

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **MAY 26, 2011**
Time: **7:00 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 (April 28, 2011)
5. Continued Public Hearings

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

Case 683-AT-11 Petitioner: **Zoning Administrator**

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

1. **Add definitions for ‘parcel,’ ‘best prime farmland,’ ‘suited overall’ and, ‘well suited overall.’**
2. **Revise paragraph 5.4.3C.2. as follows:**
 - (a) **In item a., add ‘an infrastructure to support the development’ and give examples of relevant infrastructure;**
 - (b) **In item h., replace ‘emergency’ with ‘public’ and add ‘to support the proposed development’ and give examples of relevant services;**
 - (c) **In item j., delete ‘effects on’ and replace with ‘the amount of disturbance to.’**
3. **Revise paragraph 9.1.11.B. by addition criteria that apply to special use permits in the AG-1, AG-2, and CR zoning districts in addition to the existing criteria for any special use permit as follows:**
 - (a) **The property is either best prime farmland and the property with proposed improvements is well suited overall or the property is not best prime farmland and the property with proposed improvement is suited overall;**
 - (b) **The existing public services are available to support the proposed special use effectively and safely without undue public expense;**
 - (c) **The existing public infrastructure together with proposed improvements is adequate to support the proposed development effectively and safely without undue public expense.**

Case 684-AT-11 Petitioner: **Zoning Administrator**

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

1. **Revise Section 5.2 by indicating that a subdivision in the CR, AG-1, or AG-2 zoning districts that totals more than three lots or with new streets or private access ways requires a County Board approved special use permit for Rural Residential Development in addition to the Rural Residential Overlay District.**
2. **Revise Section 5.4.3 as follows:**
 - (a) **Add a requirement for a County Board approved special use permit for Rural Residential Development in accordance with Section 9.1.11.;**
 - (b) **Add a requirement that the public hearing for a map amendment for a Rural Residential Overlay and the public hearing for the related special use permit for Rural Residential Development must be concurrent.**

Case 685-AT-11 Petitioner: **Zoning Administrator**
Request: **Amend the Champaign County Zoning Ordinance by revising Section 6.1 by adding standard conditions required for any County Board approved special use permit for a Rural Residential Development in the Rural Residential Overlay district as follows:**

- (1) Require that each proposed residential lot shall have an area equal to the minimum required lot area in the zoning district that is not in the Special Flood Hazard Area;**
- (2) Require a new public street to serve the proposed lots in any proposed RRO with more than two proposed lots that are each less than five acres in area or any RRO that does not comply with the standard condition for minimum driveway separation;**
- (3) Require a minimum driveway separation between driveways in the same development;**
- (4) Require minimum driveway standards for any residential lot on which a dwelling may be more than 140 feet from a public street;**
- (5) Require for any proposed residential lot not served by a public water supply system and that is located in an area of limited groundwater availability or over a shallow sand and gravel aquifer other than the Mahomet Aquifer, that the petitioner shall conduct groundwater investigations and contract the services of the Illinois State Water Survey (ISWS) to conduct or provide a review of the results;**
- (6) Require for any proposed RRO in a high probability area as defined in the Illinois State Agency Historic Preservation Agency (ISHPA) about the proposed RRO development undertaking and provide a copy of the ISHPA response;**
- (7) Require that for any proposed RRO that the petitioner shall contact the Endangered Species Program of the Illinois Department of Natural Resources and provide a copy of the agency response.**

6. New Public Hearings

***Case: 686-V-11** Petitioner: **Brandon Roberts**
Request: **Authorize the connection of an existing garage to an existing house with a resulting side yard of 10 feet instead of the minimum required side yard of 15 feet for a house in the AG-1 Zoning District.**
Location: **A tract of land located in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 21 of Township 20 North, Range 14 West of the Second Principal Meridian in Ogden Township and commonly known as the house at 2706 CR2050N, Ogden.**

7. Staff Report

- A. April 2011 Monthly Report
- B. Status of Zoning Cases that have received Final Determination

8. Other Business

- A. Proposed ZBA Bylaws Amendments

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

10. Adjournment

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

2 **MINUTES OF REGULAR MEETING**

3 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

4 1776 E. Washington Street

5 Urbana, IL 61801

7 **DATE:** April 28, 2011

PLACE: Lyle Shields Meeting Room
1776 East Washington Street

10 **TIME:** 7:00 p.m.

Urbana, IL 61802

11 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Roger Miller, Melvin Schroeder, Eric
12 Thorsland, Paul Palmgren

14 **MEMBERS ABSENT :** None

16 **STAFF PRESENT :** Lori Busboom, John Hall, Susan Monte

18 **OTHERS PRESENT :** Mick Harshbarger. Sherry Schildt, Herb Schildt

21 **1. Call to Order**

23 The meeting was called to order at 7:07 p.m.

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

27 The roll was called and a quorum declared present.

29 **3. Correspondence**

31 There was none.

33 **4. Approval of Minutes (March 24, 2011)**

35 Mr. Miller moved, seconded by Ms. Capel to approve the March 24, 2011 minutes as submitted.
36 The motion carried by voice vote.

38 **5. Continued Public Hearing**

40 **Case 677-V-10 Petitioner: Mick and Leah Harshbarger Request: Authorize the occupancy and**
41 **use of an existing detached accessory structure with a setback of 47 feet and 6 inches from CR**
42 **2545, a minor street, in lieu of the minimum required setback of 55 feet and a front yard of 17 feet**
43 **and 6 inches from the front property line in lieu of the minimum required front yard of 25 feet**
44 **and located in the AG-1 district. Location: Lot 27 of Deer Ridge/Ingram's Third Subdivision in**

Section 30 of Ogden Township and commonly known as the house at 2545 CR 1375N, Ogden.

Mr. Thorsland informed those present that this is an Administrative Case and as such the County allows anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a show of hands for those who would like to cross examine and each person will be called upon. He requested that anyone called to cross examine go to the cross examination microphone to ask any questions. He said that those who desire to cross examine are not required to sign the witness register but are requested to clearly state their name before asking any questions. He noted that no new testimony is to be given during the cross examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt from cross examination.

Mr. Hall stated that a new memorandum had been distributed. He said that attached to that memorandum is a letter from staff to the Ogden Township Highway Road Commissioner. Mr. Hall stated that he had a meeting with the Ogden Township Highway Commissioner who stated that he was comfortable with the proposed special conditions which also means he is comfortable with the garage staying where it is. Mr. Hall noted that the Ogden Township Highway Commissioner had written 'OK' and signed his name at the bottom of the letter.

Mr. Hall said that he had an opportunity to discuss the proposed special conditions prior to the public hearing with Mr. Harshbarger. He noted that Mr. Harshbarger indicated to him that he had not received a copy of the letter to the Ogden Township Road Commission outlining the proposed conditions prior to the public hearing.

Mr. Hall stated that the proposed conditions are not substantially different from what had been discussed at the previous hearing.

Mr. Hall said that he had asked the Assistant State's Attorney to be in attendance at the public hearing, however, she was not able to attend. Mr. Hall said that he asked her several questions that the Board may have had if she had been in attendance. That discussion has been summarized in the new memorandum, starting off with the duty of the Zoning Board of Appeals is to assure compliance with the Champaign County Zoning Ordinance. He said that the Board can only approve a variance if a positive finding can be made on all required criteria. If a positive finding is made on all but one of the criteria, the variance cannot be approved. He noted that approval of a variance takes four affirmative votes. As Board members move to adopt the Findings of Fact, if the Findings are affirmative and the Board members as individuals, then you, as individual Board members, should not vote to approve the Findings if you cannot support approval of the variance. This will ensure the Final Determination is consistent with the Findings.

Mr. Hall said that denial of a variance should only occur when denial is the only determination consistent with the evidence and the required Findings, which means it's the only way to achieve harmony with the general intent and purpose of the Zoning Ordinance and the only way to ensure no resulting injury to the neighborhood, or other detriment to the public health, safety and welfare. Mr. Hall

1 said that if the Board denies the request based on good faith evaluation of the evidence, they should not
2 worry about any subsequent penalties to the County or court action.

3
4 Mr. Hall reiterated that the Board's task is to make a good faith evaluation of the evidence and vote as
5 they see fit.

6
7 Mr. Hall said that after the discussion with the Assistant State's Attorney, not all relevant evidence had
8 been included with the Summary of Evidence. He noted that he drafted new evidence for the Board's
9 consideration. This evidence need only be included if the Board believes it to be relevant. Mr. Hall
10 continued by saying if it is not relevant, the new evidence will only be added as a Document of Record.

11
12 Mr. Hall said, regarding Item 7 on the Summary of Evidence which is required Finding #1, regarding the
13 special conditions and circumstances which are peculiar to the land or structure which are not applicable
14 to similarly situated land or structures, staff has evidence that talks about special conditions and
15 circumstances. He said that in fact the same conditions and circumstances to apply to other lots,
16 however, those are still special conditions and circumstances. Mr. Hall continued by saying that even
17 though that is the case, those things have existed all of the time that lot has existed, therefore, the
18 purchaser of this lot should be well aware of those conditions and circumstances. He said that possible
19 new evidence for Item 7 would be Item E which would read 'Site plan for Zoning Use Permit 266-08-09
20 indicated an adequate front yard but the subject building was not built in conformance with the site plan
21 due to an error by the builder.'

22
23 Mr. Hall noted that if the site plan had been received prior to construction, staff would have based their
24 site plan review and approval on that measurement, however, the garage would have still been
25 constructed in the same location, which would still require a variance.

26
27 Mr. Hall stated that he did not believe there was any new evidence required for Item 8. The existing
28 evidence supports any possible determination the Board may make.

29
30 Mr. Hall said that possible new evidence relevant to Item 9, which is Finding #3, which is whether or not
31 special conditions result from actions of the applicant. Mr. Hall noted that a new Item 9.D. could read
32 'The petitioner was familiar with all of the peculiarities of the subject property and still indicated an
33 adequate front yard on the site plan for Zoning Use Permit 266-08-09.'

34
35 Mr. Hall said that possible new evidence for Item 10, which is Finding #4, regarding whether granting of
36 the Variance would be in harmony with the general purpose and intent of the Zoning Ordinance, would
37 be new Item 10.H and would read as follows, 'Equipment for the Home Occupation is in the subject
38 building and parking related to the Home Occupation is likely to occur at the subject building even
39 though there is inadequate space between the building and the street right-of-way. Special conditions
40 have been proposed to mitigate parking encroachment into the right-of-way but those conditions rely on
41 enforcement by the Department of Planning and Zoning and place an unusual and unreasonable burden
42 on the Department.' Mr. Hall noted that he would feel more comfortable to saying 'place an unusual

1 burden on the Department' and leave out the word 'unreasonable.' He noted that the Board could make
2 the determination whether it may be an unreasonable burden on the Department.
3

4 Mr. Hall said that whenever the Board places a special condition on a variance, there is the possibility of
5 additional work for the Department. He said that if the Board believes the condition to be reasonable,
6 then it should be imposed. He said that he believes the conditions to be feasible, otherwise he said that
7 he would not have suggested them to be imposed.
8

9 Mr. Hall noted that there is new evidence for Item 11, which is Finding #5, regarding whether the
10 granting of the variance would be injurious to the neighborhood or otherwise detrimental. He said that
11 the same evidence for Item 10 is relevant for Item 11. He pointed out that a special condition such as
12 the one suggested, requires enforcement. In this instance, there is a trigger mechanism so if the
13 condition is violated three times, the case must come before the Board, however, some of the issues are
14 how likely is it to be followed, the strain on the Department and if the conditions are not being followed,
15 then there is a result on the neighborhood. Mr. Hall said that he believed those statements to be true
16 whether the case is approved or not. Mr. Hall said that he looks at this evidence as valid, however, if the
17 Board feels that this information is not relevant, then it does not have to be added to the Summary of
18 Evidence.
19

20 Mr. Hall said that, regarding Finding #6, regarding the minimum variance to make possible the
21 reasonable use of the structure, there is no new evidence. The variance requested is the minimum
22 required to make the structure conform to the Zoning Ordinance.
23

24 Mr. Hall stated that since the memorandum was distributed at the meeting, Mr. Harshbarger had not had
25 a chance to review the additional evidence. Mr. Hall said that it was his understanding that Mr.
26 Harshbarger had not seen the revised Summary of Evidence that was sent in the mailing.
27

28 Mr. Courson asked Mr. Hall to review the procedures the Department uses when receiving a complaint
29 and enforcement of the requirements. Mr. Hall said that a valid complaint must be received by the
30 office that is documented. He said that if the Department only receives telephone calls without
31 supporting documentation or direct physical evidence, nothing can be done.
32

33 Mr. Hall said that once the Department receives a complaint, a site visit is made to obtain photographic
34 evidence. If a complainant submits dated photographs to the Department it is enough evidence to begin
35 the notification process, however, it may not be enough evidence should the case end up in court.
36

37 Mr. Courson asked how many man hours are used when conducting a nuisance investigation. Mr. Hall
38 said that if three dated photographs are received within a short period of time, a notice can be sent out.
39 The time for something like that is minimal. Mr. Hall said that a lot of time is consumed in visiting the
40 site, taking and processing photographs and sending out written notices.
41

42 Ms. Capel said that if there is a bona fide safety issue every time a vehicle is parked there, however, it

1 may not seem like an issue that triggers a complaint from a neighbor.
2
3 Mr. Hall pointed out that the petitioner testified at the last public hearing that the vehicle used in the
4 Home Occupation is parked at the other driveway off of the east – west road. Mr. Hall said that the
5 reason that he drafted the condition is so that the petitioner’s testimony regarding where the vehicle is
6 parked becomes a requirement. Mr. Hall noted that the building where the Home Occupation occurs is
7 the building which requires a variance. He said that in weighing these items, it becomes a question of
8 whether parking the vehicle on the east – west road will happen one hundred percent of the time.
9
10 Mr. Thorsland asked whether the conditions that are in the memorandum are the same ones that the
11 Township Road Commissioner reviewed. Mr. Hall said that that is correct.
12
13 Mr. Hall noted that in Condition 12.D. which refers to the condition above, that should refer to ‘C’ not
14 ‘D.’
15
16 Mr. Harshbarger asked for a few moments to review the memorandum and conditions.
17
18 Mr. Courson asked whether it was correct that the garage was constructed prior to applying for a Zoning
19 Use Permit and submitting a site plan. Mr. Hall said that that was correct.
20
21 Mr. Courson asked whether the variance that was previously issued would become invalid because this
22 structure is not in compliance with the Zoning Ordinance provisions. Mr. Hall said that that was a
23 separate issue.
24
25 Mr. Hall noted that even though the Board approved one part of that previous variance for special
26 conditions, in that instance staff was aware of the need for a variance because the site plan indicated
27 insufficient yards. In this instance, staff had no idea that a variance was required because the site plan
28 indicated that the detached garage was in conformance.
29
30 Mr. Harshbarger stated that the conditions are acceptable to him.
31
32 Mr. Courson asked Mr. Harshbarger if he built the subject garage. Mr. Harshbarger stated that he was
33 the builder.
34
35 Mr. Courson asked Mr. Harshbager if he drew the site plan. Mr. Harshbarger stated that he drew the site
36 plan that was submitted with the Zoning Use Permit for the detached garage.
37
38 Mr. Thorsland asked whether there was anyone in the audience who wished to cross-examine Mr.
39 Harshbarger or provide additional testimony. He noted that there was no one.
40
41 **Mr. Palmgren moved, seconded by Mr. Courson to close the witness register. The motion carried**
42 **by voice vote.**

1
2 Mr. Thorsland noted that Mr. Hall had pointed out several items that could be added to the Summary of
3 Evidence if the Board desired to have them added.

