

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **December 12, 2013**
Time: **6:30 P.M.**
Place: **Lyle Shields Meeting Room
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802**

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

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

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

AGENDA

1. Call to Order
2. Roll Call and Declaration of Quorum
3. Correspondence
4. Approval of Minutes (August 15, 2013 and November 14, 2013)
5. Continued Public Hearings
Case 685-AT-11 Petitioner: **Zoning Administrator**

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

Note: Meeting Time at 6:30 p.m.

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 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.

**CHAMPAIGN COUNTY ZONING BOARD OF APPEALS
NOTICE OF REGULAR MEETING
DECEMBER 12, 2013**



Case 764-V-13 Petitioner: **Lars Johnson with agent Shawn Bickers**

Request: **Authorize the following in the R-4 Multiple Family Residence Zoning District:**

Part A. Authorize the following variance for an existing townhouse:

- (1) lot coverage of 44% in lieu of the maximum allowed 40%; and**
- (2) a front setback of 40 feet from the centerline of Briar Hill Drive in lieu of the minimum required 55 feet; and**
- (3) a front yard of 20 feet in lieu of the minimum required 25 feet.**

Part B. Authorize the following variance for an addition to an existing townhouse:

- (1) authorize construction of a building addition in a recorded utility easement in lieu of the requirement that no construction shall take place in a recorded utility easement; and**
- (2) a side yard of 1 foot in lieu of the minimum required 5 feet.**

Location: **Lot 1 of Wisegarver's Subdivision in the Southeast Quarter of Section 21 of Champaign Township and commonly known as the townhome at 2120 Briar Hill Drive, Champaign.**

6. New Public Hearings



Case 765-V-13 Petitioner: **Ashley M. Schum and John T. Copple and landowner Michael Harshbarger**

Request: **Authorize the following in the CR District for the occupancy and use of an existing detached accessory structure that was previously denied in Case 677-V-10:**

Part A. A setback of 47 feet and 6 inches from CR 2545E in lieu of the minimum required setback of 55 feet.

Part B. A front yard of 17 feet and 6 inches from the front property line in lieu of the minimum front yard of 25 feet.

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.**

7. Staff Report

8. Other Business

- A. Review of Docket
- B. Review of ZBA Member Handbook
- C. 2014 Zoning Board of Appeals Calendar

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

10. Adjournment



Administrative Hearing. Cross Examination allowed.

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Cases 731-S-12
Case 747-AM-13
Case 685-AT-11
Case 732-AT-11
Case 756-AT-13
Case 761-AT-13

Warner Brothers, Inc
Warner Brothers, Inc
Zoning Administrator
Zoning Administrator
Zoning Administrator
Zoning Administrator

Pgs 2-25 Approved
Pgs 2-25 Recmd. app.
Pgs 25-26 Cont.9-26-13
Pgs 26-36 Cont.9-26-13
Pgs 36-37 Cont. 9-26-13
Pgs 38-43 Recmd app.

MINUTES OF REGULAR MEETING
CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street
Urbana, IL 61802

DATE: August 15, 2013

PLACE: Lyle Shields Meeting Room
1776 East Washington Street

TIME: 7:00 p.m.

Urbana, IL 61802

MEMBERS PRESENT: Catherine Capel, Eric Thorsland, Paul Palmgren, Brad Passalacqua, Jim Randol

MEMBERS ABSENT : Roger Miller

STAFF PRESENT : Lori Busboom, John Hall, Andrew Kass

OTHERS PRESENT : John Collins, Paul Cole

1. Call to Order

The meeting was called to order at 7:02 p.m.

DRAFT

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present with one member absent and one vacant Board seat.

Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register they are signing an oath.

3. Correspondence

None

4. Approval of Minutes (May 16, 2013 and June 13, 2013)

Mr. Thorsland entertained a motion to approve the May 16, 2013 and June 13, 2013, minutes.

Mr. Palmgren moved, seconded by Mr. Passalacqua to approve the May 16, 2013 and June 13, 2013, minutes.

Mr. Thorsland asked the Board if there were any corrections to the minutes.

Mr. Palmgren stated that he has a minor correction to the June 13, 2013, minutes. He said that the page numbers for Case 756-AT-13, as indicated on the first page under Cases and Disposition, requires revision

1 indicating Pages 48 and 49 instead of 47 and 48.

2
3 Mr. Thorsland asked the Board if there were any additional corrections to the minutes and there were none.

4
5 **The motion carried by voice vote.**

6
7 Mr. Thorsland entertained a motion to re-arrange the agenda and hear the tonight's cases in the following
8 order: A. Case 731-S-13; B. Case 747-AM-13; C. Case 685-AT-11; D. Case 732-AT-12; E. Case 756-AT-
9 13; and F. Case 761-AT-13.

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11 **Ms. Capel moved, seconded by Mr. Passalacqua to re-arrange the agenda and hear the tonight's cases**
12 **in the following order: A. Case 731-S-13; B. Case 747-AM-13; C. Case 685-AT-11; D. Case 732-AT-**
13 **12; E. Case 756-AT-13; and F. Case 761-AT-13. The motion carried by voice vote.**

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16 **5. Continued Public Hearing**

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19 **Case 731-S-12 Petitioner: Warner Brothers, Inc, with owners Joseph H. Warner and Gerald Warner**
20 **and shareholder/officers Kristi Pflugmacher, Kathy McBride, Denise Foster, Angela Warner Request:**
21 **Authorize the storage and dispensing of agriculture fertilizer as a "Farm Chemicals and Fertilizer**
22 **Sales including incidental storage and mixing of blended fertilizer" facility as a Special Use in the AG-**
23 **1, Agriculture Zoning District. Location: A .96 acre (41,817.6 square feet) portion of a 38.55 acre**
24 **tract in the East One-Half of the Southeast Quarter of Section 18 of Rantoul Township and commonly**
25 **known as the farm field adjacent to the Kinze farm equipment dealership at 1254 CR 2700N, Rantoul.**
26

27 **Case 747-AM-13 Petitioner: Warner Farm Equipment, Inc. with owners Joseph H. Warner and**
28 **Gerald E. Warner Request: Amend the Zoning Map to change the zoning district designation from**
29 **the AG-1 Agriculture Zoning District to the B-1 Rural Trade Center Zoning District to bring an**
30 **existing Farm Equipment Sales and Service business into compliance. Location: A 3.8 acre tract in**
31 **the Southwest Quarter of the Southwest Quarter of the Southeast Quarter and in the Southeast**
32 **Quarter of the Southeast Quarter of the Southwest Quarter of Section 18 of Rantoul Township and**
33 **commonly known as the Kinze farm equipment dealership at 1254 CR 2700N, Rantoul.**
34

35 Mr. Thorsland called Cases 731-S-12 and 747-AM-12 concurrently.

36
37 Mr. Thorsland informed the audience that Case 731-S-12 is an Administrative Case and as such the County
38 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a
39 show of hands for those who would like to cross examine and each person will be called upon. He requested
40 that anyone called to cross examine go to the cross examination microphone to ask any questions. He said
41 that those who desire to cross examine are not required to sign the witness register but are requested to

1 clearly state their name before asking any questions. He noted that no new testimony is to be given during
2 the cross examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are
3 exempt from cross examination.
4

5 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
6 sign the witness register for that public hearing. He reminded the audience that when they sign the
7 witness register they are signing an oath.
8

9 Mr. Paul Cole, attorney for the petitioners, stated that he appreciated the Board consolidating the cases so
10 that they could be heard together. He said that when these cases were started the composition of the Board
11 was slightly different in that one member has resigned and one new member has joined the Board. He said
12 that the special use case is the case that was first contemplated by the Warner Brothers because they had
13 built a tank which had the storage capacity of 750,000 gallons which they thought might be used for not only
14 their own purposes but also for some storage on behalf of persons or businesses other than their own. He
15 said that when the petitioners came to the County for an education on how to obtain a Special Use Permit it
16 was suggested to them that because the use would probably spill over into the adjacent property, which is the
17 existing Kinze dealership, that a map amendment would be necessary requesting that the property be rezoned
18 from AG-1 to B-1.
19

20 Mr. Cole stated that at the very beginning there was some concern on behalf of the adjacent neighbors,
21 relatives of the petitioners, who live immediately to the west of the subject property about uses that may
22 occur on the Kinze dealership property that was proposed to be rezoned to B-1 and that would be somewhat
23 intrusive to their residential property. He said that a specific intrusion was the proposed truck traffic that
24 may cause dust or raise noise problems on the adjacent property. He said that the cases were continued to
25 another hearing and another hearing and then another hearing and a few more issues were raised. He said
26 that there are a number of additional issues which were raised during the hearings and each issue was
27 addressed individually and in turn.
28

29 Mr. Cole stated that the petitioners were tasked to determine if road conditions would be severely impacted
30 by the proposed use and they were directed to go to the township road commissioner to construct and agree
31 upon a plan/road agreement. He said that the plan/road agreement was presented and approved by the
32 township board. He said that at the last hearing Mr. Hall appropriately recommended that the petitioners
33 take another look at the site plan for the property that is proposed to be rezoned B-1 and modify it to
34 accommodate the fact that some of the hardcover development on the agricultural land immediately to the
35 north and east of it should also be incorporated with the B-1 lot. He said that the petitioners agreed to Mr.
36 Hall's recommendation and had the property resurveyed and presented the new plan to the Board. Mr. Cole
37 said that the new B-1 lot is a little bit larger than what was originally anticipated and he believes that it not
38 only accommodates what actual uses are occurring there but it also makes the lot more regular in shape.
39

40 Mr. Cole stated that the amongst the conditions that must be considered was whether or not the property that
41 is subject to the Special Use Permit would have to satisfy the Illinois Accessibility Code requirements. He

1 thanked staff for providing the name and contact information for someone in Springfield who was able to
2 assist him with that condition. Mr. Cole stated that after speaking to Doug Gamble, Accessibility Specialist,
3 Illinois Capital Development Board, it was determined that the property is exempt from the requirements of
4 the Illinois Accessibility Code. Mr. Cole stated that an e-mail from Mr. Gamble has been submitted to staff.

5 Mr. Cole stated that he hopes that everything has been addressed but he is available to answer any questions
6 that the Board or staff may have regarding these cases.

7
8 Mr. Thorsland asked the Board if there were any questions for Mr. Cole and there were none.

9
10 Mr. Thorsland asked if staff had any questions for Mr. Cole and there were none.

