or her request prior to introducing evidence. The Chairperson or Staff may give restatement of the case if the presentation of the Petitioner or the representative needs clarification;
 - c) The Petitioner or representative presents evidence, subject to Rule 6.8;
 - d) Staff presents and summarizes any distributed memorandum, materials or reports;
 - e) Parties other than the Petitioner present evidence, subject to Rule 6.8;
 - f) The Petitioner or representative presents rebuttal evidence, subject to Rule 6.8, but may not introduce new evidence;
 - g) At the discretion of the Board, further surrebuttal evidence may be presented by parties other than the Petitioner. However, the Petitioner shall always have the final opportunity to present evidence, subject to Rule 6.7(h);
 - h) Questions, comments, requests, or continuance by the Staff or Board.
- 6.8** ***Inquiry of Witness.***
- a) Each witness' testimony shall proceed in the following manner:
 - 1) The witness may present oral testimony, and tender any documents to the Board;
 - 2) Staff may then ask questions of the witness;
 - 3) In an administrative case, the Chair shall then invite and allow the Petitioner or representative to then ask questions of the witness;
 - 4) In an administrative case, the Chair shall then invite and allow other members of the public to then ask questions of the witness;
 - 5) Any of the above persons may then ask follow-up questions of the witness, but those other than the Board and Staff may address only those matters addressed in earlier questions of this witness or in response to such questioning.
 - b) For purposes of these rules, an "administrative case" is a Special Use permit case, a Variance case, a conditional Rezoning case, or any matter combined in the same hearing with one of these cases.
 - c) At any point during the course of a public hearing, the Chairperson, Board members, or Staff may ask questions of any party to bring out pertinent facts, and may make appropriate comments pertinent to the case.
 - d) If, at any point during a meeting, a witness is unable or unwilling to respond to a question, the Chair shall make note of this in the minutes of the meeting, unless the question has been deemed improper, pursuant to Rule 6.9(b) or (c).
 - e) The Board may place limitations on the right of cross-examination, which may include, but shall not be limited to, the following:
 - 1) Requesting that groups who are associated with the same affected property or organization to select one representative who alone shall be entitled to cross-examine adverse witnesses.
 - 2) Requiring those represented in the matter by licensed attorneys who are also present at the meeting to exercise the right of cross examination only through the attorney.

Article 6 – continued

- 3) Restricting the class of those who may be cross-examined to witnesses who have offered testimony that includes factual allegations that are relevant and material to deciding the issues before the Board.

6.9 *Admissibility.*

- a) The Board shall consider competent and material evidence as necessary for a full and fair presentation of the issues presented.
 - 1) The Board shall not be bound by the strict rules of evidence. However, the Board shall not consider hearsay inadmissible in a court of law, if this hearsay is uncorroborated, more than once-removed, or otherwise unreliable.
 - 2) Testimony shall be limited to factual statements and qualified expert or relevant lay opinion and shall not relate to personalities or conjecture.
 - 3) Testimony or other evidence may be excluded if it is irrelevant, immaterial, incompetent, or repetitious.
 - 4) Failure strictly to enforce these Rules, or to reject matters which may be irrelevant or immaterial shall not affect the validity of the hearing.
- b) A question, documentary materials, or testimony presented by any witness may be barred by the Chair if:
 - 1) It relates only to a matter of personal taste;
 - 2) It is an argumentative or rhetorical question, or seeks testimony or evidence in violation of Rule 6.9(a); or
 - 3) It is beyond the scope of allowable questions under Rule 6.8(a)(5), above.
- c) Any person present at the meeting may request that the Chairperson rule on the admissibility of specific evidence or the permissibility of a question, which ruling may, upon motion by any person present, be overruled by a majority of Board members present but not abstaining.
- d) Procedural errors which do not materially affect the rights of the parties shall be disregarded and shall not affect the validity of the proceeding.

6.10 Any party appearing before the Board may submit a list of persons favoring or opposing the application. Such list will be received by the Board, although it contains nothing more than a brief statement of the position of the persons favoring or opposing the application together with the signature and address of the persons subscribing to such statement. The Board shall determine the weight to be given to such evidence.

6.11 Any evidence that any party wishes to have considered by the Board must be presented prior to the closing of the public hearing. The Board may request any relevant information or evidence from any party only prior to the closing of the public hearing. If a public hearing has been closed, but the Board has not taken its final vote on the matter, and any party wishes to have the public hearing re-opened, it may be re-opened only upon the majority vote of those Board members present and not abstaining from the final vote.

6.12 The public hearing shall remain open to allow for oral and/or written testimony, and until the Board votes to close the public hearing pursuant to Section 8.2 herein. Further oral or written testimony shall not be accepted after the public hearing has been closed.

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Article 6 – continued

- 6.13 In the event that the petitioner fails to appear either in person or by agent, the case shall be deemed dismissed unless the Board shall vote otherwise. In such cases, the Petitioner shall be furnished with written notice of the dismissal by the Secretary of the Board. A petitioner may reactivate a dismissed case only upon filing a new petition and upon payment of the fee specified in Section 9.3.3(A)4 of the Zoning Ordinance. Such reactivated cases shall be noticed in the usual manner pursuant to Section 6.2 herein.