4
5 Mr. Thorsland said that the first item that could be added is in reference to the site plan submitted with
6 the Zoning Use Permit which indicated the front setbacks, however, the building was not built in
7 conformance to the requirements of the Zoning Ordinance. Mr. Hall noted that if this item is added, it
8 should be added as Item 7F.

9
10 Mr. Hall noted that under Item 7.C.1., it would help to add the word ‘subject’ after the word ‘the’ so
11 there would be no doubt which garage was being discussed.

12
13 Mr. Thorsland asked whether there was anyone on the Board who would not want this added as Item F.
14 There was no objection from the Board.

15
16 Mr. Thorsland asked whether Item 3D, with respect to the petitioner being aware of all of the
17 peculiarities of the subject property and still indicated an inadequate front yard on the site plan for
18 Zoning Use Permit 266-08-09, should be added to the Finding of Fact. There was no objection from the
19 Board.

20
21 Mr. Thorsland asked whether Item 10, under Finding 4, there is a suggested Item H that would also go
22 under Item 11.E., Finding 5, with respect to the equipment used in the Home Occupation being stored in
23 the subject building and parking related to the Home Occupation is likely to occur at the subject building
24 even though there is inadequate space between the subject building and the front yard. He noted that the
25 words ‘too much’ and the words ‘and unreasonable’ were deleted from the last sentence. There was no
26 objection from the Board.

27
28 Mr. Thorsland said that there were several conditions that could be imposed. He noted that the petitioner
29 and the Township Highway Commissioner have deemed the proposed conditions acceptable.

30
31 Mr. Thorsland noted that on Page 11, 12 and 13, one correction was made in reference to ‘condition C
32 above’ which should be condition ‘D.’

33
34 Mr. Miller asked whether there was an outcome of the discussion at the previous public hearing
35 regarding the placement of ‘no parking’ signs in the driveway at the point where the public right-of-way
36 begins to ensure that vehicles did not protrude into the right-of-way. Mr. Miller said that the signs
37 would alert guests and the general public that parking beyond a certain point is a violation. Mr. Hall
38 agreed with Mr. Miller and said that he previously mentioned the signs mainly as a heads up to future
39 purchasers of the property also.

40
41 Mr. Miller noted that the responsibility to ensure the parking requirements are adhered to still falls on
42 the property owner.

1
2 Mr. Thorsland asked whether Mr. Miller wanted to make a condition regarding the installation of ‘no
3 parking’ signs.

4
5 Mr. Miller said that the condition could be as simple as stating ‘The petitioner shall be required to post
6 “No Parking Signs” on the property at the end of the concrete approach to the garage.

7
8 Mr. Hall said that this adds a complication. He asked what exactly was the Board’s intentions with the
9 installation of “No Parking” signs.

10
11 Mr. Harshbarger asked what would be the maximum length of vehicle that could be parked in front of
12 the garage. Mr. Hall said that he could park a vehicle no longer than 17 feet 6 inches, or as long as the
13 existing concrete pad. Mr. Hall noted that the Zoning Ordinance requires parking spaces to be a
14 minimum of 20 feet in length.

15
16 Mr. Miller said that he wanted to make it clear that the petitioner was aware that parking beyond the
17 existing concrete pad would be a violation of the variance case and would be ultimately the petitioner or
18 future property owner’s responsibility to make sure that the conditions imposed in this case are adhered
19 to.

20
21 Mr. Harshbarger asked whether letters could be sent to the neighbors alerting them to the parking
22 requirements on his property and also the complaint process should he or someone visiting his home
23 violate the requirements. Mr. Thorsland said that Mr. Harshbarger could send letters, however, staff or
24 the Board would not send those letters.

25
26 Mr. Hall said that the space in front of the garage is not legally a parking space. He said you could park
27 a vehicle that is 16 feet long, however, you would be within 18 inches of the garage for the vehicle to not
28 encroach into the right-of-way. He added that no matter the size of the vehicle, if it encroaches into the
29 right-of-way, it is a violation.

30
31 Ms. Capel asked whether the driveway was paved. Mr. Harshbarger said that half of the drive is paved.

32
33 Mr. Harshbarger asked what would happen if the garage met the 25 feet front yard and a vehicle that was
34 24 feet long was parked two feet away from the garage. Mr. Hall said the vehicle would still encroach
35 into the right-of-way, however, the Board would not be condoning the vehicle parking in a variance case.

36
37 Mr. Thorsland asked the Board whether they wanted to consider imposing a condition with respect to
38 placement of ‘no parking’ signs. Mr. Miller said that he would withdraw the request.

39
40 Mr. Harshbarger stated that he believed the concrete pad was poured out to the edge of the property line,
41 which was 17 feet 6 inches. He said that he could install a sign that says ‘no parking beyond concrete.’
42 Mr. Hall said that a safe sign like that would ensure that anyone could follow the requirements. He

1 added that the petitioner taking the initiative to install a conservative sign is a good idea. Installing a
2 sign to the Board's exact specifications makes it more complicated.
3
4 Mr. Hall said that if the Department receives three dated photographs of vehicles in Mr. Harshbarger's
5 driveway which violated the variance conditions, and ultimately discover that those vehicles were not
6 there at Mr. Harshbarger's invitation, in other words were a set up, then that is an entirely different
7 matter which would not be prosecuted.
8
9 Mr. Courson said that he could see where placing too many conditions on variance cases could
10 potentially take up a large portion of the Department's time in investigating complaints. He added that
11 if people continuously continue to build structures in the County and then ask for a variance after the fact
12 it puts undue hardship upon the County government because property owners are not taking a
13 responsibility to ensure that the regulations are adhered to. Mr. Courson said that it is really upsetting
14 when builders are the ones who come before the Board to request a variance after the fact. He noted that
15 Mr. Harshbarger was not the only builder that has been in front of the Board, however, that as a builder,
16 there is an added layer of responsibility for finding out what are the requirements are before
17 construction.
18
19 Mr. Hall added that this is one of the few variances that have come before the Board when there has
20 been a need to address the parking.
21
22 Mr. Thorsland said that this case has a few unique situations. He said that in the previous variance case
23 Mr. Harshbarger testified that the garage was 25 feet from the property line. He added that the township
24 received Motor Fuel Tax dollars for the maintenance of the road, therefore, it requires closer scrutiny.
25 Mr. Thorsland stated that variance cases are not decided because too many builders failed to adhere to
26 the regulations, however, the Board does like to see a little more following of the letter of the law.
27
28 Mr. Thorsland asked Mr. Harshbarger whether he received the case memorandum in time to review the
29 proposed conditions. Mr. Harshbarger said that he received the memorandum at the beginning of the
30 public hearing.
31
32 Mr. Thorsland asked Mr. Harshbarger whether he received the Summary of Evidence for review. Mr.
33 Harshbarger said that he received a letter approximately a month ago stating that he would receive a
34 packet of information a week before the public hearing.
35
36 Mr. Hall noted that that was the letter that was supposed to include the proposed conditions. Mr.
37 Harshbarger said that he received two pieces of paper. Mr. Hall said that that would have been the letter
38 and the proposed conditions. He added that apparently Mr. Harshbarger did not receive the Summary of
39 Evidence. Mr. Harshbarger stated that he did not receive any of the above mentioned documents.
40
41 Mr. Miller asked Ms. Busboom whether there is a fine assessed when staff discovers construction
42 without a permit. Ms. Busboom replied that there used to be a small fine in place, but it was ineffective

1 because it wasn't a hardship to the larger construction companies who, for the most part, knew that a
2 permit was required but wanted to get their projects underway without waiting for the permit approval
3 process. Ms. Busboom said that currently, if someone fails to obtain a Zoning Use Permit after being
4 notified that one is needed, they could be subject to a fine of \$100 to \$500 per day for each day the
5 violation exists if the case goes before a judge.

6
7 Mr. Hall noted that he has discussed the letter issue with Mr. Harshbarger who agreed that he did receive
8 the letter with the conditions. Mr. Hall noted that Mr. Harshbarger apparently did not receive the
9 Summary of Evidence. He said that he does have a concern with Mr. Harshbarger not having enough
10 time to review and absorb the information in the memorandum.

11
12 Mr. Thorsland asked Mr. Harshbarger if he would like to request a continuance of the public hearing to
13 allow time to read the Summary of Evidence. Mr. Harshbarger said that he would be comfortable
14 moving ahead with a decision this evening.

15
16 **Ms. Capel moved, seconded by Mr. Schroeder to approve the Special Conditions as described in**
17 **the Summary of Evidence submitted on April 28, 2011. The motion carried by voice vote.**

18
19 Mr. Thorsland said that the letter to the Township Highway Commissioner, Greg Frerichs, and his
20 response, should be added as Item 5 of the Documents of Record.

21
22 Mr. Thorsland said that the Supplemental Memorandum dated April 28, 2011 should be added as Item 6
23 of the Documents of Record.

24
25 Mr. Hall said that new evidence should be added to Page 11 under Item 11C., with respect to the
26 Township Highway Commissioner, and revise as follows: 'The Township Highway Commissioner has
27 also received notice of this variance. The Township Highway Commissioner reviewed the case and the
28 proposed special conditions and indicated that he was O.K. with the special conditions on the April 1,
29 2011 letter from the Zoning Administrator that was included as an attachment to the Supplemental
30 Memorandum dated April 28, 2011.

31
32 **FINDINGS OF FACT**

33 **From the documents of record and the testimony and exhibits received at the public hearing for**
34 **zoning Case 677-V-10 held on March 24 and April 28, 2011, the Zoning Board of Appeals of**
35 **Champaign County finds that:**

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

39 Mr. Palmgren said "DO" because this is a corner lot so you've got issues on two sides instead of one;

1 and there is a possible traffic situation on the road going to the south on a road that is receiving tax
2 money; and a 50 feet wide drainage easement in the southwest corner of the lot.

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

6 Mr. Palmgren said “WILL NOT” because the building in question was built by the applicant and he has
7 testified that removing eight feet from that building to make it comply would be somewhat difficult but
8 he could still do that and move the furniture around.

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

11 Mr. Courson said “DO” because the applicant indicated in the evidence that it was his mistake that
12 created this problem.

13 Ms. Caple added that the site plan submitted by the applicant with the permit application indicated
14 adequate space for the building to be built in compliance with the Zoning Ordinance and it was indicated
15 as such on the site plan.

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

18 Mr. Courson said “SUBJECT TO THE PROPOSED CONDITIONS IS” because it protects people with
19 any potential traffic issues in front of the building and the road commissioner stated he had no problems
20 with it in the letter that he signed.

21 Mr. Thorsland added that “SUBJECT TO THE PROPOSED CONDITIONS IS” because if it were a side
22 yard it would be adequate but it is a front yard.

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

26
27 Mr. Thorsland said “SUBJECT TO THE PROPOSED CONDITIONS WILL NOT” because the Fire
28 Protection District had no response and the road commissioner responded and is comfortable with the
29 special conditions.

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

32
33 Ms. Capel said “SUBJECT TO THE PROPOSED CONDITONS IS” because that variance is what is

1 required to bring the building into compliance with *Zoning Ordinance*.

2
3 **7. THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE**
4 **COMPLIANCE WITH THE CRITERIA FOR SPECIAL USE PERMITS AN FOR THE**
5 **PARTICULAR PURPOSES DESCRIBED BELOW:**
6

7 A. Encroachment of parked vehicles into the right of way shall be limited:

- 8
9 1. At no time shall a parked or standing vehicle (ie. parked while attended) located on the
10 gravel base of the pavement on either side of the driveway.
11
12 2. Unless otherwise directed by the Township Highway Commissioner, no parked or
13 standing vehicle (ie. parked while attended) located on the subject property shall extend
14 past the line of the right of way during times of anticipated street maintenance (and it
15 shall be the petitioner’s responsibility to anticipate street maintenance) or at other times
16 as requested by the Township Highway Commissioner.
17
18 3. Unless otherwise directed by the Township Highway Commissioner, at no time from
19 dusk to dawn shall a parked vehicle located on the subject property extend past the
20 centerline of the roadside ditch in front of the subject garage.
21
22 4. Three documented violations of the special conditions of approval regarding
23 encroachment of parked vehicles into the street right of way between the garage and the
24 street shall void this approval and a new variance shall be required.
25

26 B. If the subject garage is damaged or destroyed to more than 50% of the replacement value it shall
27 be reconstructed in full compliance with the Champaign County Zoning Ordinance.
28

29 C. The petitioner shall file an original copy of the signed Final Determination in this variance case
30 as a Miscellaneous Document with the Champaign County Recorder of Deeds as soon as
31 possible after receiving the signed Final Determination.
32

33 D. The Zoning Administrator shall not issue any additional Zoning Compliance Certificates
34 authorizing the use of buildings on the subject property unless the petitioner submits a copy of
35 the recorded document required by condition D. above.
36

37 Mr. Hall stated that the proposed Finding of Fact cannot result in approval because the Findings were
38 not all positive.
39

40 **Ms. Capel moved, seconded by Mr. Courson to adopt the Summary of Evidence, Finding of Fact**
41 **and Documents of Record as amended. The motion carried by voice vote.**
42

1 **Mr. Palmgren moved, seconded by Ms. Capel to close the public hearing in Case 677-V-10. The**
2 **motion carried by voice vote.**

3
4 Mr. Thorsland noted that there is out of the seven member Zoning Board, six members are present and
5 one seat is vacant and has not been filled. He asked Mr. Harshbarger whether he would like to continue
6 the public hearing to allow for a seven member Board to be present. Mr. Harshbarger said that he
7 would like to proceed with the decision.