11
12 Mr. Thorsland called John Hall to testify.

13
14 Mr. John Hall, Zoning Administrator, stated that when the Supplemental Memorandum dated August 9,
15 2013, was sent in the mailing it was not known that the evidence regarding accessibility had been received.
16 He recommended that the Board delete the special condition regarding accessibility because the project
17 already complies. He said that these cases are ready for final action and the only concern that staff has is
18 compliance with the road agreement going forward. He said that he believes that the parties to the road
19 agreement probably did the best that they could do because this is a necessarily complex situation because
20 some of the fertilizer being used will be used for private purposes and some will be used for commercial
21 purposes. He said the nature of farming is that you never know what any given year will require therefore as
22 the Zoning Administrator he is concerned about receiving a phone call from the township road commissioner
23 indicating that the petitioner is not complying with the agreement. He said that staff will do the best they can
24 if such a phone call is received but he hopes that he does not receive that call. He said that Mr. Kass took
25 some photographs of the subject property and distributed those photographs to the Board for review. He said
26 that Condition H. refers to fuel tanks and a detailed site plan was revised on August 1st and discusses three
27 fuel tanks and a sunken tank enclosure. He said that it appears that there are seven tanks and the sunken tank
28 enclosure.

29
30 Mr. Kass stated that there are four tanks in the sunken tank enclosure and the three smaller tanks, indicated
31 in the distributed photographs, are the 10,000 gallon diesel fuel tanks located on the 30' x 30' concrete pad.

32
33 Mr. Hall stated that normally with a Special Use Permit the petitioner is authorized to do what is on the plan
34 and in this case there is a condition that ensures that the plan needs to be in conformance with the approval
35 therefore while it is not in coordination with what would be with a normal special use, staff is comfortable
36 with everything at this point. He said that the site plan has been revised to address all concerns and he does
37 not believe that the exact number of tanks is an issue and the only thing that is not identified is the number of
38 tanks included in the sunken tank enclosure. He said that he would like to double check that the petitioner
39 understands that this being a Special Use Permit, everything must be shown on the site plan therefore he
40 hopes that the site plan is accurate and reflects the petitioner's near term desires.

41

1 Mr. Cole stated that to his knowledge the site plan is accurate and they understand that any fuel stored is for
2 private use and the only thing that they are allowed to do commercially is store somebody else's fertilizer.

3
4 Mr. Thorsland asked the Board if there were any questions for staff.

5
6 Mr. Thorsland asked Mr. Hall if staff will enforce the road agreement.

7
8 Mr. Hall stated no. He said that the road agreement is between the petitioner and the township.

9
10 Mr. Thorsland asked Mr. Hall if the private use of the fuel tanks is enforced by staff.

11
12 Mr. Hall stated that the fuel tanks are for private use therefore it is not an issue.

13
14 Mr. Thorsland stated that if staff receives a complaint regarding the use of the fuel tanks he assumes that
15 staff will address it in a normal fashion.

16
17 Mr. Hall stated yes.

18
19 Mr. Passalacqua asked if there is any problem with the leach field and septic being in the parking lot.

20
21 Mr. Hall stated no. He said that he suspects that the leach field and septic have been there for a long time
22 therefore it is nonconforming to the current health code but as long as it works it can continue.

23
24 Mr. Passalacqua asked staff if there had been any further correspondence from the Kenneth Warner family.

25
26 Mr. Hall stated no.

27
28 Mr. Thorsland read the proposed special conditions as follows:

- 29
30 **A. A Change of Use Permit shall be applied for within 30 days of the approval of Case**
31 **731-S-12 by the Zoning Board of Appeals.**
32 The above special condition is required to ensure the following:
33 **The establishment of the proposed use shall be properly documented as required by the**
34 **Zoning Ordinance.**
35

36 Mr. Thorsland asked Mr. Cole if he agreed to the special condition.

37
38 Mr. Cole indicated that he agreed to the special condition.

- 39
40 **B. The Zoning Administrator shall not authorize a Zoning Compliance Certificate for the**
41 **proposed Special Use until the Zoning Administrator has received a certification of**

1 **inspection from an Illinois Licensed Architect or other qualified inspector certifying**
2 **that the new building complies to the following codes: (A) The 2006 or later edition of**
3 **the International Building Code; (B) The 2008 or later edition of the National Electrical**
4 **Code NFPA 70; and (C) the Illinois Plumbing Code.**

5 The special condition stated above is required to ensure the following:

6 **That the proposed structures comply with Illinois Public Act 96-704**
7

8 Mr. Thorsland asked Mr. Cole if he agreed to the special condition.
9

10 Mr. Cole indicated that he agreed to the special condition.
11
12

13 **C. The Special Use shall be void if the owner/operator fails to comply with the road**
14 **agreement with Rantoul Township regarding an annual road maintenance fee that**
15 **shall be paid to Rantoul Township for each gallon of liquid fertilizer that is delivered to**
16 **the Special Use Permit for a commercial use, provided as follows:**

17 **1. The road agreement shall not apply to liquid fertilizer used by the petitioner in**
18 **the course of their own farming activities.**

19 **2. The amount of liquid fertilizer used by the petitioner in the course of their own**
20 **farming activities will vary depending upon many different considerations but**
21 **testimony indicates that in a typical year the petitioner applies 60 to 65 gallons**
22 **per acre on a total of 2,900 acres of corn, unless the parties to the road**
23 **agreement agree that a different amount of fertilizer shall have been used by the**
24 **petitioner in the course of their own farming activities during the preceding**
25 **calendar year and the petitioner may also store multiple years worth of liquid**
26 **fertilizer for use in their own farming activities.**

27 **3. This condition applies to the Agreement with Rantoul Township Road**
28 **Commissioner received July 25, 2013, or to any subsequent road agreement**
29 **between the petitioner and Rantoul Township, provided however that if a**
30 **subsequent road agreement includes a specific provision for determining the**
31 **amount of fertilizer that shall have been used by the petitioner in the course of**
32 **their own farming activities during the preceding calendar year, then the**
33 **requirement of subparagraph 2. shall not apply, and further provided that a**
34 **fully executed Agreement shall be filed with the Zoning Administrator.**

35 The special condition stated above is required to ensure the following:

36 **That any additional highway maintenance due to the truck traffic generated by**
37 **the proposed Special Use is reimbursed by the petitioner.**
38

39 Mr. Thorsland asked Mr. Cole if he agreed to the special condition.
40

41 Mr. Cole indicated that he agreed to the special condition.

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- D. All inbound and outbound trucks delivering fertilizer and any other associated product to the proposed Special Use shall enter and exit the subject property on the east side of the Warner Farm Equipment building.**
The special condition stated above is required to ensure the following:
To prevent nuisance issues on the adjacent property.

Mr. Thorsland asked Mr. Cole if he agreed to the special condition.

Mr. Cole indicated that he agreed to the special condition.

- E. Regarding the ongoing operation of the Special Use as authorized by the Illinois Department of Agriculture and Illinois Environmental Protection Agency:**
 - (1) The Special Use shall at all times be operated in conformance with Illinois Department of Agriculture and Illinois Environmental Protection Agency requirements, permits, and any special conditions thereof.**
 - (2) The owner/operator of the Special Use shall provide the Zoning Administrator with copies of all semi-annual testing of product piping that is required by the Illinois Department of Agriculture (IDAG) and Illinois Environmental Protection Agency (IEPA) and the copies shall be provided to the Zoning Administrator concurrently with their submission to IDAG and IEPA.**
 - (3) The owner/operator of the Special Use shall make all inspection and maintenance records required by the Illinois Department of Agriculture (IDAG) and Illinois Environmental Protection Agency (IEPA) available to Champaign County in resolving any valid complaint or concern that is related to public safety and environmental protection.**
 - (4) The owner/operator of the Special Use shall provide the Zoning Administrator with copies of renewal permits over the lifetime of the Special Use for Illinois Department of Agriculture (IDAG) and Illinois Environmental Protection Agency (IEPA) Permit #AC13030985 that expires of April 17, 2015, or Permit #AC13020954 that expires on April 17, 2018.**
 - (5) The Special Use shall become void under any of the following situations:**
 - (a) Failure to receive a renewal permit with the Illinois Department of Agriculture (IDAG) and Illinois Environmental Protection Agency (IEPA) Permit #AC13030985 that expires on April 17, 2015, or Permit #AC13020954 that expires on April 17, 2018, over the lifetime of the Special Use.**
 - (b) If the experimental design approved by the Illinois Department of Agriculture (IDAG) and the Illinois Environmental Protection Agency (IEPA) in Permit #AC13030985 fails to provide adequate containment in**

1 **which case the owner/operator of the Special Use shall provide notice to**
2 **the Zoning Administrator upon a determination by either IDAG or**
3 **IEPA that the experimental design fails to provide adequate**
4 **containment.**

5 **(c) Failure of the owner/operator to comply with any part of the special**
6 **conditions in Case 731-S-12.**

7 **The special conditions above are required to ensure the following:**
8 **To ensure that Champaign County is fully informed of any risks that**
9 **arise for public safety and environmental protection.**

10
11 Mr. Thorsland asked Mr. Cole if he agreed to the special condition.

12
13 Mr. Cole indicated that he agreed to the special condition.

14
15
16 **F. The development of the site must be substantially the same as indicated in the Plat of**
17 **Survey submitted on August 8, 2013, and the building plans for the mixing building**
18 **received on March 21, 2013, and the CST Storage Tank Technical Drawings and**
19 **Specifications received September 5, 2012.**

20 **The special condition stated above is required to ensure the following:**
21 **That the development of the site is the same as described in the public hearing.**

22
23 Mr. Thorsland asked Mr. Cole if he agreed to the special condition.

24
25 Mr. Cole indicated that he agreed to the special condition.

26
27
28 **G. The diesel fuel tanks indicated on the Plat of Survey received August 8, 2013, shall only**
29 **be used for the sole purposes of the petitioner, and not for commercial (i.e. resale to**
30 **others) storage or distribution.**

31 **The special condition stated above is required to ensure the following:**
32 **That these tanks are not used for commercial (i.e. resale to others) because that cannot**
33 **be authorized in the AG-1 District.**

34
35 Mr. Thorsland asked Mr. Cole if he agreed to the special condition.

36
37 Mr. Cole indicated that he agreed to the special condition.

38
39 Mr. Thorsland entertained a motion to approve the special conditions as read.