ARTICLE 7 - FORM AND CHARACTER OF MOTIONS AND DECISIONS

- 7.1 The Board shall conduct all votes in public session. Voting *in absentia* is not permitted.
- 7.2 The form and character of motions shall conform to those specified in the Appendix - Champaign County Zoning Board of Appeals Rules of Order, a copy of which is attached hereto, provided that all motions and decisions shall conform to applicable Illinois Law. In the event that the Rules of Order contained in the attached Appendix are not applicable to the question at hand, *Roberts Rules of Order, Newly Revised*, shall apply.
- 7.3 The Chairperson shall not make any motion, except as provided in Section 8.5 herein.
- 7.4 A second shall be required prior to the Board's voting on any motion, except as provided in Section 8.5 herein. A second shall not be construed as an indication of how the member offering the second intends to vote.
- 7.5 The Chairperson may second any motion, provided that he or she has not offered the motion pursuant to Section 8.5 herein. Alternately, the Chairperson may declare a motion dead for lack of second only after three requests to entertain a second to the motion have been offered.
- 7.6 Where a motion to disapprove an item other than a Final Determination of the Board has been defeated, a member of the Board who initially voted with the prevailing side of that motion, except the Chairperson, may offer a motion to reconsider the question.
- 7.7 In the event of a tie vote, the motion shall be defeated.
- 7.8 Any member who becomes aware that he or she has a potential conflict of interest regarding a petition shall notify the Chairperson at the earliest opportunity. If it is determined that the member does have a direct conflict of interest, or prejudice sufficient to impair their ability to fairly weigh evidence, such member shall not participate in the public hearing or discussion at any meeting that relates to that particular matter, nor shall the member vote on the matter.
- 7.9 On any matter before the Board, any member declining to vote for any reason shall announce their intent to abstain and the reason for doing so before the public hearing is closed.
- 7.10 An abstention shall not be counted in the determination of a motion, but shall be recorded.
- 7.11 Upon the request of any member of the Board, a roll call vote shall be taken in lieu of a voice vote.

Article 7 – continued

- 7.12 Votes on Final Determination with respect to any matter before the Board shall be by roll call vote and in accordance with Article 8.
- 7.13 All roll call votes shall be taken by the Recording Secretary in varied order, except that the Chairperson shall vote last.

ARTICLE 8 FINAL DETERMINATIONS

- 8.1 The Board shall vote on the petition only as it was filed or subsequently amended by the Petitioner, except in the case of amendments to the text of the Zoning Ordinance.
- 8.2 Upon submission of all evidence, the Board shall consider the following motions prior to closing the public hearing:
- a) to amend, correct, add or delete points of evidence from the Summary of Evidence and Documents of Record;
 - b) to consider approval of the Summary of Evidence and Documents of Record, either as submitted or as amended;
 - c) to consider any waivers of standard conditions for specific Special Use Permits contained in Section 6.1.3 of the Zoning Ordinance. Said waivers may be approved individually or en masse by the affirmative vote of a majority of those members voting on the issue, and shall be incorporated into the Findings of Fact with the reason for granting each waiver described;
 - d) to consider any conditions proposed by Staff or the Board. Said conditions may be adopted either individually or en masse, but shall be incorporated into the Findings of Fact, with the purpose of each condition described;
 - e) to consider any proposed Findings of Fact as required by Sections 9.1.9(D) of the Zoning Ordinance for variance criteria or 9.1.11(C) of the Zoning Ordinance for special use permit criteria, whichever is applicable. Said Findings of Fact may be adopted individually or en masse; and
 - f) to close the public hearing.
- 8.3 Upon review of the full public record and due deliberation by the Board, any of its members other than the Chairperson, except as provided in Section 8.5 herein, may make a motion for Final Determination. The motion may include direction in the form of approval, approval with specified conditions, or denial.
- 8.4 No Final Determination shall be made at a meeting where less than four board members are present. A concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to grant any Variance or Special Use Permit under the terms of the Ordinance, or to recommend any amendment of the Zoning Map or Ordinance Text to the Governing Body.
- 8.5 In the event of a final determination where the Chairperson has requested a motion three times, the Chairperson shall make a Motion to Approve, which need not be seconded prior to the Board voting on the motion.

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Article 8 – continued

- 8.6 In the case of a final determination, a Motion to Approve which fails either by failure to receive a second or by failure to receive the required number of affirmative votes shall be deemed a denial and shall be dispositive of the issue.
- 8.7 Also in the case of a final determination, an initial Motion to Deny which fails shall not be deemed dispositive, and an alternate motion shall be made.
- 8.8 The Summary of Evidence and the Findings of Fact and Record of Decision of the case shall be acknowledged as to accuracy by the Secretary and the Chairperson, and shall be part of the public record of the Board.
- 8.9 Notice of the decision of the Board, including the Findings of Fact and Record of Decision, shall be given by the Secretary to the Petitioner and any other parties that have requested such notice, as soon as reasonably possible after the decision is reached.
- 8.10 All decisions or determinations made by the Zoning Board of Appeals shall be final, and shall not be reconsidered other than in accordance with Section 9.7 herein.