8
9 **Final Determination**

10
11 **Ms. Capel moved, seconded by Mr. Courson that the Champaign County Zoning Board of**
12 **Appeals finds that, based upon the application, testimony, and other evidence received in this case,**
13 **that the requirements of Section 9.1.9.C HAVE NOT been met, and pursuant to the authority**
14 **granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of**
15 **Appeals of Champaign County determines that the Variance requested in Case 677-V-10 is hereby**
16 **DENIED to the petitioners, Mick and Leah Harshbarger to authorize the occupancy and use of an**
17 **existing detached accessory structure with a setback of 47 feet and 6 inches from CR 2545, a**
18 **minor street, in lieu of the minimum required setback of 55 feet and front yard of 17 feet 6 inches**
19 **from the front property line in lieu of the minimum required front yard of 25 feet and located in**
20 **the AG-1, Agriculture, Zoning District.**

21
22 **The vote was:**

23	24 Capel – yes	24 Courson – yes	24 Miller – yes
25	25 Palmgren – yes	25 Schroeder – yes	25 Thorsland – yes

26
27 **The Board recessed at 8:15 p.m., resuming at 8:23 p.m.**

28
29 **6. New Public Hearings**

30
31 **Case 683-AT-11. Petitioner: Champaign County Zoning Administrator. Request to amend the**
32 **Champaign County Zoning Ordinance as follows: (1) add definitions for ‘parcel,’ ‘best prime**
33 **farmland,’ ‘suited overall’ and, ‘well suited overall;’ (2) revise paragraph 5.4.3C.2. as follows: (a)**
34 **in item a., add ‘an infrastructure to support the development’ and give examples of relevant**
35 **infrastructure; (b) in item h., replace ‘emergency’ with ‘public’ and add ‘to support the proposed**
36 **development’ and give examples of relevant services; (c) in item j., delete ‘effects on’ and replace**
37 **with ‘the amount of disturbance to;’ (3) revise paragraph 9.1.11.B. by addition criteria that apply**
38 **to special use permits in the AG-1, AG-2, and CR zoning districts in addition to the existing**
39 **criteria for any special use permit as follows: (a) the property is either best prime farmland and**
40 **the property with proposed improvements is well suited overall or the property is not best prime**
41 **farmland and the property with proposed improvement is suited overall; (b) the existing public**
42 **services are available to support the proposed special use effectively and safely without undue**

1 **public expense; (c) the existing public infrastructure together with proposed improvements is**
2 **adequate to support the proposed development effectively and safely without undue public**
3 **expense.**
4

5 Mr. Hall said that these text amendments are the first text amendments based on the new goals and
6 policies in the Land Resource Management Plan or LRMP. He said that Ms. Monte's memorandum
7 included the memorandum that the Committee of the Whole reviewed and approved for staff to proceed.
8 He noted that there was one difference in the memorandums which pertains to the criteria that applies to
9 all Special Use Permits. He said that since the criteria are found under Goal 4 which pertains to
10 agriculture, the criteria is intended to apply to Special Use Permits in the CR, AG-1, and AG-2 districts
11 only.
12

13 Mr. Hall said that Special Use Permits are not like a Map Amendment because special conditions can be
14 applied. The County has had policies in place for a long time under the Land Use Regulatory Policies,
15 however, this is the first time that those policies will be incorporated into the Zoning Ordinance.
16

17 Mr. Hall noted that the higher standards related to Land Use Regulatory Policies have been applied to
18 rural residential overlays. Once incorporated into the Zoning Ordinance these regulations will apply to
19 any Special Use Permits in the CR, AG-1 and AG-2 zoning districts such as churches, schools, self-
20 storage warehouses without heat or utilities, grain elevators and major rural specialty businesses.
21

22 Ms. Monte said that the Text Amendments before the Board this evening will be described in greater
23 detail than what is in the memorandum. She added that any questions, concerns or requests of additional
24 information can be either answered at this hearing or by the next time the cases are before the Board.
25

26 Ms. Monte said that this case focuses on Goal 4 from the LRMP which is intended to protect the long
27 term viability of agriculture. More specifically, the proposed amendment relates to Objective 4.3 which
28 states that 'Champaign County will require that each discretionary review development will be located
29 on a suitable site.'
30

31 Ms. Monte noted that the Text Amendment proposes to add definitions for 'Best Prime Farmland,'
32 'Parcel,' 'Suited Overall,' and 'Well Suited Overall' to the Zoning Ordinance.
33

34 Ms. Monte said that the word 'Parcel' is used frequently and is sometimes interchanged with the word
35 lot.' The proposed definition is for clarification purposes.
36

37 Ms. Monte said that the term 'Best Prime Farmland' has been used for several years and has been
38 described as a footnote in the Schedule of Height, Area and Placement section of the Zoning Ordinance.
39 There are no changes proposed in the description but it is consistent with the criteria of the LRMP.
40

41 Ms. Monte said the definitions for 'Suited Overall' and 'Well Suited Overall' are proposed to also be
42 consistent with the LRMP criteria. She noted that both of these terms are currently used as defining

1 criteria for rural development that is being proposed in the CR, AG-1 and AG-2 zoning districts.

2
3 Ms. Monte noted that the Board may have some concerns regarding the definitions with respect to their
4 clarity and ease of understanding. She asked the Board members to think about whether the definitions
5 as proposed need to be amended.

6
7 Ms. Monte said that there are currently factors in the Zoning Ordinance that must be applied when
8 reviewing Rural Residential Overlay proposals. She noted that those factors have been tweaked and
9 revised to reflect the four policies that occur in Objective 4.3 which is what this Text Amendment
10 focuses on.

11
12 Ms. Monte said that Section 5.4.3C2 which deals with the public services and infrastructure which will
13 more closely conform to LRMP Policies 4.3.3 and 4.3.4.

14
15 Ms. Monte stated that there will be three new screening criteria proposed that will affect paragraph
16 9.1.11B which applies to Special Use Permits. Ms. Monte noted that three new items would be added to
17 this paragraph to implement LRMP Policies 4.3.1, 4.3.2, 4.3.3 and 4.3.4.

18
19 Ms. Monte noted that staff will provide a Supplemental Memorandum at the next public hearing which
20 will address the Board's concerns.

21
22 Ms. Capel asked whether discretionary review would take the place of by right development. Ms. Monte
23 said that perhaps the Board would like to have discretionary review added as a proposed definition.

24
25 Mr. Hall said that there should be clarification or a definition of discretionary review. Ms. Monte noted
26 that there was such a definition in the LRMP so this is not an unreasonable request.

27
28 Ms. Capel asked whether the term 'by right' is defined. Mr. Hall said that it is not defined, it is
29 assumed. He noted that in Section 5.2, 'by right' is used, but is not defined.

30
31 Ms. Capel asked for clarification or a definition of the terms 'by right' and 'discretionary review.'

32
33 Mr. Hall said that the actual proposed amendment is Attachment B which consists of three pages. All of
34 the new language is underlined.

35
36 Mr. Thorsland asked whether a development that meets the criteria of 'well suited overall' also meets the
37 criteria of 'suited overall.' Ms. Monte said that she believed it was implied.

38
39 Mr. Thorsland asked whether it would change the Text Amendment to where it would be more than an
40 implication. Ms. Monte said that she would work on that revision.

41
42 **Case 684-AT-11. Petitioner: Champaign County Zoning Administrator. Request to amend the**

1 **Champaign County Zoning Ordinance as follows: (1) revise Section 5.2 by indicating that a**
2 **subdivision in the CR, AG-1, or AG-2 zoning districts that totals more than three lots or with new**
3 **streets or private access ways requires a County Board approved special use permit for Rural**
4 **Residential Development in addition to the Rural Residential Overlay District; (2) revise Section**
5 **5.4.3 as follows: (a) add a requirement for a County Board approved special use permit for Rural**
6 **Residential Development in accordance with Section 9.1.11.; (b) add a requirement that the public**
7 **hearing for a map amendment for a Rural Residential Overlay and the public hearing for the**
8 **related special use permit for Rural Residential Development must be concurrent.**
9

10 Ms. Monte said that this case will add the Special Use Permit process with the discretionary review
11 process for a Rural Residential Overlay. She said that the proposed Text Amendment will not only
12 make a Rural Residential Overlay proposal fall under a Special Use Permit approval, that Special Use
13 Permit will be a County Board Special Use Permit that must be approved by the County Board. This is
14 only the second type of Special Use Permit that must be approved by the County Board.
15

16 Ms. Monte said that the Text Amendment proposes that the Special Use Permit must be run concurrently
17 with a Map Amendment for Rural Residential Overlay requests. This will ensure that more site specific
18 impacts on adjacent properties and impacts from adjacent properties on the proposed Rural Residential
19 Overlay are examined more carefully.
20

21 Ms. Monte noted that the Assistant State’s Attorney’s Office has recommended this change. She noted
22 that there has been no adverse public reaction received from this proposed change.
23

24 Ms. Monte reviewed how the proposed amendments would alter the Zoning Ordinance. She noted that
25 in Section 5.2, Table of Authorized Uses, instead of a just a footnote in the ‘Subdivision’ category, there
26 would be a letter ‘B’ which would indicate a County Board Special Use.
27

28 Ms. Monte noted that the other change would be located in Subsection 5.4.3 under the requirements in
29 the Zoning Ordinance for Rural Residential Overlay requirements, which adds the requirement to obtain
30 a County Board Special Use Permit and to have it run concurrently with the Map Amendment.
31

32 Ms. Capel asked whether the purpose of the proposed requirement to add the Special Use Permit
33 requirement was to enable the Board to impose special conditions. Ms. Monte said that it ensures a
34 better platform to examine the site specific impacts of the proposed development on adjacent properties
35 and the impacts the adjacent properties might have on the proposed development.
36

37 Mr. Thorsland noted that the item requiring 600 feet between driveways in the same rural residential
38 development caused a rather lively discussion at the County Board meeting. Ms. Monte said that that
39 will be discussed in Case 685-AT-11.
40

41 Mr. Hall pointed out that the Rural Residential Overlay is currently the only Map Amendment that is
42 specific to a plan.

1 **Case 685-AT-11. Petitioner: Champaign County Zoning Administrator. Request to amend the**
2 **Champaign County Zoning Ordinance by revising Section 6.1 by adding standard conditions**
3 **required for any County Board approved special use permit for a Rural Residential Development**
4 **in the Rural Residential Overlay district as follows: (1) require that each proposed residential lot**
5 **shall have an area equal to the minimum required lot area in the zoning district that is not in the**
6 **Special Flood Hazard Area; (2) require a new public street to serve the proposed lots in any**
7 **proposed RRO with more than two proposed lots that are each less than five acres in area or any**
8 **RRO that does not comply with the standard condition for minimum driveway separation; (3)**
9 **require a minimum driveway separation between driveways in the same development; (4) require**
10 **minimum driveway standards for any residential lot on which a dwelling may be more than 140**
11 **feet from a public street; (5) require for any proposed residential lot not served by a public water**
12 **supply system and that is located in an area of limited groundwater availability or over a shallow**
13 **sand and gravel aquifer other than the Mahomet Aquifer, that the petitioner shall conduct**
14 **groundwater investigations and contract the services of the Illinois State Water Survey (ISWS) to**
15 **conduct or provide a review of the results; (6) require for any proposed RRO in a high probability**
16 **area as defined in the Illinois State Agency Historic Preservation Agency (ISHPA) about the**
17 **proposed RRO development undertaking and provide a copy of the ISHPA response; (7) require**
18 **that for any proposed RRO that the petitioner shall contact the Endangered Species Program of**
19 **the Illinois Department of Natural Resources and provide a copy of the agency response.**

20
21 Ms. Monte said that Case 685-AT-11 and Case 684-AT-11 are specifically written to update the County
22 regulations that pertain to Rural Residential Discretionary Review developments as intended by the
23 LRMP by 2010. She noted that the time table for implementation is running a little behind.

24
25 Ms. Monte noted that there are seven standard conditions proposed. Some of the conditions are
26 expanded versions of Section 5.4.5 which pertains to the Rural Residential Overlay requirements.

27
28 Ms. Monte said that staff is working on examples of each of the seven proposed standard conditions
29 which will be provided in a Supplemental Memorandum that will be provided at the next public hearing.

30
31 Ms. Monte noted that proposed Standard Condition 1, which would require each proposed residential lot
32 have an area equal to the minimum required lot area located outside of the Special Flood Hazard Area, is
33 already addressed in the Subdivision Regulations and also in the Special Area Flood Hazard Ordinance,
34 however, it is not part of the Zoning Ordinance.

35
36 Ms. Monte noted that proposed Standard Condition 2, which would require a new public street to serve
37 the proposed lots in any proposed Rural Residential Overlay with more than two proposed lots that are
38 each less than five acres in area or any Rural Residential Overlay that does not comply with the standard
39 condition for minimum driveway separation, has been identified as a necessary amendment by the
40 Zoning Administrator based on his experience with Rural Residential Overlay requests that have come
41 before the County.
42

1 Ms. Monte noted that proposed Standard Condition 3, which proposes to require a proposed RRO
2 residential lot that fronts onto an existing public street to have the driveway adjacent to another driveway
3 if more than one lot is proposed, and required each pair of driveways or individual driveways to be at
4 least 600 feet from any driveway for any other lot in the same development, was discussed heavily at the
5 County Board level. She said that once a diagram has been prepared, the Board would have a better
6 understanding of the purpose of this portion of the proposed amendment. She said that the proposal is to
7 limit the number of individual driveways in rural residential lots, reducing congestion on township
8 roads.

9
10 Ms. Monte said that proposed Standard Condition 4 addresses specific standards for driveway pavement,
11 vertical clearance and a turn-around for driveways that are more than 140 feet from a public road.

12
13 Ms. Monte said that proposed Standard Condition 5, which proposes to require that for any proposed
14 RRO residential lot not served by a public water supply system and that is located in an area of limited
15 groundwater availability or over a shallow sand and gravel aquifer other than the Mahomet Aquifer, that
16 the petitioner shall contract the services of the Illinois State Water Survey (ISWS) to conduct or provide
17 a review of the results of a recent groundwater investigation to determine if adequate groundwater
18 resources exist on the site for the proposed RRO, without endangering groundwater availability for the
19 existing neighboring land uses, will ensure that there is suitable water supply for residences.

20
21 Ms. Monte said that proposed Standard Condition 6, which proposes to require for any proposed RRO in
22 a high probability area as defined in the Illinois State Agency Historic Resources Preservation Act that
23 the petitioner shall contact the Illinois Historic Preservation Agency about the proposed RRO
24 development undertaking and provide a copy of the response, will ensure that the LRMP policies are
25 consistent with the Champaign County Subdivision Regulations and Zoning Ordinance.

26
27 Ms. Monte said that proposed Standard Condition 7, which proposes to require for any proposed RRO
28 that the petitioner shall contact the Endangered Species Program of the Illinois Department of Natural
29 Resources and provide a copy of the agency response, to add a clarifying statement to the regulations
30 already in place in the Champaign County Zoning Ordinance.

31
32 Ms. Monte noted that an applicant can request any of these proposed standard conditions to be waived in
33 a proposed Rural Residential Overlay case.

34
35 Mr. Hall pointed out that staff is reviewing approved Rural Residential Overlay developments to see
36 how the proposed conditions would have affected or altered them, if they would have been altered at all.

37
38 Mr. Hall noted that when this case comes before the Board again, a table of RRO rezoning cases will be
39 listed with a column indicating whether the proposed conditions would have changed anything. He said
40 that is a chance to compare the proposed standards to the cases that have previously come before the
41 Board to see if they are reasonable or if they are too stringent or inadequate.