40
41 **Ms. Capel moved, seconded by Mr. Palmgren to approve the special conditions. The motion carried**

1 **by voice vote.**

2

3 Mr. Thorsland asked staff if there were any additions to the Documents of Record.

4

5 Mr. Kass stated that a new #44 should read as follows: E-mail from Doug Gamble, Accessibility Specialist,
6 Illinois Capital Development Board to Paul Cole, attorney for the petitioner, dated August 12, 2013. He said
7 that a new #45 should read as follows: Site visit photos by staff taken on August 13, 2013.

8

9 **Findings of Fact for Case 731-S-12:**

10

11 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
12 731-S-12 held on March 28, 2013, May 16, 2013, June 13, 2013, July 25, 2013, and August 15, 2013, the
13 Zoning Board of Appeals of Champaign County finds that:

14

15 **1. The requested Special Use Permit IS necessary for the public convenience at this**
16 **location.**

17

18 Mr. Passalacqua stated that the requested Special Use Permit IS necessary for the public convenience at this
19 location because the Board has heard testimony that other farmers and organizations would benefit by the
20 convenience of chemical storage at this location.

21

22 Ms. Capel stated that additional storage capacity provides for timely application of chemicals.

23

24 Mr. Palmgren stated that competitive pricing can occur if product is stored at this location.

25

26 Mr. Thorsland stated that it allows for the storage of agricultural chemicals in access of a one season supply
27 when the price is competitive. He said that there has been testimony indicating that in a year when it is
28 affordable the petitioner will now have the capacity to purchase several years of product for their private use.

29

30 Mr. Hall stated that the important point is that it provides lower prices for the Warners and their customers.

31

32 Mr. Kass read the Board's findings as follows:

33 • **There has been testimony received that other farmers and organizations would benefit**
34 **by the convenience of storage of agrichemicals at this location.**

35 • **The additional storage capacity provides for the timely application of fertilizer**

36 • **A larger tank is more cost effective in the long run because it allows lower prices per**
37 **gallon.**

38 The Board agreed with the findings.

39

40 **2. The requested Special Use Permit, subject to the special conditions imposed herein, is**
41 **so designed, located, and proposed to be operated so that it WILL NOT be injurious to**

1 **the district in which it shall be located or otherwise detrimental to the public health,**
2 **safety, and welfare.**

3
4 **a. The street has ADEQUATE traffic capacity and the entrance location has ADEQUATE**
5 **visibility.**

6
7 Mr. Passalacqua stated that the road agreement is the by-product of testimony that the road is not adequate.

8
9 Mr. Thorsland stated that Finding 2.i. is the point where the Board can add relative considerations such as
10 the road agreement.

11
12 Mr. Passalacqua stated that the street has ADEQUATE traffic capacity and the entrance location has
13 ADEQUATE visibility.

14
15 **b. Emergency services availability is ADEQUATE.**

16
17 Mr. Passalacqua stated that emergency services availability is ADEQUATE because it is unchanged.

18
19 **c. The Special Use WILL be compatible with adjacent uses.**

20
21 Mr. Palmgren stated that the Special Use WILL be compatible with adjacent uses.

22
23 **d. Surface and subsurface drainage will be ADEQUATE.**

24
25 Ms. Capel stated that surface and subsurface drainage will be ADEQUATE.

26
27 **e. Public safety will be ADEQUATE.**

28
29 Mr. Passalacqua stated that public safety will be ADEQUATE because of the special conditions and the
30 IDAG and IEPA permits address public safety.

31
32 Mr. Kass read the Board's findings:
33 • The special conditions and the IDAG and IEPA permits address public safety.

34
35 The Board agreed.

36
37 **f. The provisions for parking will be ADEQUATE.**

38
39 Ms. Capel stated that the provisions for parking will be ADEQUATE.

40
41 **g. The property is BEST PRIME FARMLAND and the property with the proposed**

1 **improvements IS WELL SUITED OVERALL.**

2
3 Ms. Capel stated that the property is BEST PRIME FARMLAND and the property with the proposed
4 improvements IS WELL SUITED OVERALL.

5
6 **h. The existing public services ARE available to support the proposed special use**
7 **effectively and safely without undue public expense.**

8
9 Ms. Capel stated that the existing public services ARE available to support the proposed special use
10 effectively and safely without undue public expense.

11
12 **i. The only existing public infrastructure together with proposed improvements ARE**
13 **adequate to support the proposed development effectively and safely without undue**
14 **public expense.**

15
16 Mr. Passalacqua stated that the only existing public infrastructure together with proposed improvements
17 ARE adequate to support the proposed development effectively and safely without undue public expense
18 because of the road agreement and the surcharge per gallon on commercial product.

19
20 Mr. Thorsland stated that there is a road agreement in place to provide funding for any infrastructure
21 improvements.

22
23 Mr. Kass read the Board's finding as follows:

24 • **The petitioners have entered into a road agreement with Rantoul Township that will**
25 **provide for road maintenance based on the amount of gallons commercially stored at**
26 **the Special Use.**

27
28 Mr. Thorsland stated that the requested Special Use Permit, subject to the special conditions imposed herein,
29 is so designed, located, and proposed to be operated so that it WILL NOT be injurious to the district in
30 which it shall be located or otherwise detrimental to the public health, safety, and welfare.

31
32 **3a. The requested Special Use Permit, subject to the special conditions imposed herein,**
33 **DOES conform to the applicable regulations and standards of the DISTRICT in which**
34 **it is located.**

35
36 Ms. Capel stated that the requested Special Use Permit, subject to the special conditions imposed herein,
37 DOES conform to the applicable regulations and standards of the DISTRICT in which it is located.

38
39 **3b. The requested Special Use Permit, subject to the special conditions imposed herein,**
40 **DOES preserve the essential character of the DISTRICT in which it is located because:**
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5. The requested Special Use IS NOT an existing nonconforming use.

Mr. Passalacqua stated that the requested Special Use IS NOT an existing nonconforming use.

6. The special conditions imposed herein are required to ensure compliance with the criteria for Special Use Permits and for the particular purposes described below:

A. A Change of Use Permit shall be applied for within 30 days of the approval of Case 731-S-12 by the Zoning Board of Appeals.

The above special condition is required to ensure the following:
The establishment of the proposed use shall be properly documented as required by the Zoning Ordinance.

B. The Zoning Administrator shall not authorize a Zoning Compliance Certificate for the proposed Special Use until the Zoning Administrator has received a certification of inspection from an Illinois Licensed Architect or other qualified inspector certifying that the new building complies to the following codes: (A) The 2006 or later edition of the International Building Code; (B) The 2008 or later edition of the National Electrical Code NFPA 70; and (C) the Illinois Plumbing Code.

The special condition stated above is required to ensure the following:
That the proposed structures comply with Illinois Public Act 96-704

C. The Special Use shall be void if the owner/operator fails to comply with the road agreement with Rantoul Township regarding an annual road maintenance fee that shall be paid to Rantoul Township for each gallon of liquid fertilizer that is delivered to the Special Use Permit for a commercial use, provided as follows:

- 1. The road agreement shall not apply to liquid fertilizer used by the petitioner in the course of their own farming activities.**
- 2. The amount of liquid fertilizer used by the petitioner in the course of their own farming activities will vary depending upon many different consideration but testimony indicates that in a typical year the petitioner applies 60 to 65 gallons per acre on a total of 2,900 acres of corn, unless the parties to the road agreement agree that a different amount of fertilizer shall have been used by the petitioner in the course of their own farming activities during the preceding calendar year and the petitioner may also store multiple years worth of liquid fertilizer for use in their own farming activities.**
- 3. This condition applies to the Agreement with Rantoul Township Road Commissioner received July 25, 2013, or to any subsequent road agreement between the petitioner and Rantoul Township, provided however that if a subsequent road agreement includes a specific provision for determining the amount of fertilizer that shall have been used by the petitioner in the course of**

1 their own farming activities during the preceding calendar year, then the
2 requirement of subparagraph 2. shall not apply, and further provided that a
3 fully executed Agreement shall be filed with the Zoning Administrator.

4 The special condition stated above is required to ensure the following:

5 **That any additional highway maintenance due to the truck traffic generated by**
6 **the proposed Special Use is reimbursed by the petitioner.**
7

- 8 **D. All inbound and outbound trucks delivering fertilizer and any other associated product**
9 **to the proposed Special Use shall enter and exit the subject property on the east side of**
10 **Warner Farm Equipment building.**

11 The special condition stated above is required to ensure the following:

12 **To prevent nuisance issues on the adjacent property.**
13

- 14 **E. Regarding the ongoing operation of the Special Use as authorized by the Illinois**
15 **Department of Agriculture and Illinois Environmental Protection Agency:**

- 16 (1) **The Special Use shall at all times be operated in conformance with Illinois**
17 **Department of Agriculture and Illinois Environmental Protection Agency**
18 **requirements, permits, and any special conditions thereof.**
19 (2) **The owner/operator of the Special Use shall provide the Zoning Administrator**
20 **with copies of all semi-annual testing of product piping that is required by the**
21 **Illinois Department of Agriculture (IDAG) and Illinois Environmental**
22 **Protection Agency (IEPA) and the copies shall be provided to the Zoning**
23 **Administrator concurrently with their submission to IDAG and IEPA.**
24 (3) **The owner/operator of the Special Use shall make all inspection and**
25 **maintenance records required by the Illinois Department of Agriculture (IDAG)**
26 **and Illinois Environmental Protection Agency (IEPA) available to Champaign**
27 **County in resolving any valid complaint or concern that is related to public**
28 **safety and environmental protection.**
29 (4) **The owner/operator of the Special Use shall provide the Zoning Administrator**
30 **with copies of renewal permits over the lifetime of the Special Use for Illinois**
31 **Department of Agriculture (IDAG) and Illinois Environmental Protection**
32 **Agency (IEPA) Permit #AC13030985 that expires of April 17, 2015, or Permit**
33 **#AC13020954 that expires on April 17, 2018.**
34 (5) **The Special Use shall become void under any of the following situations:**
35 (a) **Failure to receive a renewal permit with the Illinois Department of**
36 **Agriculture (IDAG) and Illinois Environmental Protection Agency**
37 **(IEPA) Permit #AC13030985 that expires on April 17, 2015, or Permit**
38 **#AC13020954 that expires on April 17, 2018, over the lifetime of the**
39 **Special Use.**
40 (b) **If the experimental design approved by the Illinois Department of**
41 **Agriculture (IDAG) and the Illinois Environmental Protection Agency**

1 **(IEPA) in Permit #AC13030985 fails to provide adequate containment in**
2 **which case the owner/operator of the Special Use shall provide notice to**
3 **the Zoning Administrator upon a determination by either IDAG or**
4 **IEPA that the experimental design fails to provide adequate**
5 **containment.**

6 **(c) Failure of the owner/operator to comply with any part of the special**
7 **conditions in Case 731-S-12.**

8 The special conditions above are required to ensure the following:
9 **To ensure that Champaign County is fully informed of any risks that**
10 **arise for public safety and environmental protection.**

11
12 **F. The development of the site must be substantially the same as indicated in the Plat of**
13 **Survey submitted on August 8, 2013, and the building plans for the mixing building**
14 **received on March 21, 2013, and the CST Storage Tank Technical Drawings and**
15 **Specifications received September 5, 2012.**

16 The special condition stated above is required to ensure the following:
17 **That the development of the site is the same as described in the public hearing.**

18
19 **G. The diesel fuel tanks indicated on the Plat of Survey received August 8, 2013, shall only**
20 **be used for the sole purposes of the petitioner, and not for commercial (i.e. resale to**
21 **others) storage or distribution.**

22 The special condition stated above is required to ensure the following:
23 **That these tanks are not used for commercial (i.e. resale to others) because that cannot**
24 **be authorized in the AG-1 District.**

25
26 Mr. Thorsland entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings
27 of Fact as amended.