ARTICLE 9 - REQUEST TO WITHDRAW, AMEND, CONTINUE, OR REHEAR APPLICATIONS

- 9.1 Upon written request from the applicant or authorized agent, a petition or an appeal may be withdrawn at any time prior to the Board's making its final determination on the case.
- 9.2 The Board may consider a request to amend a petition or an appeal prior to or during the course of the public hearing on the issue. In the event that the request to amend is denied, the cause for such denial being stated in the motion, the hearing and decision on the case as it was originally proposed shall proceed.
- 9.3 If the request to amend the petition or appeal is granted, or if a text amendment has been altered, the Board shall determine whether there is a substantial or material difference between the case as it was described in the public notice and the case as amended such as to render the notice insufficient. In such case, new public notice shall be required before the hearing of the case may proceed, with fees for such notice paid by the applicant pursuant to Section 9.3.3(B)6 of the Zoning Ordinance.
- 9.4 The Board shall also determine whether the nature of the amendment is such as to require re-examination by counsel or staff members having made reports on the original application or appeal. If referral for re-examination is found necessary, the Board may proceed with the hearing, or may continue it to a specified time, and shall not make a final determination on the case until it has considered any revised staff reports that result from the amendment to the petition.
- 9.5 The Board may, upon majority vote of those members present, continue a public hearing in order to receive additional information from staff, the petitioner, other agencies, technical experts, or other interested parties. A request from the applicant or any other interested party to continue the public hearing may be permitted only for good cause. In the event of such continuances, further

Article 9 – continued

publication of such action need not be made.

- 9.6** In all cases, continuances shall be made to a date certain. The Board shall not grant a request for a continuance for more than 100 days from the date the continuance is requested. The Board shall not grant more than one request for a continuance except in the following instances:
- a) a continuance initiated by the Board for purpose of receiving additional information from staff, the petitioner, other agencies, technical experts, or other interested parties;
 - b) a continuance due to the absence of two or more Board members;
 - c) a continuance due to a bona fide illness or incapacity of the petitioner, the petitioner=s representatives, or other interested party; or
 - d) a continuance due to faulty public or mail notice.
 - e) In all cases, continuances shall be made to a date certain. The Board shall not grant a request for a continuance for more than 100 days from the date the continuance is requested.
- 9.7** No matter previously decided by the Board may be reconsidered unless upon submission of a new petition, the Board finds that the petition or the circumstances of a particular case have changed significantly, or unless a period of no less than one year has passed.

ARTICLE 10 - RECORDS

- 10.1** A file of materials and decisions relating to each case shall be kept as part of the records of the Board by the Secretary in the Office of the Zoning Board of Appeals.
- 10.2** All records of the Board shall be public records. Such records shall be maintained in accordance with the *Illinois Public Records Act*, (50 ILCS 205/1 *et seq.*), and shall be made available to the public pursuant to the provisions of the *Illinois Freedom of Information Act*, (5 ILCS 140/01 *et seq.*).
- 10.3** The Zoning Administrator, or the Zoning Administrator’s representative, shall serve as Secretary to the Board pursuant to Section 9.1.7(F) of the Zoning Ordinance.
- 10.4** The Secretary to the Board shall perform or supervise all clerical work of the Board and shall:
- a) maintain the case docket, case log, and all case files;
 - b) set the agenda for the meetings of the Board pursuant to Section 6.1 herein;
 - c) cause to be published all required legal publications pursuant to the County Enabling Legislation;
 - d) send out all other notices pursuant to Section 6.2 herein;
 - e) furnish the Board with all pertinent information and memorandum regarding items before the Board;
 - f) attend all Board meetings and hearings;
 - g) summarize the testimony of those appearing before the Board;
 - h) record and maintain permanent minutes of the Board’s proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact;
 - i) maintain the audio tapes of the Board’s proceedings for a period of no less than one year after the date of each hearing of the Board;
 - j) make a record of examinations and official actions;
 - k) record the names and mailing addresses of all persons appearing before the Board; and

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Article 10 – continued

- l) conduct the routine correspondence of the Board and such other correspondence as directed by the Board.

ARTICLE 11 - SEPARABILITY

- 11.1 Should any Article or Section of the By-Laws of the Champaign County Zoning Board of Appeals be found to be illegal, the remaining articles and sections shall remain in effect.

ARTICLE 12 - AMENDMENTS

- 12.1 These rules may be amended by the affirmative vote of five members of the Board.
- 12.2 The proposed amendment must be presented at a regular or special meeting preceding the meeting at which the vote is taken.
- 12.3 These rules may be suspended for cause upon affirmative vote of five members, unless such rule is required by state statute or the Zoning Ordinance.

* * *

The foregoing rules and regulations are hereby adopted by the Zoning Board of Appeals of Champaign County.

SIGNED:

Debra Griest
Champaign County Zoning Board of Appeals

ATTEST:

Secretary
Champaign County Zoning Board of Appeals

DATE: _____