1 Mr. Hall said that eventually the submittals currently required for a Rural Residential Overlay will
2 become standard conditions under a Special Use Permit, however the requirement for a Special Use
3 Permit must be adopted first.

4
5 Mr. Hall commented that more conditions are likely to be discovered indefinitely as staff becomes more
6 familiar with the process and gets more insight from the County Board.

7
8 Mr. Courson asked whether the Historical studies and Endangered Species studies are necessary on tilled
9 land. He said that land that is being farmed for many years never has to go through examination,
10 however, once someone decides to develop the same land into a Rural Residential Overlay, then the
11 studies are required which increases cost and make it harder, if not impossible, to obtain approval.

12
13 Ms. Monte said that in most cases no additional studies are required once the initial request is made.

14
15 Mr. Hall noted that in the Summerfield RRO case which involved a forty acre field that had been tilled
16 every year and was being proposed to be developed into one acre lots, it was discovered that there were
17 three sites that were found to have a high enough density of pieces of artifacts to warrant a Phase II study
18 of the property. The end result was that the developer amended his plans to do a twelve lot development
19 leaving the areas of concern untouched.

20
21 Mr. Hall noted that the endangered species are generally not in a field that has been farmed for numerous
22 years, however, it may reside in an area adjacent to the farm field that we don't want to disturb in the
23 development process. He noted that there are not that many endangered species left in the County.
24 Contacting the agencies is merely a formality for the most part. All this proposed amendment does is to
25 give the County Board a chance to take it into consideration.

26
27 Mr. Thorsland noted that farming operations don't go deep enough to disturb old home sites or Indian
28 burial grounds, however, when developing a site for home construction, the ground is disturbed at a level
29 that may uncover historical artifacts.

30
31 Ms. Monte noted that she discovered information regarding what procedures to follow if you discover
32 human remains on your property and would bring that information to the next meeting.

33
34 **Mr. Miller moved, seconded by Mr. Palmgren to close the Witness Register for Zoning Cases 683-
35 AT-11, 684-AT-11 and 695-AT-11. The motion carried by voice vote.**

36
37 **Ms. Capel moved, seconded by Mr. Courson to continue Zoning Cases 683-AT-11, 684-AT-11 and
38 685-AT-11 to May 26, 2011. The motion carried by voice vote.**

39
40 **Mr. Schroeder moved, seconded by Mr. Courson to cancel the May 12, 2011 Zoning Board of
41 Appeals meeting. The motion carried by voice vote**

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7. Staff Report

Mr. Hall noted that Ms. Berry is at home recuperating from a planned surgery and hopefully she will be back at work on or before June 2.

Mr. Hall said that he has been working on a procedure for post-decision wrap-up for zoning cases. He said that it has been a big problem for the Department because once a decision has been made by the Zoning Board of Appeals, that becomes secondary to the next petitioner and what he wants to get from the Board and so on.

Mr. Hall said that getting cases in front of the Zoning Board and getting a decision is the most important thing in Current Planning, however, doing the wrap-up has never been critical and it should be. He said that he would like to formalize reporting to the Board the status of cases that have received a final decision. Mr. Hall said that he would need to discuss the proper procedure for reporting this to the Board.

Mr. Hall noted that petitioners have been benefiting from this lack of finalizing cases because the deadline for abiding by the Board’s decision doesn’t start until the petitioner receives the Findings from the case.

Mr. Thorsland said that Mr. Hall has asked whether an update on zoning cases that have received a final decision should be placed on the agenda. Mr. Hall said that the Board should always feel free to ask how the post-decision wrap-up on zoning cases is progressing.

8. Other Business

Mr. Thorsland said that the Zoning Board of Appeals By-laws are still in the process of being updated. He asked the Board if they had any comments or concerns that staff should be made aware of. Mr. Thorsland said that staff would like to have an updated version finalized by fall.

Mr. Miller asked what would be the procedure to initiate a text amendment to require a fine for construction without a permit.

Mr. Hall said that he has tossed around the idea of imposing a higher fee for permitting after the construction has taken place. He said that staff could toss around some ideas and also discuss this proposal with the State’s Attorney.

Mr. Hall said that a text amendment for fee increase is supposed to be initiated later this year after more information is gathered for the County Board. Mr. Hall said that if after discussing this with the State’s Attorney, the Zoning Board could initiate the text amendment without first seeking County Board approval or the changes could be included in the fee amendment that staff has already been directed to

1 do, or County Board approval could be sought first. Mr. Hall noted that without County Board approval
2 of the proposal beforehand, it may not go very well.

3
4 Mr. Thorsland said that he was in favor of obtaining County Board approval of the proposal first.

5
6 Mr. Courson said that he liked the term ‘post construction fee’ instead of a penalty or fine. He noted that
7 if it is a penalty or fine people will tend to be more disgruntled.

8
9 Mr. Hall said that he would discuss this matter with the State’s Attorney and include an item on the next
10 agenda.

11
12 **9. Audience Participation with respect to matters other than cases pending before the Board**

13
14 There was none.

15
16 **10. Adjournment**

17
18
19 The meeting adjourned at 9:28 p.m.

20
21 Respectfully submitted,

22
23
24
25 Secretary of Zoning Board of Appeals

CASE NO. 683-AT-11
Supplemental Memorandum

Date: May 18, 2011

Petitioner: Zoning Administrator

Prepared By: Susan Monte, CCRPC Planner and John Hall, Zoning Administrator

Request:

Amend the Champaign County Zoning Ordinance as follows:

1. Add definitions for parcel, best prime farmland, suited overall, and well suited overall.
2. Revise Paragraph 5.4.3 C.2. as follows:
 - a. In Item a, add “and infrastructure to support the development” and give examples of relevant infrastructure.
 - b. Item h, replace ‘emergency’ with ‘public’ to describe ‘services’, add “to support the proposed development” and give examples of relevant services.
 - c. In Item j, delete “effects on” and replace with “the amount of disturbance to”.
3. Revise Subsection 9.1.11B. by adding criteria that apply to special use permits in the AG-1, AG-2, and CR zoning districts in addition to the existing criteria for any special use permit, as follows:
 - a. The property is either best prime farmland and the property with proposed improvements is well suited overall or the property is not best prime farmland and the property with proposed improvements is suited overall.
 - b. The existing public services are available to support the proposed special use effectively and safely without undue public expense.
 - c. The existing public infrastructure together with proposed improvements is adequate to support the proposed development effectively and safely without undue public expense.

STATUS

This case was continued from the April 28, 2011 meeting. The minutes of that meeting are included separately for approval.

The requested change to the draft text amendment requested at the April 28, 2011 meeting was to add a definition to Section 3.0 for the terms: ‘by right’ and ‘discretionary’.

PROPOSED REVISION

The following additional defined terms are proposed to be added to Section 3.0 of the Zoning Ordinance:

3.0 Definitions

BY RIGHT: a term to describe a USE permitted or allowed in the DISTRICT involved, without review by BOARD or GOVERNING BODY, and complying with provisions of the zoning ordinance and with other applicable ordinances and regulations.

DISCRETIONARY: a term to describe a decision requiring the exercise of judgment, deliberation or decision on the part of the BOARD and GOVERNING BODY in the process of approving or disapproving a SPECIAL USE or a rezoning request.

DISCRETIONARY DEVELOPMENT: a non-agricultural land USE that may occur provided that a SPECIAL USE permit and/or a rezoning request is granted by the BOARD and/or by the GOVERNING BODY following a DISCRETIONARY review process and additionally provided that the USE complies with provisions of the zoning ordinance and other applicable ordinances and regulations.

CASE NO. 684-AT-11
Supplemental Memorandum

Date: May 18, 2011

Petitioner: Zoning Administrator

Prepared By: Susan Monte, CCRPC Planner and John Hall, Zoning Administrator

Request:

Amend the Champaign County Zoning Ordinance as follows:

1. Revise Section 5.2 by indicating that a subdivision in the CR, AG-1, or AG-2 Districts that totals more than three lots or with new streets or private access ways requires a County Board approved special use permit for rural residential development in addition to the Rural Residential Overlay District.
2. Revise Section 5.4.3 as follows:
 - a. Add a requirement for a County Board approved special use permit for a rural residential development in accordance with Section 9.1.11.
 - b. Add a requirement that the public hearing for a map amendment for a Rural Residential Overlay and the public hearing for the related special use permit must be concurrent.

STATUS

This case was continued from the April 28, 2011 meeting. The minutes of that meeting are included separately for approval.

Additional information about prior Rural Residential Overlay Zoning Map Amendment cases is provided as a general reference.

ADDITIONAL INFORMATION

Attachment A is a list of the 20 Rural Residential Overlay (RRO) Zoning Map Amendment Cases received to date by the Department of Planning and Zoning since the Zoning Ordinance adopted the RRO zoning provisions on June, 22, 1999. The list provides a general summary of RRO cases, indicating the status and scope of the RRO requests received, and general location of each RRO request.

ATTACHMENTS

A Rural Residential Overlay (RRO) Zoning Map Amendment Cases

Rural Residential Overlay (RRO) Zoning Map Amendment Cases

	Zoning Case Number	Status	Section/Township	Notes
1	221-AM-00	Withdrawn	Section 25/Scott	26 lots on 40 acres in AG-1 (Bell)
2	253-AM-00	Approved	Section 25/Newcomb	5 lots on 17.8 acres in CR (Neef)
3	247-AM-00	Withdrawn	Section 27/St. Joseph	26 lots on 119.83 acres in CR (Atkins)
4	295-AM-01	Withdrawn	Section 11/Brown	3 lots on 5.19 acres of ? in AG-1 (Campos)
5	343-AM-02	Approved	Section 12/Tolono	4 lots on 20 acres in AG-1 (Widholm)
6	398-AM-03	Approved	Section 25/Newcomb	10 lots on 21.8 acres in CR (Brock)
7	445-AM-04	Denied	Section 25/Stanton	48 lots (reduced) on 75 acres in AG-1 (Hunt)
8	459-AM-04	Approved	Section 36/Newcomb	12 lots on 40 acres in CR (Woodard)
9	460-AM-04	Dismissed	Section 2/St Joseph	4 lots on 8 acres in CR (Sjuts)
10	468-AM-04	Approved	Section 21/East Bend	6 lots on 10.45 acres in CR (Knox)
11	514-AM-05	Denied	Section 25/Stanton	1 lot on 4.7 acres in AG-1 (Hooser)
12	520-AM-05	Approved	Section 29/Newcomb	3 lots (reduced) on 12 acres in AG-1 (Bateman)
13	546-AM-06	Approved	Section 35/Somer	12 lots on 25 acres in AG-2 (Insana)
14	542-AM-06	Remanded*	Section 22/Newcomb	27 lots on 80 acres in AG-1 (Wozniak)
15	571-AM-06	Approved	Section 25/Newcomb	1 lot on 8.8 acres in AG-1 (Brock)
16	565-AM-06	Withdrawn	Section 22/Somer	AG-2 (Lo)
17	566-AM-06	Withdrawn	Section 22/Somer	AG-2 (Lo)
18	567-AM-06	Withdrawn	Section 22/Somer	AG-2 (Lo)
19	573-AM-06	Approved	Section 43/Somer	3 lots on 18.9 acres in CR (Cope)
20	632-AM-08	Withdrawn	Section 35/Newcomb	1 lot (1.6 acres) in AG-1 (Trautman)

Summary Status of RRO Cases	
Cases Approved:	9
Cases Denied:	2
Cases Dismissed:	1
*Case Remanded at Request of Petitioner and on Hold:	1
Cases Withdrawn:	7
Total Number of RRO Cases Proposed:	20

**CASE NO. 685-AT-11
Supplemental Memorandum**

Date: May 19, 2011

Petitioner: Zoning Administrator

Prepared By: Susan Monte, CCRPC Planner and John Hall, Zoning Administrator

STATUS

This case was continued from the April 28, 2011 meeting. The minutes of that meeting are included separately for approval.

Additional information is provided regarding the draft Standard Conditions 1, 2, and 3 to be required for a County Board approved special use permit for a rural residential development in the Rural Residential Overlay District.

Request: (abbreviated version)

Amend the Champaign County Zoning Ordinance by revising Section 6.1 to add seven standard conditions to be required for any County Board approved special use permit for a rural residential development in the Rural Residential Overlay District (RRO).

Request: (full version)

Amend the Champaign County Zoning Ordinance by revising Section 6.1 to add standard conditions required for any County Board approved special use permit for a rural residential development in the Rural Residential Overlay District (RRO) as follows:

1. Require that each proposed residential lot shall have an area equal to the minimum required lot area that is located outside of the Special Flood Hazard Area.
2. Require a new public street to serve the proposed lots in any proposed RRO with more than two proposed lots that are each less than five acres in area or any RRO that does not comply with the standard condition for minimum driveway separation.
3. Require any proposed residential lot that fronts onto an existing public street to have the driveway adjacent to another driveway, if more than one lot is proposed, and require each pair of driveways or individual driveways to be at least 600 feet from any driveway for any other lot in the same development.

continued

Request: (continued)

4. Require for any residential lot on which a dwelling may be more than 140 feet from a public street that the lot shall have a driveway as follows:
 - a. The minimum required driveway pavement shall be a minimum of six inches of gravel or similar all-weather material that is a minimum of 20 feet wide and the driveway shall extend from the public street to the proposed dwelling.
 - b. The required driveway pavement shall be maintained with a vertical clearance free of overhanging vegetation for a minimum height of 13 feet six inches.
 - c. The required driveway shall include a hammer head type turnaround that is a minimum of 20 feet by 40 feet in area and that consists of the same minimum driveway pavement and minimum clear vertical clearance.
5. Require for any proposed residential lot not served by a public water supply system and that is located in an area of limited groundwater availability or over a shallow sand and gravel aquifer other than the Mahomet Aquifer, that the petitioner shall contract the services of the Illinois State Water Survey to conduct or provide a review of the results of a recent groundwater investigation to determine if adequate groundwater resources exist on the site for the proposed RRO, without endangering groundwater availability for the existing neighboring land uses.
6. Require for any proposed RRO in a high probability area as defined in the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420) that the petitioner shall contact the Illinois State Historic Preservation Agency (ISHPA) about the proposed RRO development undertaking and provide a copy of the ISHPA response.
7. Require that for any proposed RRO that the petitioner shall contact the Endangered Species Program of the Illinois Department of Natural Resources and provide a copy of the agency response.

ADDITIONAL INFORMATION

The draft text amendment to the Champaign County Zoning Ordinance revises Section 6.1 to add seven standard conditions to be required for any County Board approved special use permit for a rural residential development in an RRO. This memorandum provides additional information regarding the draft Standard Conditions 1, 2, and 3.

Standard Condition 1

The proposed Standard Condition 1 requires that each proposed residential lot shall have an area equal to the minimum required lot area that is located outside of the Special Flood Hazard Area.