28
29 **Mr. Passalacqua moved, seconded by Ms. Capel to adopt the Summary of Evidence, Documents of**
30 **Record and Findings of Fact as amended. The motion carried by voice vote.**

31
32 Mr. Thorsland entertained a motion to move to a final determination.

33
34 **Mr. Palmgren moved, seconded by Ms. Capel to move to a final determination. The motion carried by**
35 **voice vote.**

36
37 Mr. Thorsland informed the petitioner that one Board member is absent and one Board seat is vacant
38 therefore it is at his discretion to either continue Case 731-S-12 until a full Board is present or request that
39 the present Board move forward to the Final Determination. He informed the petitioner that four affirmative
40 votes are required for approval.

41

1 Mr. Cole requested that the present Board move to the Final Determination.

2
3 **Final Determination for Case 731-S-12:**
4

5 **Ms. Capel moved, seconded by Mr. Passalacqua that the Champaign County Zoning Board of**
6 **Appeals finds that, based upon the application, testimony, and other evidence received in this case, the**
7 **requirements of Section 9.1.11B. for approval HAVE been met, and pursuant to the authority granted**
8 **by Section 9.1.6B of the Champaign County Zoning Ordinance, determines that the Special Use**
9 **requested in Case 731-S-12 is hereby GRANTED WITH SPECIAL CONDITIONS to the applicant**
10 **Warner Brothers, Inc. to authorize the storage and dispensing of agricultural fertilizer as a “Farm**
11 **Chemicals and Fertilizer Sales including incidental storage and mixing of blended fertilizer” facility as**
12 **a Special Use in the AG-1 Agriculture Zoning District. Subject to the following conditions:**

13
14 **A. A Change of Use Permit shall be applied for within 30 days of the approval of Case**
15 **731-S-12 by the Zoning Board of Appeals.**

16 The above special condition is required to ensure the following:

17 **The establishment of the proposed use shall be properly documented as required by the**
18 **Zoning Ordinance.**

19
20 **B. The Zoning Administrator shall not authorize a Zoning Compliance Certificate for the**
21 **proposed Special Use until the Zoning Administrator has received a certification of**
22 **inspection from an Illinois Licensed Architect or other qualified inspector certifying**
23 **that the new building complies to the following codes: (A) The 2006 or later edition of**
24 **the International Building Code; (B) The 2008 or later edition of the National Electrical**
25 **Code NFPA 70; and (C) the Illinois Plumbing Code.**

26 The special condition stated above is required to ensure the following:

27 **That the proposed structures comply with Illinois Public Act 96-704**

28
29 **C. The Special Use shall be void if the owner/operator fails to comply with the road**
30 **agreement with Rantoul Township regarding an annual road maintenance fee that**
31 **shall be paid to Rantoul Township for each gallon of liquid fertilizer that is delivered to**
32 **the Special Use Permit for a commercial use, provided as follows:**

33 1. **The road agreement shall not apply to liquid fertilizer used by the petitioner in**
34 **the course of their own farming activities.**

35 2. **The amount of liquid fertilizer used by the petitioner in the course of their own**
36 **farming activities will vary depending upon many different consideration but**
37 **testimony indicates that in a typical year the petitioner applies 60 to 65 gallons**
38 **per acre on a total of 2,900 acres of corn, unless the parties to the road**
39 **agreement agree that a different amount of fertilizer shall have been used by the**
40 **petitioner in the course of their own farming activities during the preceding**
41 **calendar year and the petitioner may also store multiple years worth of liquid**

fertilizer for use in their own farming activities.

- 3. This condition applies to the Agreement with Rantoul Township Road Commissioner received July 25, 2013, or to any subsequent road agreement between the petitioner and Rantoul Township, provided however that if a subsequent road agreement includes a specific provision for determining the amount of fertilizer that shall have been used by the petitioner in the course of their own farming activities during the preceding calendar year, then the requirement of subparagraph 2. shall not apply, and further provided that a fully executed Agreement shall be filed with the Zoning Administrator.

The special condition stated above is required to ensure the following:

That any additional highway maintenance due to the truck traffic generated by the proposed Special Use is reimbursed by the petitioner.

- D. All inbound and outbound trucks delivering fertilizer and any other associated product to the proposed Special Use shall enter and exit the subject property on the east side of Warner Farm Equipment building.

The special condition stated above is required to ensure the following:

To prevent nuisance issues on the adjacent property.

- E. Regarding the ongoing operation of the Special Use as authorized by the Illinois Department of Agriculture and Illinois Environmental Protection Agency:

- (1) The Special Use shall at all times be operated in conformance with Illinois Department of Agriculture and Illinois Environmental Protection Agency requirements, permits, and any special conditions thereof.
- (2) The owner/operator of the Special Use shall provide the Zoning Administrator with copies of all semi-annual testing of product piping that is required by the Illinois Department of Agriculture (IDAG) and Illinois Environmental Protection Agency (IEPA) and the copies shall be provided to the Zoning Administrator concurrently with their submission to IDAG and IEPA.
- (3) The owner/operator of the Special Use shall make all inspection and maintenance records required by the Illinois Department of Agriculture (IDAG) and Illinois Environmental Protection Agency (IEPA) available to Champaign County in resolving any valid complaint or concern that is related to public safety and environmental protection.
- (4) The owner/operator of the Special Use shall provide the Zoning Administrator with copies of renewal permits over the lifetime of the Special Use for Illinois Department of Agriculture (IDAG) and Illinois Environmental Protection Agency (IEPA) Permit #AC13030985 that expires of April 17, 2015, or Permit #AC13020954 that expires on April 17, 2018.
- (5) The Special Use shall become void under any of the following situations:
 - (a) Failure to receive a renewal permit with the Illinois Department of

1 **Agriculture (IDAG) and Illinois Environmental Protection Agency**
2 **(IEPA) Permit #AC13030985 that expires on April 17, 2015, or Permit**
3 **#AC13020954 that expires on April 17, 2018, over the lifetime of the**
4 **Special Use.**

5 **(b) If the experimental design approved by the Illinois Department of**
6 **Agriculture (IDAG) and the Illinois Environmental Protection Agency**
7 **(IEPA) in Permit #AC13030985 fails to provide adequate containment in**
8 **which case the owner/operator of the Special Use shall provide notice to**
9 **the Zoning Administrator upon a determination by either IDAG or**
10 **IEPA that the experimental design fails to provide adequate**
11 **containment.**

12 **(c) Failure of the owner/operator to comply with any part of the special**
13 **conditions in Case 731-S-12.**
14 **The special conditions above are required to ensure the following:**
15 **To ensure that Champaign County is fully informed of any risks that**
16 **arise for public safety and environmental protection.**
17

18 **F. The development of the site must be substantially the same as indicated in the Plat of**
19 **Survey submitted on August 8, 2013, and the building plans for the mixing building**
20 **received on March 21, 2013, and the CST Storage Tank Technical Drawings and**
21 **Specifications received September 5, 2012.**

22 **The special condition stated above is required to ensure the following:**
23 **That the development of the site is the same as described in the public hearing.**
24

25 **G. The diesel fuel tanks indicated on the Plat of Survey received August 8, 2013, shall only**
26 **be used for the sole purposes of the petitioner, and not for commercial (i.e. resale to**
27 **others) storage or distribution.**

28 **The special condition stated above is required to ensure the following:**
29 **That these tanks are not used for commercial (i.e. resale to others) because that cannot**
30 **be authorized in the AG-1 District.**
31

32 Mr. Thorsland requested a roll call vote.

33
34 The roll was called:

35
36 **Capel-yes Palmgren-yes Passalacqua-yes**
37 **Randol-yes Miller-absent Thorsland-yes**
38

39 Mr. Thorsland stated that the Board will now review Case 747-AM-13.

40
41 Mr. Thorsland asked the Board and staff if there were any questions for the petitioner.

1
2 Mr. Thorsland asked the Board if they desired to review the Finding of Fact entirely or to review the
3 Summary Finding of Fact.

4
5 The Board agreed to review the Summary Finding of Fact.

6
7 Mr. Thorsland read the proposed special condition for Case 747-AM-13 as follows:

8
9 **A. A Change of Use Permit shall be applied for within 30 days of the approval of Case**
10 **747-AM-13 by the County Board.**

11 The above special condition is required to ensure the following:

12 **The establishment of the proposed use shall be properly documented as required by the**
13 **Zoning Ordinance.**

14
15 Mr. Thorsland asked the petitioner if he agreed to the proposed special condition.

16
17 Mr. Cole stated that he agreed.

18
19 Mr. Thorsland entertained a motion to approve the proposed special condition.

20
21 **Mr. Passalacqua moved, seconded by Ms. Capel to approve the proposed special condition. The**
22 **motion carried by voice vote.**

23
24 **Summary Finding of Fact for Case 747-AM-13:**

25
26 From the documents of record and the testimony and exhibits received at the public hearing conducted on
27 March 28, 2013, May 16, 2013, June 13, 2013, July 25, 2013, and August 15, 2013, the Zoning Board of
28 Appeals of Champaign County finds that:

29
30 **1. The proposed amendment *WILL HELP ACHIEVE* the Land Resource Management Plan**
31 **because of the following (objectives and policies are very briefly summarized):**

32 **A. The proposed map amendment *WILL HELP ACHIEVE* the following LRMP goals:**

33
34 **Goal 4 Agriculture because while it will either not impede or is not relevant to**
35 **the other Objectives and Policies under this goal, it *WILL HELP ACHIEVE* the**
36 **following:**

- 37 • **It *WILL HELP ACHIEVE* Objective 4.1 requiring minimization of the**
38 **fragmentation of farmland, conservation of farmland, and stringent development**
39 **standards on best prime farmland because of the following:**
40 • **It will *HELP ACHIEVE* Policy 4.1.1 requiring that other land uses only be**
41 **accommodated under very restricted conditions or in areas of less productive soils**
42 **(see Item 14.A.(2)).**

1
2 Mr. Passalacqua stated that the proposed map amendment will HELP ACHIEVE Policy 4.1.1 requiring
3 that other land uses only be accommodated under very restricted conditions or in areas of less productive
4 soils (See Item 14.A.(2)).

- 5
6 • It **DOES** conform with Policy 4.1.6 requiring that the use, design, site and location
7 are consistent with policies regarding suitability, adequacy of infrastructure and
8 public services, conflict with agriculture, conversion of farmland, and disturbance
9 of natural areas (see Item 14.A.(3)).

10
11 Ms. Capel stated that the proposed map amendment DOES conform with Policy 4.1.6 requiring that the
12 use, design, site and location are consistent with policies regarding suitability, adequacy of infrastructure
13 and public services, conflict with agriculture, conversion of farmland, and disturbance of natural areas
14 (see Item 14.A.(3)).

15
16 Mr. Passalacqua stated that the proposed map amendment WILL HELP ACHIEVE Objective 4.1
17 requiring minimization of the fragmentation of farmland, conservation of farmland, and stringent
18 development standards on best prime farmland.

- 19
20
21 • It will **HELP ACHIEVE** Objective 4.2 requiring discretionary development to not
22 interfere with agriculture because it will **HELP ACHIEVE** the following:
 - 23 • Policy 4.2.1 requiring a proposed business in a rural area to support agriculture or
24 provide a service that is better provided in the rural area (see Item 14.B.(1)).
 - 25 • Policy 4.2.2 requiring discretionary development in a rural area to not interfere
26 with agriculture or negatively affect rural infrastructure (see Item 14.B.(2)).
 - 27 • Policy 4.2.3 requiring discretionary development recognize and provide for the
28 right of agricultural activities to continue on adjacent land (see Item 14.B.(3)).
 - 29 • Policy 4.2.4 requiring consideration of whether a buffer between proposed
30 development and agricultural activities is necessary (see Item 14.B.(4)).

31
32 Mr. Thorsland stated that staff recommends that the proposed map amendment will HELP ACHIEVE
33 Objective 4.2 requiring discretionary development to not interfere with agriculture.

34
35 The Board agreed with staff's recommendation.

- 36
37 • It will **HELP ACHIEVE** Objective 4.3 requiring any discretionary development to
38 be on a suitable site because of the following:
 - 39 • It will **HELP ACHIEVE** Policy 4.3.2 requiring a discretionary development on best
40 prime farmland to be well-suited overall (see Item 14.C.(2)).

- 1 • It will **HELP ACHIEVE** Policy 4.3.3 requiring existing public services be adequate
- 2 to support the proposed development effectively and safely without undue public
- 3 expense (see Item 14.C.(3)).
- 4 • It **WILL HELP ACHIEVE** Policy 4.3.4 requiring existing public infrastructure be
- 5 adequate to support the proposed development effectively and safely without undue
- 6 public expense (see Item 14.C.(4)).
- 7

8 Mr. Passalacqua stated that the proposed map amendment WILL HELP ACHIEVE Policy 4.3.4
9 requiring existing public infrastructure be adequate to support the proposed development effectively and
10 safely without undue public expense (see Item 14.C.(4)).

- 11
- 12 • It will **HELP ACHIEVE** Policy 4.3.5 requiring that a business or non-residential use
- 13 on best prime farmland only if it serves surrounding agriculture and is appropriate
- 14 in a rural area (see Item 14.C.(5)).
- 15

16 Mr. Passalacqua stated that the proposed map amendment WILL HELP ACHIEVE Objective 4.3
17 requiring discretionary development to be on a suitable site.

18

19 **B. Goal 8 Natural Resources because while it will either not impede or is not relevant to**
20 **the other Objectives and Policies under this goal, it will *HELP ACHIEVE* the**
21 **following:**

- 22
- 23 • **Objective 8.2 requiring the County to conserve its soil resources because it will**
24 ***HELP ACHIEVE* the following:**
 - 25 • **Policy 8.2.1 requiring the County to minimize the conversion of farmland to**
 - 26 **non-agricultural development.**
- 27

28 Mr. Thorsland stated that staff recommends that the proposed map amendment will HELP ACHIEVE
29 Objective 8.2 requiring the County to conserve its soil resources because it will HELP ACHIEVE Policy
30 8.2.1 requiring the County to minimize the conversion of farmland to non-agricultural development
31 therefore it will HELP ACHIEVE Goal 8. He asked the Board if they agreed with staff's
32 recommendations.

33

34 The Board agreed.

- 35
- 36 **C. The proposed amendment will *NOT IMPEDE* the following LRMP goal(s):**
- 37 • **Goal 1 Planning and Public Involvement**
 - 38 • **Goal 2 Governmental Coordination**
 - 39 • **Goal 3 Prosperity**
 - 40 • **Goal 5 Urban Land Use**
 - 41 • **Goal 6 Public Health and Public Safety**
 - 42 • **Goal 7 Transportation**

- 1 • **Goal 9 Energy Conservation**
- 2 • **Goal 10 Cultural Amenities**
- 3

4 Mr. Thorsland stated that staff recommends that the proposed amendment will not impede the following
5 LRMP goals: Goals 1, 2, 3, 5, 6, 7, 9 and 10. He asked the Board if they agreed with staff's
6 recommendation.

7
8 The Board agreed.

9
10 **2. The proposed Zoning Ordinance map amendment *IS* consistent with the *LaSalle* and**
11 ***Sinclair* factors because of the following:**

- 12 • **The amendment will allow the petitioners to continue to provide the needed**
13 **products and services they offer to the agricultural community.**
- 14
- 15 • **The subject property is suitable for the business and cannot be converted back to**
16 **agricultural production.**
- 17

18 Mr. Thorsland stated that staff recommends that the proposed Zoning Ordinance map amendment IS
19 consistent with the *LaSalle* and *Sinclair* factors. He asked the Board if they agreed with staff's
20 recommendation.

21
22 The Board agreed.

23
24 **3. The proposed Zoning Ordinance map amendment *WILL HELP ACHIEVE* the purpose of**
25 **the Zoning Ordinance because:**

- 26 • **Establishing the B-1 District at this location *DOES* lessen and avoid congestion in**
27 **the public streets (Purpose 2.0 (c) see Item 23.C.).**
- 28

29 Mr. Passalacqua requested clarification.

30
31 Mr. Thorsland stated that item #23.C(a) on page 18 indicates the following: The Rantoul Township
32 Highway Commissioner has a concern with the volume of heavy truck traffic that will take place over
33 the township roads as result of the proposed Special Use and even has concerns about heavy truck
34 traffic if the storage tank is used for agricultural purposes only. Regarding these concerns about heavy
35 truck traffic: i.: Rantoul Township hired Applied Research Associates (ARA) Inc. to prepare a life cycle
36 cost analysis of the impacts of the proposed Special Use on township roads; and ii.: The petitioners have
37 entered into an agreement with Rantoul Township to assist with maintenance costs of the roads. The
38 agreement does not specify which roads the petitioners are to use. The amount the petitioners will pay to
39 the Township is based upon how many gallons of commercial product are stored per year. Because the
40 Special Use will also be used to store liquid fertilizer used on the petitioner's own farmland every year
41 that will not be considered "commercial product" and for which the petitioner will not be obligated to

1 pay towards the road agreement with the Township, the specific amount used for the petitioner's own
2 farmland must necessarily be considered in arriving at the actual amount of commercial product that is
3 stored in any given year; and iii.: Enforcement of the road agreement will be complicated because the
4 agreement does not specify any limit on how much liquid fertilizer may be claimed to be used for the
5 petitioners own farmland and given that the petitioners have stated an intent to buy in large quantity and
6 store fertilizer for use on their own farmland over multiple seasons.

7
8 Mr. Thorsland stated that the Board applied Special Condition C. in Case 731-S-12.

9
10 Mr. Passalacqua stated that the only thing that the analysis did was evaluate the quality and physical road
11 but he reads #3 of the Summary of Evidence as traffic congestion regarding the number of vehicles.

12
13 Mr. Hall stated that it is a purpose statement and therefore he suggested that it read broadly as
14 congestion being if you end up with a road that is unduly destroyed due to the heavy traffic there will be
15 congestion.

16
17 Mr. Passalacqua stated that the road agreement addresses this item.

18
19 Mr. Hall stated that if the Board thinks that the road addresses road maintenance then it will help prevent
20 congestion.

21
22 Mr. Passalacqua stated that the answer to this item should be that establishing the B-1 District at this
23 location DOES lessen and avoid congestion in the public streets.

24
25 Mr. Thorsland stated that he agrees and that is because the road agreement is in place.

26
27 Mr. Thorsland asked the Board if they agreed that the proposed Zoning Ordinance map amendment
28 WILL HELP ACHIEVE the purpose of the Zoning Ordinance because establishing the B-1 District at
29 this location DOES lessen and avoid congestion in the public streets (Purpose 2.0.(c) see Item 23.C.)

30
31 The Board agreed.

- 32
- 33 ● **Establishing the B-1 District at this location will help classify, regulate, and restrict**
 - 34 **the location of the uses authorized in the B-1 District (Purpose 2.0 (i) see Item 23.I.).**
 - 35
 - 36 ● **Establishing the B-1 District at this location will help make the existing buildings,**
 - 37 **structures, and uses conform to those authorized in the B-1 District (Purpose 2.0**
 - 38 **(m) see Item 23.M.).**
 - 39

40 The Board agreed.

41
42 **4. Regarding the error in the present Ordinance that is to be corrected by the proposed change:**

- **Approval of the amendment would bring the existing business into compliance with the Zoning Ordinance.**

The Board agreed.