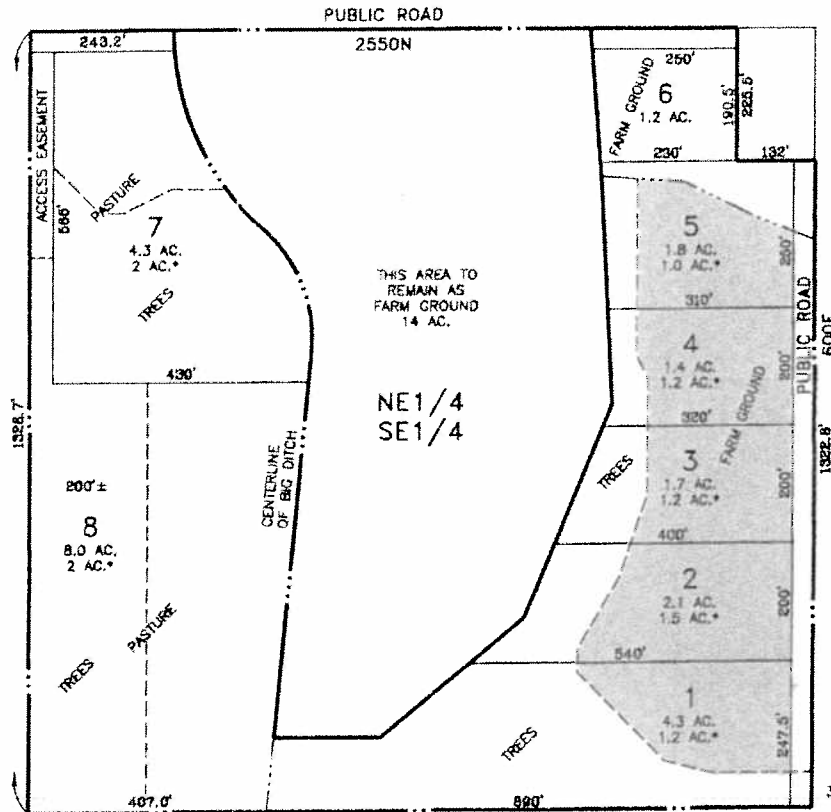
Standard Condition 1 draft amendment text:

1. Each residential LOT in the rural residential development shall have at least one acre of buildable area that is not in the Special Flood Hazard Area.

Standard Condition 1 is intended as a minimum quality standard related to the depth of floodwaters. The logic is basically that the minimum subdivision standards apply to any subdivision plat, including by right lots, and allow land for a minimum required lot area to be up to one foot below the Base Flood Elevation. That standard is not acceptable for RROs, and RRO lots are proposed to be required to have an entire minimum lot area above the BFE which will still allow the remainder to be below the BFE.

Standard Condition 1 Example Oak Grove Subdivision was the first RRO approved by the County. Two natural drainageways (The Big Ditch and an unnamed tributary) cross the site and each of the five lots in the subdivision site are partially located within the 100-year floodplain. Each lot is sited so as to minimize the potential for encroachments or modifications to the natural drainageways, and to allow for a ‘contiguous buildable area’ outside of the floodplain that meets or exceeds the minimum zoning standard for a lot in the CR District (one acre) located outside of the floodplain.

An excerpt of the approved RRO Zoning Plan for the Oak Grove Subdivision is shown below. The ‘contiguous buildable area’ located outside of the floodplain on each lot is highlighted.



Standard Condition 2

The proposed Standard Condition 2 requires a new public street to serve the proposed lots in any proposed RRO with more than two proposed lots that are each less than five acres in area or any RRO that does not comply with the standard condition for minimum driveway separation.

Standard Condition 2 draft amendment text:

2. More than two residential LOTS that are each less than five acres in area or any Rural Residential Overlay District (RRO) that does not comply with the standard condition for minimum driveway separation shall front a new STREET that shall meet the standards of the relevant SUBDIVISION jurisdiction.

The Champaign County Zoning Ordinance requires all lots to either front on or have a minimum 20 foot access directly onto a public street. The Champaign County Subdivision Regulations contain general Minimum Subdivision Standards which apply to “any LOT or LOTS in any SUBDIVISION ... except for (emphasis added) SUBDIVISIONS pursuant to a Rural Residential Overlay zoning map amendment.”

Standard Condition 2 will be a performance standard which is specific to RRO development. Its intent will be to minimize the number of additional driveway entrances onto existing rural streets. The presence of multiple driveways along existing rural streets adds driving hazards (e.g., additional mail boxes and interruptions to traffic flow) and during times of planting and harvest, may adversely impact ongoing agricultural operations.

Standard Condition 2 represents a higher performance standard than the existing Minimum Subdivision Standards that apply to “by right” lots. Standard Condition 2 contains specific performance standards: “..when more than two residential lots are less than five acres each” ... and “... “ when any ...RRO ...does not comply with the standard condition for minimum driveway separation.” The Subdivision Regulations Items 6.1.5(b)(1) and (3) which apply to all lots except those in an RRO, contain more general performance standards, as follows:

- Subdivision Regulation Items 6.1.5(b)(1) contains the qualifier “as much as possible consistent with good engineering practice.” Text of this existing Subdivision regulation is provided below:
 - “1) Possible driveway locations on each LOT must be limited such that driveway entrances to existing public STREETS are centralized as much as possible consistent with good engineering practice.”
- Subdivision Regulation Items 6.1.5(b)(3) contains the qualifier “whenever possible”. Text of this existing Subdivision regulation is provided below:
 - 3) The SUBDIVISION LOT arrangement must minimize the perimeter of the SUBDIVISION that borders adjacent agriculture and must be located next to adjacent residential LOTS whenever possible.”

Minimizing the perimeter of a subdivision or RRO that borders adjacent agriculture likely reduces the incompatibility with adjacent agricultural operations. This is largely why the creation of more than two new lots (generally less than 5 acres) in a row fronting a rural street is discouraged for new lots allowable by right. Standard Condition 2 would apply a similar limit to proposed RRO lots.

Standard Condition 2 Example The following diagrams generally illustrate Standard Condition 2 as it would apply to a proposed RRO that does not comply with the [proposed] standard condition for minimum driveway separation.

Figure A is a proposed 4-lot RRO on a 20-acre parcel. Two of the proposed lots are 5-acre flag lots, and the other two proposed lots front on the street. The proposed 'Flag Lot' could result in four driveways, as shown.

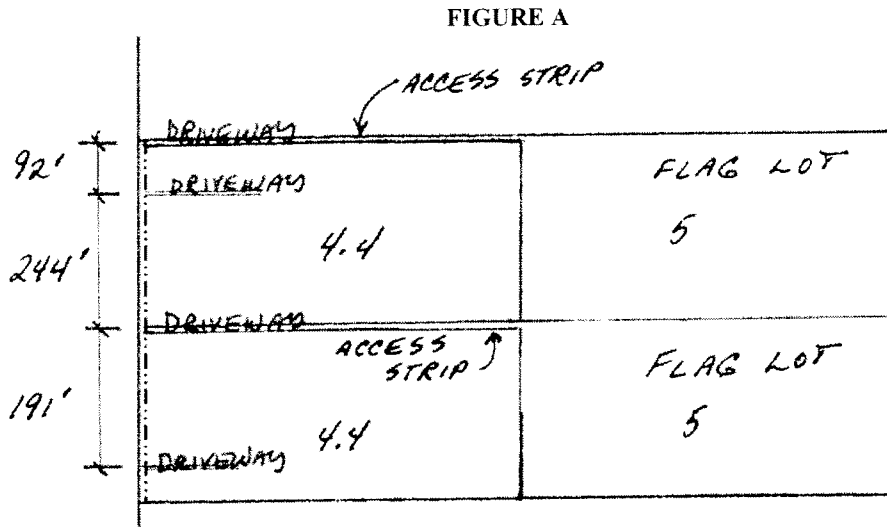
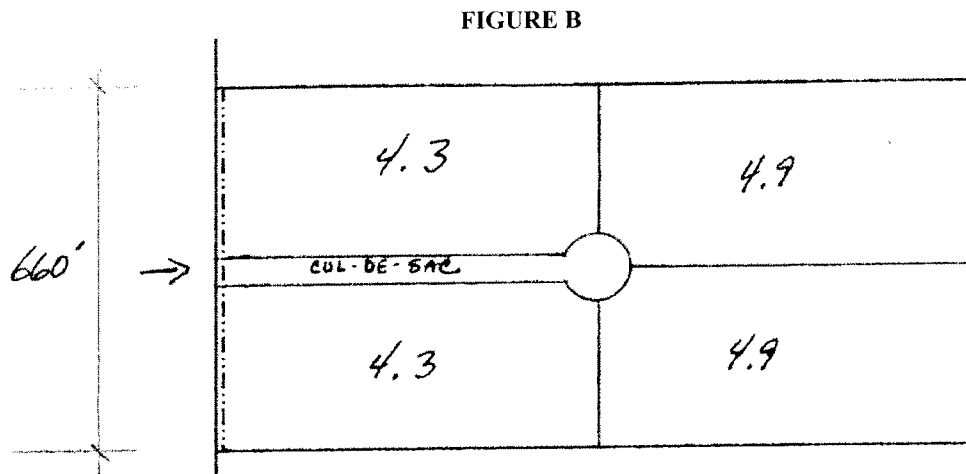


Figure B shows a revised layout of the proposed 4-lot RRO with a cul-de-sac providing lot access to all four lots.



A very similar RRO request for four lots on 20 acres was approved by the County in 2002. This RRO was the Widholm Subdivision and it included four lots, each with frontage on CR 1200E. (Figures C and D on the next page illustrate an excerpt of the Widholm Subdivision Plat.)

continued

Standard Condition 2 Example (continued)

Figure C is an excerpt of the approved four-lot RRO known as the Widholm Subdivision. Since there was no standard condition in place at the time of approval, it is possible that four separate driveways could be constructed with the [hypothetical] separation distances as shown in Figure C.

FIGURE C

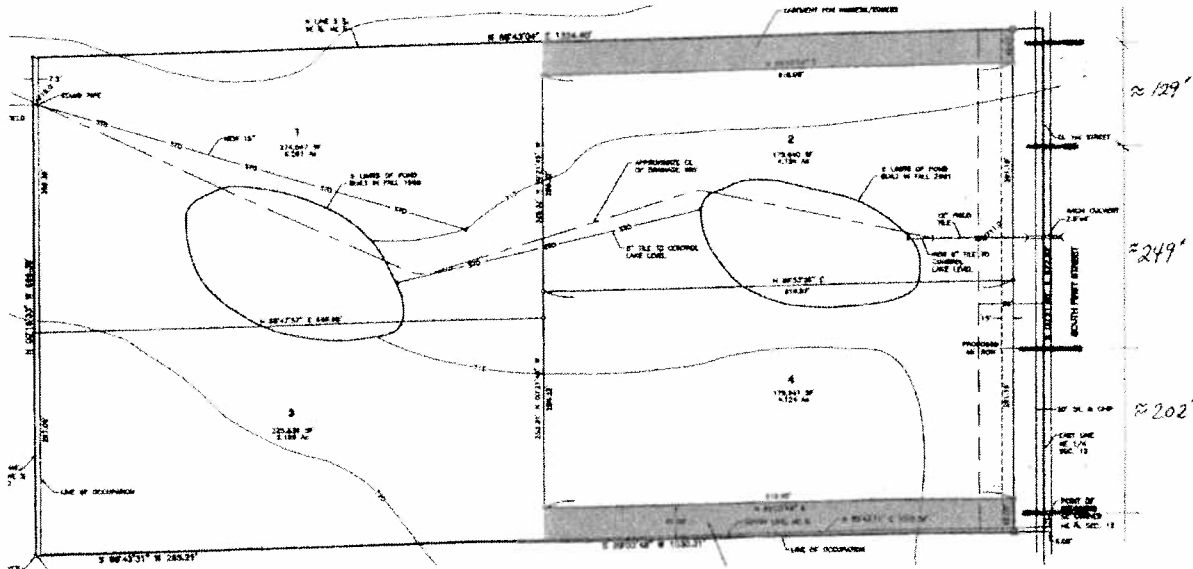
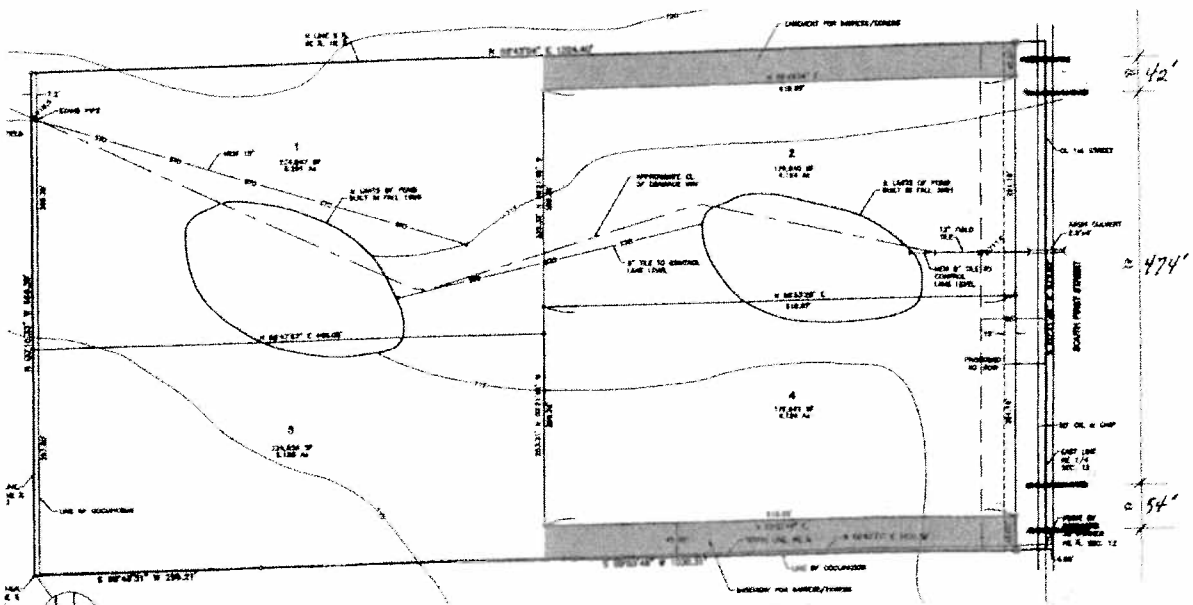


Figure D is an excerpt of the approved four-lot RRO known as the Widholm Subdivision. This diagram shows hypothetical locating of pairs of driveways on adjacent portions of adjoining lots. This type of driveway location would not meet the requirement of proposed Standard Condition 3, and therefore, the subdivision would not be approved today, if either proposed Standard Condition 2 or proposed Standard Condition 3 were in place.

FIGURE D



Standard Condition 3

The proposed Standard Condition 3 requires any proposed RRO lot that fronts onto an existing public street to have the driveway adjacent to another driveway, if more than one lot is proposed, and require each pair of driveways or individual driveways to be at least 600 feet from any driveway for any other lot in the same development.