Mr. Passalacqua stated that the proposed map amendment WILL HELP ACHIEVE the Land Resource Management Plan and the proposed map amendment WILL HELP ACHIEVE the LRMP Goals.

Mr. Thorsland asked the Board if there were any questions regarding the Summary Finding of Fact and there were none.

Mr. Thorsland asked staff if there were any additional items to add to the Documents of Record.

Mr. Kass indicated that the same items added to the Documents of Record for Case 731-S-12 should be added to the Documents of Record for this case.

Mr. Thorsland entertained a motion to adopt the Finding of Fact, Documents of Record and Summary Finding of Fact as amended.

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

Mr. Thorsland entertained a motion to move to the final determination.

Ms. Capel moved, seconded by Mr. Palmgren to move to the final determination for Case 747-AM-13. The motion carried by voice vote.

Mr. Thorsland informed the petitioner that one Board member is absent and one Board seat is vacant therefore it is at his discretion to either continue Case 747-AM-13 until a full Board is present or request that the present Board move forward to the Final Determination. He informed the petitioner that four affirmative votes are required for approval.

Mr. Cole requested that the present Board move to the Final Determination.

Final Determination for Case 747-AM-13:

Ms. Capel moved, seconded by Mr. Palmgren that pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that the Zoning Ordinance Amendment requested in Case 747-AM-13 should BE ENACTED by the County Board in the form attached hereto. Subject to the following special condition:

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A. A Change of Use Permit shall be applied for within 30 days of the approval of Case 747-AM-13 by the County Board.
The above special condition is required to ensure the following:
The establishment of the proposed use shall be properly documented as required by the Zoning Ordinance.

Mr. Thorsland requested a roll call vote.

The roll was called as follows:

Capel-yes	Miller-absent	Palmgren-yes
Passalacqua-yes	Randol-yes	Thorsland-yes

Mr. Hall informed the petitioner that the case has received a recommendation of approval therefore the Case 747-AM-13 will be forwarded to the Environment and Land Use Committee for review at their September 6th meeting.

Mr. Thorsland stated that the Board will now take a five minute recess.

The Board recessed at 8:00 p.m.
The Board resumed at 8:06 p.m.

Mr. Thorsland stated that the Board will now hear Case 685-AT-11.

Case 685-AT-11 Petitioner: Champaign County Zoning Administrator. Request to 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 Historic Preservation Agency (ISHPA) about the proposed RRO development undertaking and provide a copy

1 of the ISHPA response; (7) require that for any proposed RRO that the petitioner shall contact the
2 Endangered Species Program of the Illinois Department of Natural Resources and provide a copy of
3 the agency response.
4

5 Mr. Hall requested that Case 685-AT-11 to the September 26, 2013, meeting.
6

7 Mr. Thorsland entertained a motion to continue Case 685-AT-11 to the September 26, 2013, meeting.
8

9 Mr. Passalacqua moved, seconded by Ms. Capel to continue Case 685-AT-11 to the September 26,
10 2013, meeting. The motion carried by voice vote.
11

12 Mr. Thorsland stated that the Board will now hear Case 732-AT-12.
13

14 **Case 732-AT-12 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning**
15 **Ordinance as follows: Part A. Revise paragraph 7.1.2B. as follows: (1) Strike “non-family” and**
16 **replace with “non-resident”; and (2) Revise subparagraph 7.1.2B.i. to strike “five acres” and replace**
17 **with “two acres in area”; and renumber the subparagraph to 7.1.2B.(1); and (3) Revise**
18 **subparagraph 7.1.2B.ii to strike “five acres” and replace with “that are two acres in area”; add the**
19 **phrase “and provided that”; and renumber the subparagraph to 7.1.2B.(2); and (4) Add new**
20 **subparagraph 7.1.2B.(3) to authorized that all employees may be present and working on the**
21 **premises for no more than 5 days with any 30 day period due to inclement weather or as necessitated**
22 **by other business considerations; and (5) Add new subparagraph 7.1.sB.(4) to authorize that family**
23 **members who are residents of the property when the HOME OCCUPATION is operating but whom**
24 **subsequently move from the premises may remain active in the HOME OCCUPATION and shall not**
25 **be counted as a non-resident employee as long as their participation in the HOME OCCUPATION**
26 **continues. Part B. Revise paragraph 7.1.2E. as follows: (1) Strike “Second Division vehicle as**
27 **defined by the Illinois Vehicle Code” and replace with “MOTOR VEHICLES”; and add the phrase**
28 **“and parked at”. (2) Add new subparagraph 7.1.2E(1) to require that the number of MOTOR**
29 **VEHICLES and licensed trailers displaying the name of the RURAL HOME OCCUPATION or used**
30 **in any way for the RURAL HOME OCCUPATION shall be within the limits established. (3)**
31 **Renumber subparagraph 7.1.2E.i.to be 7.1.2E.(2) and strike “vehicles over 8,000 gross weight” and**
32 **replace with “MOTOR VEHICLES that are either a truck tractor and/or a MOTOR VEHICLE with**
33 **tandem axles, both as defined by the Illinois Vehicle Code (625 ILCS 5/1 et seq)”; and add the phrase**
34 **“and all MOTOR VEHICLE loads and weights shall conform to the Illinois Vehicle Code (625 ILCS**
35 **5/15-111)”. (4) Renumber subparagraph 7.1.2E.ii. to be 7.1.2E.(3) and strike “vehicles” and replace**
36 **with “MOTOR VEHICLES”; and strike “vehicles under 8,000 lbs. gross vehicle weight”; and insert**
37 **“licensed”; and strike “and off-road vehicles”; and insert the phrase “or owner”. (5) Renumber**
38 **subparagraph 7.1.2E.(4)(a) to require that no more than 1 motor vehicle may be parked outdoors less**
39 **than five feet from a side or rear property line or less than 10 feet from a front property line; and (b)**
40 **Add subparagraph 7.1.2E(4)(b) to require that outdoor parking for more than one motor vehicle shall**
41 **be no less than 50 feet from any lot line and no less than 100 feet from any offsite dwelling; and (c)**

1 **Add subparagraph 7.1.2E.(4)(c) to require that outdoor parking for more than one motor vehicle that**
2 **does not meet certain requirements shall be at least 10 feet from any lot line and be screened. (6) Add**
3 **subparagraph 7.1.2E.(5) to require that paragraphs 7.1.2E. and 7.1.2F. apply to all new RURAL**
4 **HOME OCCUPATION and to any expansion of a RURAL HOME OCCUPATION that is filed after**
5 **September 1, 2012. (7) Add subparagraph 7.1.2E.(6)(a) and (b) to require the following: (a) Any**
6 **MOTOR VEHICLE or licensed trailer or piece of equipment that was included on an application for**
7 **a RURAL HOME OCCUPATION that was received before September 1, 2012, may continue to be**
8 **used provided that the total number of vehicles are not more than 10 and no more than 3 may be**
9 **truck tractors or MOTOR VEHICLES with tandem axles as defined by the Illinois Vehicle Code; (b)**
10 **Any RURAL HOME OCCUPATION that complies with 7.1.2E.(6) shall be authorized to have the**
11 **same number of motor vehicles or licensed trailers or pieces of equipment as long as it continues in**
12 **business at that location and any MOTOR VEHICLE or licensed trailer or piece of equipment may**
13 **be replaced with a similar motor vehicle or licensed trailer or piece of equipment. Part C. Add new**
14 **paragraph 7.1.2F. as follows: (1) Limit the number of motorized or non-motorized complete pieces of**
15 **non-farm equipment in outdoor storage to 10 complete pieces, provided that the number of pieces of**
16 **equipment that may be in outdoor storage shall be reduced by the number of MOTOR VEHICLES**
17 **and licensed trailers that are also parked outdoors; and (2) Require that equipment in outdoor**
18 **storage meet the same separations required for MOTOR VEHICLES in 7.1.2E.(4)(b) and**
19 **7.1.2E.(4)(c). Part D. Revise paragraph 7.1.2H. to require that more than four vehicles for patrons**
20 **and onsite employees shall be screened; and also provide that loading berths are not required for**
21 **RURAL HOME OCCUPATIONS. Part E. Revise paragraph 7.1.2K. as follows: (1) Add the phrase**
22 **“for other than equipment used in any RURAL HOME OCCUPATION”; and strike the phrase**
23 **“screened as provided by Section 7.6, and replace with the phrase “shall be provided as follows:” (2)**
24 **Add subparagraph 7.1.2K.(1) to require that no outdoor storage be located in any required off street**
25 **parking spaces; and (3) Add subparagraph 7.1.2K.(2) to require screening if outdoor storage occurs**
26 **in any yard within 1,000 feet of certain specified uses of surrounding property.**

27
28 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
29 sign the witness register for that public hearing. He reminded the audience that when they sign the
30 witness register they are signing an oath.

31
32 Mr. Thorsland asked the petitioner if he would like to make a brief statement outlining the nature of the
33 request prior to introducing new evidence.

34
35 Mr. John Hall, Zoning Administrator, distributed a new Supplemental Memorandum dated August 15, 2013,
36 to the Board for review. He said that staff tried to imagine the smallest RHO and what it would mean and it
37 was then that he realized that even one piece of equipment needs to be screened. He said that if there is a
38 small RHO with one piece of equipment, does the equipment need to be screened if four vehicles do not
39 need to be screened. He said that he took an informal survey in the office and found that if someone could
40 have four vehicles that are not screened then a small RHO should be able to have two pieces of equipment
41 that each is less than 15,000 pounds should also not require screening. He said that in the materials attached

1 to tonight's memorandum staff has added a revision for subparagraph 7.1.2 F. 4. B. as follows: b. When
2 there are no more than two complete pieces of equipment (each weighing less than 15,000 pounds gross
3 weight), in which case no SCREEN is required unless the total number of MOTOR VEHICLES (each
4 weighing less than 15,000 pounds gross vehicle weight) and equipment is more than four in which case the
5 required SCREEN shall be as required by 7.1.2 E.4.c. He said that for vehicles over 15,000 pounds even one
6 vehicle must be screened. He said that staff thought that this provision would help small RHOs and at the
7 same time should not harm neighbors.