Standard Condition 3 draft amendment text:

3. A LOT that fronts on and has access to an existing STREET shall locate a driveway adjacent to another driveway, if more than one LOT is proposed, and each pair of driveways or individual driveways shall be at least 600 feet from any driveway for any other LOT in the same development.

Figures E-H below are diagram excerpts from the Champaign County Land Atlas & Plat Book, 21st Edition. These are diagrams of sample one-square sections showing rectangular land descriptions, acreages and distances. The diagrams may assist in visualizing the potential impacts of the proposed Standard Condition 3 which requires driveway separation distance of a minimum of 660 feet.

FIGURE E

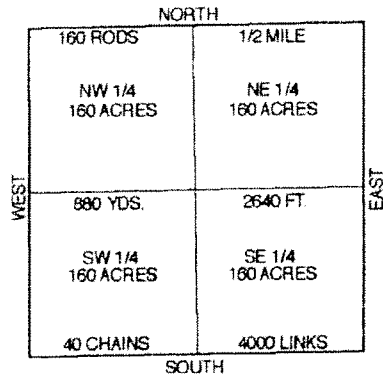


FIGURE G

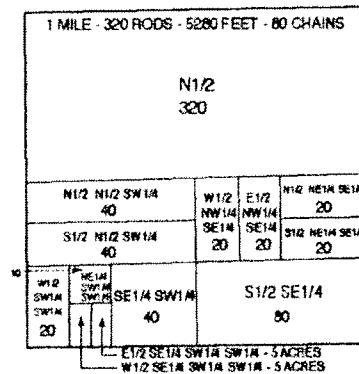


FIGURE F

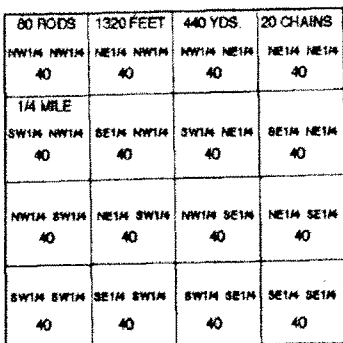
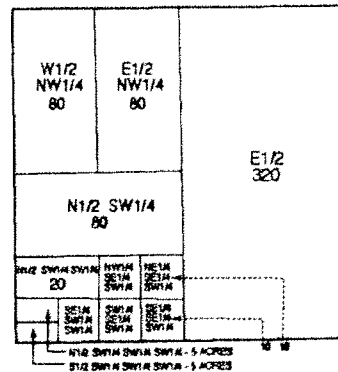


FIGURE H



**NON-ANNOTATED DRAFT REVISION BYLAWS
CHAMPAIGN COUNTY ZONING BOARD OF APPEALS
As Amended August 25, 2005 May 18, 2011**

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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.

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 7.7 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 7.2 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.*). The Board may only go into closed session for appropriate reasons and only upon the advice of the Champaign County State's Attorney.

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 Neither meetings nor public hearings shall be held by less than a quorum of the Board.
- 5.9 Meetings of the Board shall include the following agenda items and, unless the Board votes to vary the order, the agenda items 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) Correspondence
 - e) Correction and approval of minutes of previous meeting(s)
 - 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
- 5.10 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.
- 5.11 Applications for zoning cases shall be docketed on a first come-first serve basis, strictly based upon receipt of a completed application and its required fee. No application for a zoning case shall 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 public hearings are docketed for a meeting of the Board, no additional public hearings shall be docketed for that meeting without prior approval of the Chairperson.

ARTICLE 6 - FORM AND CHARACTER OF MOTIONS AND DECISIONS

- 6.1 The Board shall conduct all votes in public session. Voting *in absentia* is not permitted.
- 6.2 The form and character of motions shall conform to those specified in the Appendix - Champaign County Zoning Board of Appeals Bylaws Summary of Actions, a copy of which is attached hereto, provided that all motions and decisions shall conform to applicable Illinois Law. In the event that the Bylaws contained in the attached Appendix are not applicable to the question at hand, *Roberts Rules of Order, Newly Revised*, shall apply.

Article 6 – continued

- 6.3 The Chairperson shall not make any motion, except as provided in Section 9.5 herein.
- 6.4 A second shall be required prior to the Board’s voting on any motion, except as provided in Section 9.5 herein. A second shall not be construed as an indication of how the member offering the second intends to vote.
- 6.5 The Chairperson may second any motion, provided that he or she has not offered the motion pursuant to Section 9.5 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.
- 6.6 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.
- 6.7 In the event of a tie vote, the motion shall be defeated.
- 6.8 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.
- 6.9 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.
- 6.10 An abstention shall not be counted in the determination of a motion, but shall be recorded.
- 6.11 Upon the request of any member of the Board, a roll call vote shall be taken in lieu of a voice vote.
- 6.12 Votes on Final Determination with respect to any matter before the Board shall be by roll call vote and in accordance with Article 9.
- 6.13 All roll call votes shall be taken by the Recording Secretary in varied order, except that the Chairperson shall vote last.

ARTICLE 7– PUBLIC HEARING PROCEDURES

- 7.1 All public hearings shall include the following steps:
 - a) Public Notice
 - b) Reading of the petition request by the Chairperson at each new or continued public hearing.
 - c) Presentation of the evidence
 - d) Adoption of a Summary of Evidence
 - e) Adoption of a Finding of Fact
 - f) Final Determination

Article 7- continued

7.2 Public Notice. 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.

7.3 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.

7.4 Ex parte Communications.

- a) Communications regarding any pending ~~item~~ public hearing 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

Article 7– continued

- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 **Presentation 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 or alternatively the Board may ask Staff to review the request. 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 Section 7.9;
 - d) Staff presents and summarizes any distributed memorandum, materials or reports;
 - e) Parties other than the Petitioner present evidence, subject to Section 7.9;
 - f) The Petitioner or representative presents rebuttal evidence, subject to Section 7.9, 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;
 - h) Questions, comments, requests, or continuance by the Staff or Board;
 - i) The Board shall then vote to Close the Witness Register.
- 7.9 **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.

Article 7– continued

- 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 public hearing, a witness is unable or unwilling to respond to a question, the Chair shall make note of this in the minutes of the public hearing, unless the question has been deemed improper, pursuant to Section 7.10 (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 public hearing to exercise the right of cross examination only through the attorney.
 - 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.

7.10 Admissibility of Evidence.

- 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 Bylaws, 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 Section 7.10 (a); or
 - 3) It is beyond the scope of allowable questions under Section 7.9 (a)(5), above.

Article 7– continued

- c) Any person present at the public hearing 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.
- 7.11** Any party appearing before the Board may submit a list of persons favoring or opposing the zoning case 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.
- 7.12** Any evidence that any party wishes to have considered by the Board must be presented prior to the closing of the Witness Register or, if a Finding of Fact has been approved but the Board has not made a motion for a specific Final Determination, and any party wishes to present new evidence, the new evidence may be presented only upon the majority vote of those Board members present and not abstaining from the final vote.
- 7.13** The Board may request any relevant information or evidence from any party only prior to any motion for a specific Final Determination.
- 7.14** In the event that the petitioner fails to appear either in person or by agent, the zoning case shall be deemed dismissed unless the Board shall vote otherwise. In such instances, the petitioner shall be furnished with written notice of the dismissal by the Secretary to 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 7.2 herein.
- 7.15** Upon presentation of all evidence, the Board shall consider the following motions prior to making a Final Determination:
- a) to close the Witness Register;
 - b) to amend, correct, add or delete points of evidence from the Summary of Evidence and Documents of Record;
 - c) to consider approval of the Summary of Evidence and Documents of Record, either as submitted or as amended;
 - d) 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;
 - e) 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;

Article 7– continued

- f) 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 or for any proposed amendment. Said Findings of Fact may be adopted individually or en masse.

7.16 A Final Determination consistent with Article 9 or a dismissal consistent with section 7.14 shall end the public hearing.

ARTICLE 8 – PUBLIC HEARING REQUEST TO WITHDRAW, AMEND, CONTINUE, OR REHEAR A ZONING CASE APPLICATION

8.1 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.

8.2 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.

8.3 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 zoning case as it was described in the public notice and the zoning case as amended such as to render the notice insufficient. When there is a material difference, a new public notice shall be required before the public hearing of the zoning case may proceed, with fees for the new legal advertisement to be paid by the applicant pursuant to Section 9.3.3(B)5 of the Zoning Ordinance.

8.4 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.

8.5 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 publication of such action need not be made.

8.6 All 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;

Article 8– continued

- 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.
- 8.7 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 zoning case have changed significantly, or unless a period of no less than one year has passed.

ARTICLE 9 PUBLIC HEARING FINAL DETERMINATION

- 9.1 The Board shall vote on the petition only as it was filed or subsequently amended by the Petitioner, except for amendments to the text of the Zoning Ordinance.
- 9.2 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 9.5 herein, may make a motion for Final Determination. The motion may include direction in the form of approval, approval with specified conditions, or denial.
- 9.3 No Final Determination shall be made at a public hearing 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.
- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.

Article 9 – continued

9.9 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 8.7 herein.

ARTICLE 10 - RECORDS

10.1 A file of materials and decisions relating to each public hearing shall be kept as part of the records of the Board by the Secretary to the Zoning Board of Appeals.

10.1 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.*).

10.2 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.

10.3 The Secretary to the Board shall perform or supervise all clerical work of the Board and shall:

- a) maintain the zoning case docket, case log, and all case files;
- b) set the agenda for the meetings of the Board pursuant to Section 5.11 herein;
- c) cause to be published all required legal advertisements and publications pursuant to the County Enabling Legislation;
- d) send out all other notices pursuant to Section 7.2 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
- 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 four 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 four members, unless such rule is required by state statute or the Zoning Ordinance.

APPENDICES

- A Champaign County Zoning Board of Appeals Bylaws Summary of Actions
- B Example Statement for Administrative Hearings

* * *

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

SIGNED:

~~Debra Griest~~ Eric Thorsland
 Champaign County Zoning Board of Appeals

ATTEST:

 Secretary
 Champaign County Zoning Board of Appeals

DATE: _____

Champaign
County
Department of



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

(217) 384-3708

To: **Champaign County Zoning Board of Appeals**
From: **John Hall, Zoning Administrator**
Date: **May 18, 2011**
RE: **Proposed Revisions to ZBA Bylaws**

UPDATE

At the March 24, 2011, meeting the ZBA reviewed proposed revisions to the Bylaws intended to make the Bylaws use of the phrase “close the public hearing” consistent with the letter and intent of the Open Meetings Act. A Revised Draft is attached and a non-annotated Revised Draft is included separately.

HISTORY OF “CLOSING THE PUBLIC HEARING”

Also attached are pages 6-8 from a copy of the 1975 Bylaws. The original use of the term “public hearing” is illustrated by Section 8 on p. 7 and Article VII Section 1 on p. 8. As authorized in this copy of the Bylaws, the close of the “public hearing” could be as much as 90 days from the final determination by the ZBA. Thus, at the time the phrase “public hearing” seems to have been similar to the modern phrase “close the witness register”.

The 1975 Bylaws also required the final determination to be conducted in public session (Section 2 of Article VII) so there was some contradiction between the use of the phrase “close the public hearing” and the requirement for what had to be conducted within public session.

The phrase “close the witness register” has been included in the Revised Draft Bylaws in the Presentation of Evidence (Section 7.8); Section 7.12; and as a required motion in Section 7.15.

MISCELLANEOUS UNRELATED REVISIONS

During the preparation of this Revision it became apparent that the Bylaws required editing for a number of other inconsistencies and those changes are also proposed.

APPENDICES

The Draft Revision does not include the Appendices which should be available at the meeting.

ATTACHMENTS

- A** pp. 6-8 from the Champaign County Zoning Board of Appeals Bylaws ca. 1975
- B** Annotated Draft Revision Bylaws dated May 18, 2011 (not including Appendices)
- C** Non-Annotated Draft Revision Bylaws dated May 18, 2011 (included separately; does not include Appendices)

is requested. The measurement of public roads, streets, alleyways and other public ways shall be excluded in determining the 250 foot requirement; if the subject property is part of a larger tract such 250 foot requirement shall be calculated from the exterior boundaries of the larger tract.

The Zoning Administrator shall arrange for the publication notice as required by the Zoning Ordinance and the State Statutes.

The County Zoning Administrator shall also attempt to give notice to those property owners identified herein, stating the place and time for the first hearing on the petition by notification letter. Said letter shall state the name and address of the owner(s) of the property, the location of the property and a brief statement of the nature and purpose of the petition(s).

Article VI

Procedure on Hearings

Section 1: At the time of the hearing, the Petitioner may appear in his own behalf or be represented by counsel or agent.

In the event that objectors retain counsel to represent them at a hearing before the Board, then such counsel shall state that he has been so retained and is present to object.

Section 2: All witnesses shall testify under oath.

Section 3: The Petitioner or his representative may make a statement outlining the nature of his request prior to introducing evidence.

Section 4: Evidence shall be presented in the following order:

- a) Chairman may give restatement of case if Petitioner's or his representative's presentation needs clarification.
- b) Petitioner presents evidence.
- c) Board cross-examines Petitioner and/or his witnesses.

- d) Objectors present evidence.
- e) Board cross-examines objector's evidence and/or witnesses.
- f) Rebuttal by Petitioner.
- g) Evidence, comments, requests or continuance by the Board.

Section 5: The Board shall not be bound by the strict rules of evidence, and it may exclude irrelevant, immaterial, incompetent, or repetitious testimony or other evidence.

Section 6: A Petitioner or objector, or his agent or attorney, 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 appeal or application together with the signature and the address of the persons subscribing to such statement. The Board shall determine the weight to be given such evidence.

Section 7: The Chairman shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board.

Section 8: Any evidence that a Petitioner wishes to have considered in the decision process must be presented at the public hearing. The Zoning Board of Appeals can request any relevant information concerning a case from a Petitioner or objector. No further oral testimony will be accepted after the public hearing is closed. Only a written response by the Petitioner or objector to the staff report, or to the information prepared by the Board and prepared solely for the case under consideration, will be accepted by the Board of Appeals after the close of a public hearing, except for the following: The Board of Appeals may request additional information at any time prior to the time of final decision. A response to such a request must be received in writing. Any such response should be

part of the public record and written rebuttal to the response will be permitted until the time of final decision.

Article VII Decisions

Section 1: Final decisions or recommendations shall be made within 90 days from the date of the final hearing.

Section 2: The Board shall conduct its vote in public session.

Section 3: A concurring vote of five (5) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to grant any variation in the Ordinance or to recommend any variation or modification in the Ordinance to the Governing Body.

Section 4: All decisions of the Board shall be made at a public meeting by motion made, seconded and the Chairman polling membership by a roll call vote. The motion which decides the issue shall be in the form of findings of fact and shall state the reasons for the findings by the Board. If conditions are imposed in the granting of a variation or special use, such conditions shall be included in the motion.