8
9 Mr. Hall stated that in regards to the RHO Parking Requirements one thing that Section 7.4 includes is the
10 provision that parking for any "industrial use" needs to be "...surfaced with an all-weather dustless material"
11 which will be oil and chip at the least. He said that the RHO parking refers to Section 7.4 and one of the bad
12 things about Section 7.4 is that it provides no way to determine what is an "industrial use." He said that
13 theoretically we could have been requiring RHOs to actually pave their parking areas but we haven't and it is
14 time to bring the Ordinance into line with practice. He said that staff has added a new provision
15 7.1.2E.4.c.(4) which states as follows: The requirements of Section 7.4 notwithstanding, paragraph 7.4.1 D.
16 2. shall not be applicable to any parking at a RURAL HOME OCCUPATION. He said that this changes the
17 technical parts of the Ordinance but it does not change how we operate. He said that another thing about
18 Section 4 is that it is extraordinarily poorly done and when we refer to Section 7.4 it does not help anyone
19 because it doesn't provide any guidance for the Zoning Administrator or the landowner regarding parking
20 requirements for an RHO. He said that we have been doing this since 1993 and it has gotten staff into a
21 disagreement and at some time the entire Section of 7.4 should be amended.

22
23 Mr. Hall stated that attached are revised versions of the amendment both annotated and non-annotated and
24 the total revised Section 7.1.2. reflects the changes that he just reviewed. He said that also attached is the
25 handout which indicates the changes with underlining and includes the requirement for exterior lighting,
26 which is Case 756-AT-13. He said that the handout has four site plans attached and Attachment D is the
27 small RHO. He said that Attachment D indicates a dwelling with four parking spaces and two of the parking
28 spaces could be for equipment and one could be for the paved accessible parking. He said that the accessible
29 parking is required unless a letter from Doug Gamble, Illinois Capital Development Board, indicates that it is
30 not required. Mr. Hall stated that one thing that the Board should do is review the site plan notes because
31 staff realized that they are attempting to be helpful with the site plan examples but unless they are completed
32 perfect someone could be mislead or suggest that something is required when it truly is not. He said that
33 staff if not intending to mislead anyone and he is not sure that staff has done a good enough job with the
34 examples therefore if the Board sees something which requires a comment staff would appreciate it if the
35 Board would notify staff. He said that staff believes that they have revised the example site plan to point out
36 when something is not required and is merely optional, for example item #3 discusses screening. He said
37 that site plan C is probably the most developed site plan because it is the one with the accessory building and
38 outdoor storage and incorporates exterior lighting and a note about a sign.

39
40 Mr. Passalacqua stated that he is not sure that site plan B is a great example because the egress point into the
41 screened lot would be difficult with a truck and tractor.

1
2 Mr. Hall stated that he is aware of one RHO that has semi-trucks and in that situation the driveway is
3 centered on the area where they store the trucks and the house is off to the side. He said that staff can revise
4 the site plan.
5
6 Mr. Passalacqua stated that he does not want to give someone an example that will not work.
7
8 Mr. Hall stated that he will not encourage anyone to install extra driveway openings for their RHO.
9
10 Mr. Passalacqua stated that the site plan does indicate the septic field and the screening.
11
12 Mr. Hall stated that he will revise the site plan. He said that the new application form has been previously
13 reviewed by the Board but staff added items #13 and 15.J regarding exterior lighting but if Case 756-AT-13
14 is not approved those items will be deleted. He said that one of the reasons why this case has taken so long
15 is because staff has never taken the luxury of doing this in the context of a text amendment and have always
16 waited until something gets approved and then scramble around and cobble something together. He said that
17 doing this in the context of a text amendment adds at least two months to the text amendment and it is time
18 well spent and should always be done in this way. He said that the Board received an updated Finding of
19 Fact for this case and the interesting thing about this text amendment is that it does not relate to the LRMP
20 but is related to some of the purpose statements and common sense improvement of the Zoning Ordinance.
21 He said that he does not anticipate final action tonight because there are three or four pages of new evidence
22 that the Board should review. He said that staff has taken a different approach to the Summary Finding of
23 Fact and the new evidence under item #17 is pretty much non-subjective in how the proposed text
24 amendment will improve the Zoning Ordinance.
25
26 Mr. Thorsland asked the Board if there were questions for Mr. Hall and there were none.
27
28 Mr. Thorsland called John Collins to testify.
29
30 Mr. John Collins, who resides at 893 CR 2185N, Champaign, asked how this proposed amendment will
31 affect him. He said that he and his father live in a rural community and even though they do not farm they
32 do own and maintain a section of farm ground and they are hobbyists. He said that he and his father
33 purchase vehicles and they play with them and they may keep the vehicles or sell them or do something else
34 with them. He said that they purchase tractors, trucks, and cars and they fix them up and they play with
35 them. He said that he and his father do park some of the vehicles outside and they do have a number of
36 construction equipment items that also sit outside and are used to maintain their farm and their neighbor's
37 farm. He said that he has a large forklift, backhoe, and three tractors and a lot of implements. He said that
38 his father has gotten into the habit of purchasing box trailers/containers for storage. He asked how the
39 proposed amendment will affect him and his father because they are not a business but are private
40 individuals who collect items on their farm lot.
41

1 Mr. Hall stated that we have had a similar situation just outside of Urbana in the past couple of years and the
2 landowner collected construction vehicles and had a nice rectangular area where he stored them. Mr. Hall
3 stated that when the office started getting complaints his approach with that individual was that he
4 understood that the landowner was not running a business but it appears as a business because he had
5 everything that a business would have. He said that even though the landowner was not a business, under
6 the terms of the Zoning Ordinance, the landowner still has to operate it under the confines of what a business
7 would have to operate. Mr. Hall stated that the office has never received a complaint about Mr. Collin's
8 property but if the office did he would know that Mr. Collins does not collect these things as a business but
9 yet when he sees a forklift, tractors, etc., it would appear as a business. He said that an off-road forklift,
10 under the proposed amendment, would be considered equipment and if there were no more than two pieces
11 of equipment they could be considered and grouped with the vehicles and any vehicle over 15,000 pounds
12 needs to be screened. He said that the screening can be anything that is eight feet tall and is opaque, a fence,
13 landscaping, an earth berm, some combination.

14

15 Mr. Thorsland asked if the box trailers/containers could be used for screening.

16

17 Mr. Hall stated that containers are fine but they are another form of building.

18

19 Mr. Passalacqua stated that he does not agree that it is good to have junk stored behind trailers.

20

21 Mr. Hall stated that the items can be no closer than the side yard to the property line. He said that staff
22 would rather have containers out there than a bunch of stuff.

23

24 Mr. Collins stated that the proposed amendment appears to be too restrictive. He said that there have been
25 several situations which have been called an RHO because they have a couple of machine sheds that they run
26 a 20 year old business out of and suddenly a new subdivision is built next to the RHO property and
27 complaints are received by new adjacent landowners. He asked if existing facilities will have to conform to
28 the new amendment.

29

30 Mr. Hall stated that this amendment is revising a rule that was adopted in 1993 and the 1993 amendment
31 revised an amendment that was adopted in 1973. He said that there have been rules for home occupations
32 since 1973 and they have only gotten less restrictive since day one even though there are many people who
33 would disagree with him. He said that the handout shows a home occupation that can have three semi-trucks
34 and ten trailers.

35

36 Mr. Collins stated that he reviewed the site plans.

37

38 Mr. Hall stated that example C indicates a one acre lot and there are basically a little less than one-half of the
39 lot devoted to a business therefore he does not know how someone could look at that and call it too
40 restrictive but he does know that some neighbors would look at it and call it crazy.

41

1 Mr. Collins stated that it depends on what side of the fence you are on.

2
3 Mr. Hall stated that when someone indicates that the proposed amendment is too restrictive he has no idea
4 what they are reacting to therefore he has no idea what to change. He said that finally he gained some insight
5 which made him wonder if screening should be required for every piece of equipment and he does not
6 believe that it should be required therefore that is what he is recommending.

7
8 Mr. Collins stated that he is looking at this amendment from his perspective. He said that he and his father
9 do not plan to inflict any harm upon anyone but they would like to be able to continue what they are
10 currently doing on their property.

11
12 Mr. Hall stated that maybe neighbors would accept a higher threshold for someone that they know is a
13 hobbyist rather than someone who runs a business with these things. He said that such a change appears
14 reasonable but he does not know how to structure it so that a business would have to meet this standard or
15 maybe this standard and a hobbyist could do a little bit more. He said that it would have to be justified on
16 the basis that a hobbyist just never would have the same kind of noise, odor and sounds that a business
17 would have.

18
19 Mr. Collins stated that he and his father are not out there seven days a week from 6 a.m. to midnight making
20 noise. He said that they may be out there on a Sunday from 6 a.m. to midnight making a little noise and
21 creating a little dust.

22
23 Mr. Thorsland asked Mr. Collins if he considered his activities to be agriculture.

24
25 Mr. Collins stated that he believes that he is considered agriculture.

26
27 Mr. Thorsland asked if there is a reason why Mr. Collins' items do not fall under the agricultural exemption.
28 He said that Mr. Collins does have a farm parcel and all of his equipment could be used on the farm.

29
30 Mr. Hall stated that he could not rule that out.

31
32 Mr. Collins stated that he knows that Mr. Malloch has had a lot of issues with neighbors.

33
34 Mr. Thorsland stated that he was at the Malloch property when a lot of the equipment went under water and
35 that is when he was asked to relocate his items because there was a lot of oil in the water due to the
36 equipment.

37
38 Mr. Collins stated that he can see having restrictions to keep something like that from occurring.