Section 5: A summary of the case shall be acknowledged as to accuracy by the secretary and shall be part of the public record of the Board.

Section 6: Notice of the decision of the Board shall be given to the Petitioner, the Zoning Administrator and any affected zoned municipality.

Section 7: Unless otherwise specified by the Board, any order or decision of the Board authorizing a variance or a special use shall expire if the Petitioner fails to obtain a zoning permit within one hundred twenty (120) days from the date of the decision.

**ANNOTATED DRAFT REVISION BYLAWS
CHAMPAIGN COUNTY ZONING BOARD OF APPEALS
As Amended ~~August 25, 2005~~ May 18, 2011**

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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.

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~~ 7.7 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~~ 7.2 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.*). The Board may only go into closed session for appropriate reasons and only upon the advice of the Champaign County State’s Attorney.

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.~~

{Note: This paragraph is entirely about ex parte communications and should be so titled. Ex parte communications relate only to matters of public hearings and this should be relocated to the Article on Public Hearing Procedures.}

- ~~5.98~~ 5.98 Neither meetings nor 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. *{Note: The prohibition on closing of a public hearing with less than five Board members is apparently a neglected hangover from when the quorum was five members. The quorum has been changed to four and if four members can decide a case four members should be able to continue a case.}*

- ~~5.10 9~~ 5.10 9 Meetings of the Board shall include the following agenda items and, unless the Board votes to vary the order, the agenda items 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)~~ Correspondence
- e) ~~Communications~~ Correction and approval of minutes of previous meeting(s)
- 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

~~5.110~~ 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.

~~5.111~~ Applications for zoning cases 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 for a zoning case shall 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 public hearings are docketed for a meeting of the Board, no additional cases public hearings shall be docketed for that meeting without prior approval of the Chairperson. {Note: relocated from 6.1; some grammar changes}~~

ARTICLE ~~76~~ - FORM AND CHARACTER OF MOTIONS AND DECISIONS

- ~~76.1~~ The Board shall conduct all votes in public session. Voting *in absentia* is not permitted.
- ~~76.2~~ The form and character of motions shall conform to those specified in the Appendix - Champaign County Zoning Board of Appeals ~~Rules of Order~~ Bylaws Summary of Actions, 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~~ Bylaws contained in the attached Appendix are not applicable to the question at hand, *Roberts Rules of Order, Newly Revised*, shall apply.
- ~~76.3~~ The Chairperson shall not make any motion, except as provided in Section ~~8.5~~ 9.5 herein.
- ~~76.4~~ A second shall be required prior to the Board’s voting on any motion, except as provided in Section ~~8.5~~ 9.5 herein. A second shall not be construed as an indication of how the member offering the second intends to vote.
- ~~76.5~~ The Chairperson may second any motion, provided that he or she has not offered the motion pursuant to Section ~~8.5~~ 9.5 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.
- ~~76.6~~ 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.
- ~~76.7~~ In the event of a tie vote, the motion shall be defeated.
- ~~76.8~~ 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.

Article ~~7~~6 – continued

- ~~76.9~~ 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.
- ~~76.10~~ An abstention shall not be counted in the determination of a motion, but shall be recorded.
- ~~76.11~~ Upon the request of any member of the Board, a roll call vote shall be taken in lieu of a voice vote.
- ~~76.12~~ Votes on Final Determination with respect to any matter before the Board shall be by roll call vote and in accordance with Article ~~8~~9.
- ~~76.13~~ All roll call votes shall be taken by the Recording Secretary in varied order, except that the Chairperson shall vote last.

ARTICLE ~~6~~7 – PUBLIC HEARING PROCEDURES

~~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. {Note: relocate to the end of Art. 5}

67.1 All public hearings shall include the following steps:

- a) Public Notice
- b) Reading of the petition request by the Chairperson at each new or continued public hearing.
- c) Presentation of the evidence
- d) ~~Preparation and~~ Adoption of a Summary of Evidence
- e) ~~Preparation and~~ Adoption of a Finding of Fact
- f) Final Determination

67.2 **Public Notice.** 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;

Article 67– continued

- 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.

67.3 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.

5.8 7.4 Ex parte Communications.

- a) Communications regarding any pending item public hearing 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. {Note: This has been relocated from the Article 5 on Meetings.}

6.4 7.5 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 7.6 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 7.7 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.

Article 67- continued

~~6-7~~ **7.8 Order Presentation 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 or alternatively the Board may ask Staff to review the request. 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 section 6-8-7.9;~~
- d) Staff presents and summarizes any distributed memorandum, materials or reports;
- e) Parties other than the Petitioner present evidence, subject to ~~Rule section 6-8-7.9;~~
- f) The Petitioner or representative presents rebuttal evidence, subject to ~~Rule section 6-8-7.9,~~ 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.
- i) The Board shall then vote to Close the Witness Register.

~~6-8~~ **7.9 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~~ public hearing, a witness is unable or unwilling to respond to a question, the Chair shall make note of this in the minutes of the ~~meeting~~ public hearing, unless the question has been deemed improper, pursuant to ~~Rule section 6-9~~ 7.10 (b) or (c).

Article ~~67~~– continued

- 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~~ public hearing to exercise the right of cross examination only through the attorney.
 - 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.

~~6.8~~ 7.10 Admissibility of Evidence.

- 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-Bylaws~~, 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~~ section 7.10 (a); or
 - 3) It is beyond the scope of allowable questions under ~~Rule 6.8~~ section 7.9 (a)(5), above.
- c) Any person present at the ~~meeting~~ public hearing 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~~ 7.11 Any party appearing before the Board may submit a list of persons favoring or opposing the zoning case 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.

Article ~~6~~7- continued

~~6.11~~ 7.12 Any evidence that any party wishes to have considered by the Board must be presented prior to the closing of the public hearing Witness Register. ~~The Board may request any relevant information or evidence from any party only prior to the closing of the public hearing.~~ or, if a Finding of Fact has been approved but the Board has not ~~taken its final vote on the matter~~ made a motion for a specific Final Determination, and any party wishes to present new evidence, ~~have the public hearing re-opened, it may be re-opened~~ the new evidence may be presented only upon the majority vote of those Board members present and not abstaining from the final vote. *{Note: The proposed changes are intended to make minimal changes while eliminating any appearance of inconsistency with the Open Meetings Act. The shaded text is relocated to new 7.13.}*

~~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. *{Note: The existing paragraph is redundant to the preceding paragraph.}*

7.13 The Board may request any relevant information or evidence from any party only prior to the closing of the public hearing any motion for a specific Final Determination. *{Note: This has been relocated from the existing 6.11 and modified to eliminate any appearance of inconsistency with the Open Meetings Act.}*

~~6.12~~ 7.14 In the event that the petitioner fails to appear either in person or by agent, the zoning case shall be deemed dismissed unless the Board shall vote otherwise. In such ~~cases~~ instances, the petitioner shall be furnished with written notice of the dismissal by the Secretary ~~of~~ to 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~~7.2 herein.

~~6.13~~ 7.15 Upon ~~submission~~ presentation of all evidence, the Board shall consider the following motions prior to closing the public hearing making a Final Determination:

- a) to close the Witness Register;
- ~~a~~b) to amend, correct, add or delete points of evidence from the Summary of Evidence and Documents of Record;
- ~~b~~c) to consider approval of the Summary of Evidence and Documents of Record, either as submitted or as amended;
- ~~c~~d) 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~~e) 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~~f) 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

Article ~~67~~– continued

~~permit criteria, whichever is applicable or for any proposed amendment. Said Findings of Fact may be adopted individually or en masse.; and~~
~~f) to close the public hearing. (Note: This entire paragraph is relocated from the existing paragraph 8.2.; the adoption of a Finding of Fact completes the “fact finding” portion of a public hearing}~~

~~6.14~~ **7.16** A Final Determination consistent with Article ~~8~~ 9 or a dismissal consistent with section 7.1.4 shall end the public hearing.

ARTICLE ~~98~~ – PUBLIC HEARING REQUEST TO WITHDRAW, AMEND, CONTINUE, OR REHEAR A ZONING CASE APPLICATIONS

- ~~98.1~~ 98.1 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.
- ~~98.2~~ 98.2 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.
- ~~98.3~~ 98.3 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 zoning case as it was described in the public notice and the zoning case as amended such as to render the notice insufficient. ~~In such case~~ When there is a material difference, a new public notice shall be required before the public hearing of the zoning case may proceed, with fees for such the new notice legal advertisement to be paid by the applicant pursuant to Section 9.3.3(B)65 of the Zoning Ordinance.
- ~~98.4~~ 98.4 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.
- ~~98.5~~ 98.5 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 publication of such action need not be made.
- ~~98.6~~ 98.6 ~~In all cases,~~ All 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;

Article 98- continued

- 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.~~

~~98.7~~ 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 zoning case have changed significantly, or unless a period of no less than one year has passed.

ARTICLE 89 PUBLIC HEARING FINAL DETERMINATIONS

89.1 The Board shall vote on the petition only as it was filed or subsequently amended by the Petitioner, except ~~in the case of~~ for 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;~~
- ~~e) 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. {Note: This paragraph with revisions is relocated to become new paragraph 6.14}~~

~~8.29.2~~ 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 89.5 herein, may make a motion for Final Determination. The motion may include direction in the form of approval, approval with specified conditions, or denial.

Article 89 – continued

- ~~8.49.3~~ No Final Determination shall be made at a ~~meeting~~ public hearing 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.
- ~~8.59.4~~ 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.
- ~~8.69.5~~ 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.
- ~~8.79.6~~ 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.
- ~~8.89.7~~ 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.
- ~~8.99.8~~ 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.
- ~~8.99.9~~ 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 ~~98.7~~ 98.7 herein.

ARTICLE 10 - RECORDS

- 10.1** A file of materials and decisions relating to each ~~case~~ public hearing shall be kept as part of the records of the Board by the Secretary ~~in the Office of~~ to the Zoning Board of Appeals. *{Note: This revision is to make this paragraph consistent with practice.}*
- 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 zoning case docket, case log, and all case files;
 - b) set the agenda for the meetings of the Board pursuant to Section ~~6.4~~ 5.11 herein;

Article 10 – continued

- c) cause to be published all required legal advertisements and publications pursuant to the County Enabling Legislation;
- d) send out all other notices pursuant to Section ~~6~~7.2 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
- 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~~ four 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~~ four members, unless such rule is required by state statute or the Zoning Ordinance.

APPENDICES

- A Champaign County Zoning Board of Appeals Bylaws Summary of Actions
- B Example Statement for Administrative Hearings

* * *

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

SIGNED:

~~Debra Griest~~ Eric Thorsland
Champaign County Zoning Board of Appeals

ATTEST:

Secretary
Champaign County Zoning Board of Appeals

DATE: _____

CASE NO. 686-V-11

PRELIMINARY MEMORANDUM

May 19, 2011

Petitioners: **Brandon Roberts**

Champaign
County
Department of

PLANNING &
ZONING

Site Area: **.52 acres**

Time Schedule for Development:

Upon approval of zoning use permit

Request: **Authorize the connection of an existing garage to an existing house with a resulting side yard of 10 feet instead of the minimum required side yard of 15 feet for a house in the AG-1 Zoning District.**

Location: **A tract of land located in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 21 of Township 20 North, Range 14 West of the Second Principal Meridian in Ogden Township and commonly known as the house at 2706 CR2050N, Ogden.**

Brookens

Administrative Center

1776 E. Washington Street
Urbana, Illinois 61802

Prepared by: **John Hall**
Zoning Administrator

(217) 384-3708

BACKGROUND

The subject property is a nonconforming lot of record that was created in 1967 by recorder's Document No. 76942 at page 659 in Book 862 of the Champaign County Recorder of Deeds and later corrected by Recorder's Document 777794 on page 297 of Book 877. The lot is nonconforming as follows:

- The lot area is 18,620 square feet net of the right of way in lieu of the minimum required lot area of one acre); and
- The lot width is 133 feet in lieu of the minimum required average lot width of 200 feet.

The subject detached garage was built under the current owner and was authorized by Zoning Use Permit No. 88-05-01 on 4/8/05. The 10 foot side yard on the west side is the minimum required side yard in the AG-1 District for a "detached accessory building".

On April 26, 2011, the owner's builder applied for Zoning Use Permit No. 116-11-02 to build an enclosed 8 feet by 30 feet connection between the garage and the dwelling. It is not clear how much if any of the existing garage will be converted to living space but merely connecting the garage to the dwelling will make the garage part of the "principal building". Principal buildings in the AG-1 District are required to have minimum side yards of 15 feet and so the existing 10 foot side yard on the west side of the garage requires a variance before Permit 116-11-02 can be approved.

EXTRATERRITORIAL JURISDICTION

The subject property is located less than one mile from the Village of Royal. Municipalities do not have protest rights in variance cases and are not notified of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Single Family Dwelling	AG-1 Agriculture
North	*Farmland	AG-1 Agriculture
East	*Single Family Dwelling	AG-1 Agriculture
West	20 feet wide accessway to farmland on north * ----- Single Family Dwelling†	AG-1 Agriculture
South	Farmland	AG-1 Agriculture
*Land owned by Charles and Judith Carl who have submitted a letter of support (see attached) † Variance Case 876-V-93 authorized a 4 feet side yard and a 5 feet rear yard for the garage on the east side of the property		

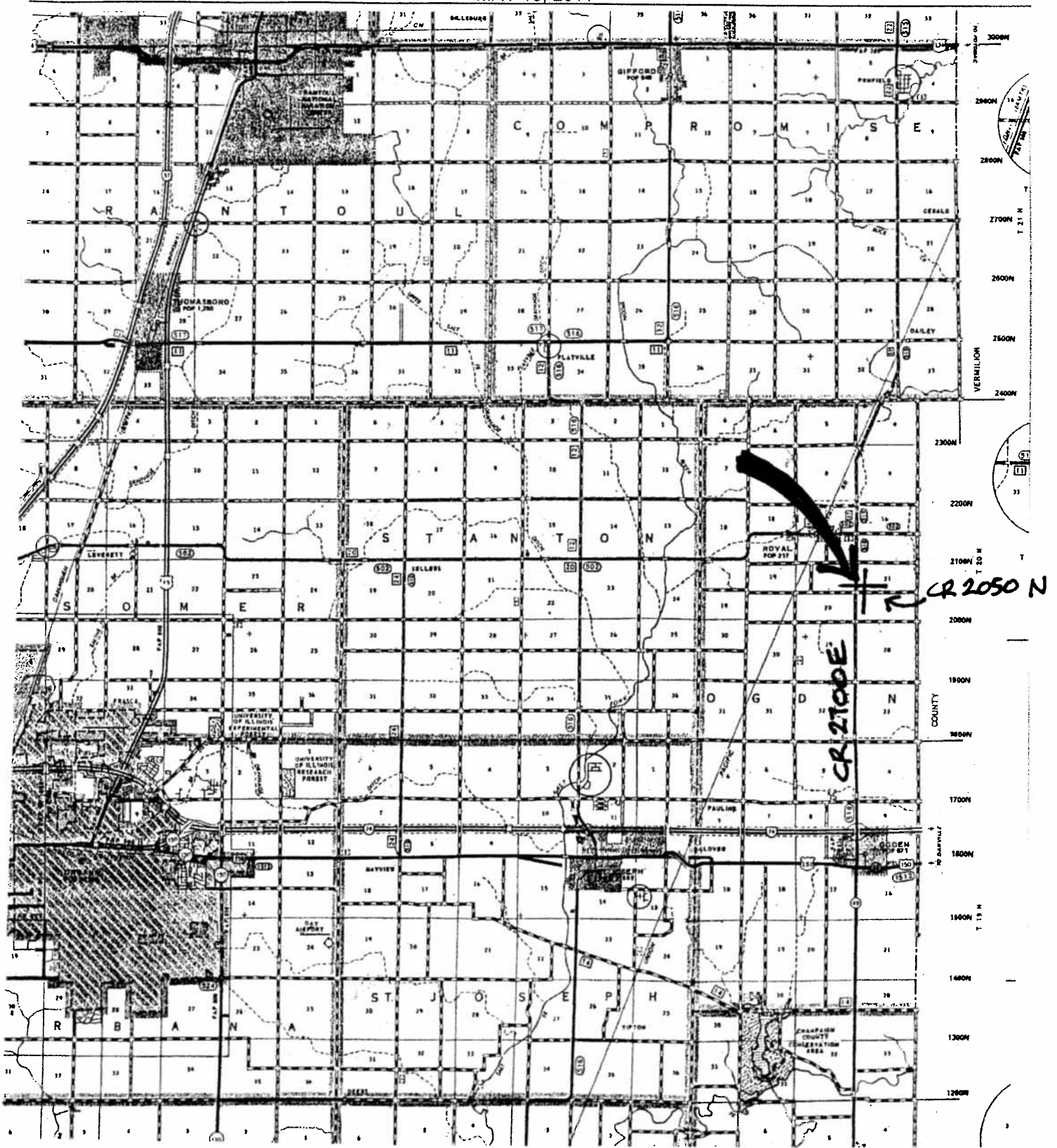
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Petitioner’s site plan received on April 28, 2011
- C Letter of support received on 5/17/11 from neighbors Charles and Judith Carl
- D Draft Summary of Evidence, Finding of Fact, and Final Determination

ATTACHMENT A. LOCATION MAP

Case 686-V-11

MAY 19, 2011



Champlain
County
Department of
**PLANNING &
ZONING**

ATTACHMENT A. LAND USE MAP

Case 686-V-11

MAY 19, 2011



SUBJECT
PROPERTY

Area of Concern



SF

Single Family



FS

Farmstead



1" = 100'

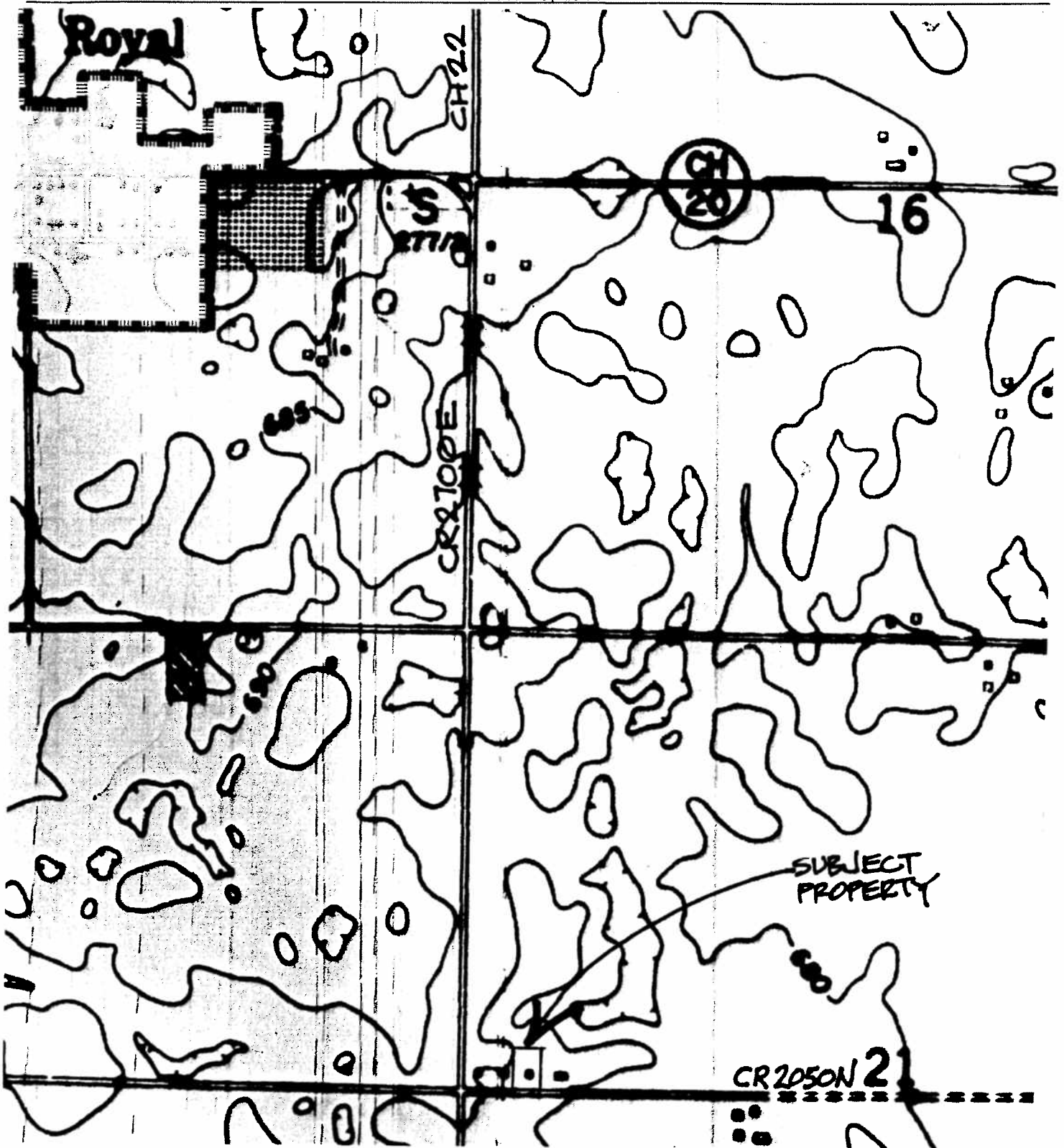
Champaign
County
Department of

**PLANNING &
ZONING**

ATTACHMENT A. ZONING MAP

Case 686-V-11

MAY 19, 2011



AG-1 Agriculture	R-1 Single Family Residence	R-4 Multiple Family Res.	B-2 Neighborhood Business	B-5 Central Business	 NORTH Champaign County Department of PLANNING & ZONING
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	

May 15, 2011

Champaign County Department of Planning & Zoning
Brookens Administrative Center
1776 E. Washington St.
Urbana, IL 61802

RE: Case 686-V-11

To Whom It May Concern:

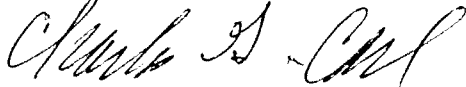
We own the land on 3 sides of the property requesting a Variance from the Champaign County Zoning Case # 686-V-11. They are requesting to connect an existing garage to an existing house.

We approve of this variance. We will be out of town on the night of the Zoning Board of Appeals meeting, May 26, 2011.

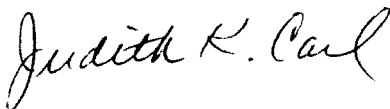
Contact us if you have any questions.

Sincerely,

Charles G. Carl



Judith K. Carl



2710 CR 2050 N
Ogden, IL 61859
583-3248

RECEIVED

MAY 17 2011

CHAMPAIGN CO. P & Z DEPARTMENT

Zoning Case 686-V-11

DRAFT

**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: **May 26, 2011**

Petitioners: **Brandon Roberts**

Request: **Authorize the connection of an existing garage to an existing house with a resulting side yard of 10 feet instead of the minimum required side yard of 15 feet for a house in the AG-1 Zoning District.**

Location: **A tract of land located in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 21 of Township 20 North, Range 14 West of the Second Principal Meridian in Ogden Township and commonly known as the house at 2706 CR2050N, Ogden.**

PRELIMINARY SUMMARY OF EVIDENCE & FINDINGS OF FACT

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **May 26, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner Brandon Roberts owns the subject property.
2. The subject property is a tract of land located in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 21 of Township 20 North, Range 14 West of the Second Principal Meridian in Ogden Township and commonly known as the house at 2706 CR2050N, Ogden as described in Recorder's Document 777794 on page 297 of Book 877.
3. The subject property is located less than one mile from the Village of Royal. 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 AG-1 Agriculture and is in use as a single family dwelling.
 - B. Land to the north, east, and west of the subject property is also zoned AG-1 Agriculture and is in use as follows:
 - (1) Land to the east, north, and for 20 feet on the west is under one owner who has a house on the east and farmland on the north and a 20 feet wide farm access on the west.
 - (2) Land further to the west is also zoned AG-1 Agriculture and is in use as a single family dwelling. Variance Case 876-V-93 authorized a 4 feet side yard and a 5 feet rear yard for the garage on the east side of the property
 - C. Land to the south of the subject property is also zoned AG-1 Agriculture and is in use as farmland.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the existing site plan received on April 28, 2011:
{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) "ACCESSORY BUILDING" is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either detached from or attached to the MAIN or PRINCIPAL STRUCTURE, and subordinate to and used

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

- (2) "ACCESSORY STRUCTURE" is a STRUCTURE on the same LOT within the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either DETACHED from or ATTACHED to the MAIN or PRINCIPAL STRUCTURE, subordinate to and USED for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
- (3) "BUILDING 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.
- (4) "DWELLING, SINGLE FAMILY" is a DWELLING containing one DWELLING UNIT.
- (5) "LOT" is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
- (6) "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.
- (7) "STRUCTURE" is anything CONSTRUCTED or erected with a fixed location on the surface of the ground or affixed to something having a fixed location on the surface of the ground. Among other things, STRUCTURES include BUILDINGS, walls, fences, billboards, and SIGNS.
- (8) "STRUCTURE, MAIN or PRINCIPAL" is the STRUCTURE in or on which is conducted the main or principal USE of the LOT on which it is located.
- (9) "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.
- (10) "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.

PRELIMINARY SUMMARY OF EVIDENCE & FINDINGS OF FACT

Item 6.A. (continued)

- (11) "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.
 - (12) "YARD, REAR" is a YARD A YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
 - (13) "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. 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.
- C. Side yard requirements are found in the Zoning Ordinance as follows:
- (1) Side yards for principal buildings are in Section 5.3 Schedule of Area, Height, & Placement Regulations by District. The minimum required side yard in the AG-1 District is 15 feet. Footnote 7 refers to instances where the lot lines are not parallel.
 - (2) Side yards for detached accessory buildings are in Section 7.2. The minimum required side yard for detached accessory buildings in the AG-1 District is 10 feet.
- D. 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.
- E. Paragraph 9.1.9.E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
- A. The Petitioner has testified on the application that **“The lot was created prior to zoning with the width of only 133’. Existing detached garage is at a 10’ setback and we are proposing to connect this structure to the home and will not be encroaching into the required setback for a detached structure.”**
 - B. The subject property is a nonconforming lot of record with an overall area of 18,620 square feet net of the right of way in lieu of the one acre minimum required lot area in the AG-1 District and an average lot width of 133 feet in lieu of the minimum required 200 feet average lot width.

{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, **“Our family size has increased and need additional living space.”**

{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:

PRELIMINARY SUMMARY OF EVIDENCE & FINDINGS OF FACT

- A. The Petitioner has testified on the application that, **“No. The lot was created before zoning and is only 133’ wide and the garage is setback 10’. In attaching the house to the garage would not be injurious to neighboring property but would cause hardship due to needed living space.”**

{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, **“With the existing structure meeting the required setback and connecting the two buildings will not decrease the setback.”**
- B. The Zoning Ordinance does not clearly state the considerations that underlay the side yard requirements. In general, the side yard is presumably intended to ensure the following:
- (1) Adequate light and air: The amount of light and air allowed to adjacent properties is a function of not just the distance from the property line but also the height of the subject building, as follows (Note: building heights are measured to the average of the roof peak and the roof eave):
 - (a) Principal buildings can be as tall as 50 feet in the AG-1 District and only require a 15 feet side yard for a minimum side yard that is less than 1/3 the maximum height.
 - (b) Accessory buildings can only be as tall as 15 feet on lots less than an acre in area but require a side yard of 10 feet for a minimum side yard that is equal to 2/3 the maximum height.
 - (c) The actual side yard is 10 feet wide and the garage is only 12 feet to the peak and 8 feet to the eave with an average height of 10 feet which means that the side yard is equal to the height. Proportionally, the proposed side yard will result in a much greater amount of air and light than the minimum side yard required by the Ordinance for a building that is the maximum allowable height.
 - (d) The actual side yard will not be decreased by the proposed connection of the garage to the dwelling and thus it will not adversely affect the amount of light and air on neighboring properties.
 - (2) Separation of structures to prevent conflagration:
 - (a) Structures closer to municipalities are presumably closer to fire protection services than structures located more remotely in the rural area and can presumably be closer together than rural structures.

- (b) No structures can be constructed in the 20 feet wide strip of land on the west and so there will be no structure within 30 feet of the proposed principal building which equals the normal separation provided by a 15 feet side yard on two adjacent lots.
- (3) Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.
- C. The proposed side yard of 10 feet is 67% of the required 15 feet for a variance of 33%.
- D. 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 **“By connecting the two existing structures (which meet current setbacks) we will not be encroaching on the neighbors.”**
 - B. The Ogden Township Highway Commissioner has been notified of this variance but no comments have been received.

Item 11. (continued)

- C. The Fire Protection District and Drainage District have also been notified of this variance but no comments have been received.
- D. Neighbors Charles and Judith Carl who own abutting land on the east, north, and west have submitted a letter of support for the proposed variance.

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

- 12. 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

No special conditions of approval are proposed at this time.

DOCUMENTS OF RECORD

1. Variance application received on April 28, 2011, with attachment:
 - A Site plan

2. Preliminary Memorandum with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Proposed site plan received on April 28, 2011
 - C Letter of support received on 5/17/11 from neighbors Charles and Judith Carl
 - D Draft Summary of Evidence, Finding of Fact, and Final Determination

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **686-V-11** held on **May 26, 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 for approval **{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 **686-V-11** is hereby **{GRANTED/GRANTED WITH CONDITIONS/DENIED}** to the petitioner, **Brandon Roberts**, to authorize **the connection of an existing garage to an existing house with a resulting side yard of 10 feet instead of the minimum required side yard of 15 feet for a house in the AG-1 Zoning District.**

{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