39
40 Mr. Thorsland stated that during his childhood years there was a 35 year long one-half mile race track that a
41 developer created a subdivision next to and there was also an airport nearby. He said that within 15 years the

1 race track and the airport were shut down because the people in the new subdivision did not enjoy their
2 existence. He said that this is all complaint based and hopefully if Mr. Collins does everything well in
3 having fun the neighbors do not complain. He said that there is a different threshold of what people consider
4 annoying especially if the neighbors have lived there for a long time and they understand what is occurring
5 on the property. He said that he personally believes that Mr. Collins' operation would fall under agriculture.
6
7 Mr. Passalacqua asked Mr. Collins if he has two separate parcels.
8
9 Mr. Collins stated yes.
10
11 Mr. Passalacqua asked Mr. Collins how many pieces of equipment are on the properties.
12
13 Mr. Collins stated that he has four pieces of equipment that actually run, two pieces are being repaired and
14 approximately 12 attachments. He said that the two being repaired is an old dump truck and a Dodge
15 paneled van.
16
17 Mr. Passalacqua stated that since this is complaint driven he can understand why Mr. Collins is voicing
18 concerns. He asked if no complaints are received is a property fine in being noncompliant.
19
20 Mr. Hall stated no. He said that the department is largely complaint driven under the Nuisance Ordinance
21 but we are not simply complaint driven under the Zoning Ordinance. He said that the reality is that staff will
22 only become aware of something if someone complains. He said that he can not stress enough that staff does
23 not have time to investigate everything that receives a complaint.
24
25 Mr. Passalacqua asked Mr. Collins if he knows the consensus of the neighbors in regards to what he does on
26 his property. He asked Mr. Collins if he believes that someone is ready to complain about his activities.
27
28 Mr. Collins stated no. He said that he has a good relationship with all of his neighbors because some of his
29 equipment assists them with their driveways during the winter months.
30
31 Mr. Passalacqua stated that he appreciates Mr. Collins concerns but the only advice that he can offer is that
32 Mr. Collins continue to be a good neighbor so that no complaints are filed regarding his activities on his
33 property.
34
35 Mr. Thorsland stated that he agrees with Mr. Passalacqua. He said that personally he has tried to purchase as
36 much land as possible around his home so that he can keep neighbors as far away as possible. He said that
37 he agrees with Mr. Hall that the proposed amendment is less restrictive and a lot of it was based upon
38 testimony from people who are in a similar situation as Mr. Collins. He said that the proposed amendment is
39 very detailed and many examples are being provided but the existing Ordinance is a lot more restrictive and
40 if Mr. Collins decided to turn his hobby into a business it would be a lot easier to do with the new
41 amendment than with the existing requirements.

1

2 Mr. Randol asked where the line is drawn between a farmer who has 40 acres and 20 pieces of farm
3 equipment sitting on his property and a non-farm property owner who is a hobbyist. He asked if because the
4 farmer is agricultural the use of his property is excused.

5

6 Mr. Hall stated that there is no limit of operable agricultural equipment on a property but if it is inoperable
7 the Nuisance Ordinance caps how much a property owner may have outdoors. He said that he has never
8 received a complaint about someone having too much inoperable farm equipment but he does know that
9 there are some properties in the County which neighbors could complain about if they wanted to.

10

11 Mr. Collins stated that he agrees that any agricultural equipment that exists on the lot and are used
12 concurrently on a agricultural property should be exempted. He asked Mr. Hall how his staff differentiates
13 between the farmer that has a large property with four or five semi-trucks and trailers that are stored outside
14 but in the off season the farmer uses the vehicles to haul asphalt and gravel.

15

16 Mr. Hall stated that this is an issue which staff has struggles with since 1990 and we have not found a way
17 yet to legalize everything like that in the County.

18

19 Mr. Collins stated that he is not against the farmers for doing so because they are doing whatever they have
20 to do to survive or prosper. He said that he also believes in the clause, "I was here first" as in the case of Mr.
21 Thorsland's story about the race track and airport existing prior to the subdivision. He said that he does live
22 close to a rural subdivision that his grandfather created years ago and he does try to maintain a good
23 relationship with his neighbors but what happens when a new neighbor moves into the subdivision and they
24 do not like his current use of his property. Mr. Collins stated that the first thing that he is going to tell the
25 complaining neighbor is that his family has lived here for over 100 years and they have been doing the same
26 practices for the same period of time therefore live with it.

27

28 Mr. Hall stated that the only thing that the Zoning Ordinance gives priority to in regards to "first come first
29 serve" is in the case of a use that was approved by a Special Use Permit. He said that as long as the property
30 owner operates within the constraints of the special use and how it was approved it doesn't matter whether
31 the adjacent neighbors are unhappy or not and even if the County Board would change the Zoning Ordinance
32 the approved use would still be allowed.

33

34 Mr. Collins asked if some of this is driven upon the creation of too much noise, traffic, etc.

35

36 Mr. Hall stated that traffic is obviously related to the vehicle code for weight limits and none of the standards
37 are based on noise because noise is a hard thing to get a handle on. He said that the Zoning Board itself
38 decided to include the lighting so that they could reduce that level of uses by requiring better lighting for the
39 businesses.

40

41 Mr. Collins stated that he does agree with the lighting requirements.

- 1
2 Mr. Thorsland stated that the addition of the lighting requirements makes the proposed amendment
3 consistent with new special uses. He said that nothing irritates a neighbor more than an adjacent use lighting
4 up their house at night.
5
- 6 Mr. Collins asked how this RHO differs from what the County Board approved for the L.A. Gourmet project
7 when 80 or 90 vehicles would be at the property for events on evenings and weekends.
8
- 9 Mr. Hall stated that the RHO is very subtle in what could happen. He said that he does not recall how many
10 employees L.A. Gourmet was going to have there but it exceeded the limits of what a RHO allows.
11
- 12 Mr. Thorsland asked if we are talking about the kitchen site or the event center.
13
- 14 Mr. Kass stated that we are talking about the event center.
15
- 16 Mr. Thorsland stated that the ZBA did another case for the kitchen site which was an RHO.
17
- 18 Mr. Hall stated that the largest RHO would allow two employees working on the site and three more could
19 report for work off-site.
20
- 21 Mr. Collins asked how that would work when both sites are in Champaign County.
22
- 23 Mr. Hall stated that the sites are at different locations on different properties. He said that by nature since it
24 is an RHO the other site is not going to be next door and must be somewhere other than the AG-1 District.
25 He said that the property in the AG-1 or the AG-2 District could only have two employees and he cannot tell
26 anyone how much smaller something like the event center would have to be but he would guess that it could
27 be no more than half that size if it was going to be run by the resident family members who reside on the
28 property plus no more than two other employees. He said that he cannot give Mr. Collins an idea in scale
29 but something like that would not be feasible but we will all be surprised someday as to how big something
30 like that could be because every now and then staff will receive a home occupation application that surprises
31 staff in realizing that something that large really could be approved and conducted as a home occupation.
32
- 33 Mr. Collins stated that he was just wondering what the difference is between the RHO and what L.A.
34 Gourmet is doing on their property.
35
- 36 Mr. Hall stated that principally it is the number of employees.
37
- 38 Mr. Passalacqua asked if Mr. Collins is a collector/hobbyist and a drive-by inspection appears to be a
39 business what would Mr. Collins have to do for an RHO.
40
- 41 Mr. Hall stated that he would have to provide screening.

- 1
2 Mr. Collins stated that what he does on his property is not covered by the RHO and his only issue is possibly
3 the Nuisance Ordinance.
4
- 5 Mr. Hall stated that he is not familiar with what all Mr. Collins has going on at his property but it sounds like
6 most of it is agriculture. He said that someone not doing a business but has things on their property that
7 appear as a business and if those things exceed the number of vehicles or equipment then those items would
8 have to be in line with the RHO requirements.
9
- 10 Mr. Passalacqua stated that basically it would come down to what could be stored outside and what is stored
11 outside would require screening.
12
- 13 Mr. Hall stated yes.
14
- 15 Mr. Passalacqua asked Mr. Collins if he currently has any screening on his property.
16
- 17 Mr. Collins stated that he parks equipment behind buildings or along the tree line. He said that he would
18 like to see something that is not operated as a business to be exempt from the RHO and just be subject to the
19 Nuisance Ordinance. He said that if does want to operate a business in the rural area there are ways that he
20 is supposed to do it correctly.
21
- 22 Mr. Passalacqua stated that if Mr. Collins has buildings that he is storing equipment behind he is probably in
23 compliance already.
24
- 25 Mr. Collins stated that the RHO requirements indicate only one sign placement. He asked if the requirement
26 included someone's name on a piece of equipment.
27
- 28 Mr. Hall stated no. He said that someone could have their name placed on every piece of equipment which
29 is larger than a sign and the County Board is not concerned.
30
- 31 Mr. Collins stated that he is a member of the Hensley Township Plan Commission, which he is not
32 representing tonight , and he did not receive any information regarding this case but the case was brought up
33 before the Hensley Township Board. He said that tonight is the first night that he has had an opportunity to
34 review the information and as a resident of Champaign County he feels that the proposed RHO requirements
35 are too restrictive in regards to the number of vehicles, screening, size of lots, etc.
36
- 37 Mr. Hall stated that Mr. Collins would have received notice of this case in January of 2013. He asked Mr.
38 Collins if his township would like to have more time to consider this case.
39
- 40 Mr. Collins stated yes.
41

- 1 Mr. Kass stated that Ben McCall is the contact person for the Hensley Township Plan Commission. He said
2 that the Hensley Township Supervisor was also notified of the case.
3
- 4 Mr. Collins stated that there have been some new members added to the Plan Commission.
5
- 6 Mr. Thorsland stated that by signing the witness register he will now receive any future mailings regarding
7 this case.
8
- 9 Mr. Thorsland asked the Board if there were any questions for Mr. Collins and there were none.
10
- 11 Mr. Thorsland asked if staff had any questions for Mr. Collins and there were none.
12
- 13 Mr. Thorsland stated that the Board should review all of the new information that has been presented
14 tonight.
15
- 16 Mr. Thorsland asked Mr. Hall for a continuance date.
17
- 18 Mr. Hall requested that Case 732-AT-12 be continued to the September 26, 2013, meeting.
19
- 20 Mr. Thorsland entertained a motion to continue Case 732-AT-12 to the September 26, 2013, meeting.
21
- 22 **Ms. Capel moved, seconded by Mr. Palmgren to continue Case 732-AT-12 to the September 26, 2013,**
23 **meeting. The motion carried by voice vote.**
24
- 25 Mr. Thorsland stated that the Board will now hear Case 756-AT-13.
26
- 27 **Case 756-AT-13 Petitioner: Champaign County Zoning Administrator Request to amend the**
28 **Champaign County Zoning Ordinance as follows: Amend paragraph 7.1.2K to add a requirement**
29 **that any new RURAL HOME OCCUPATION with any outdoor storage area or outdoor operations**
30 **area that is lighted or any wholly new outdoor storage area or wholly new outdoor operations area**
31 **that is lighted that is added to any existing RURAL HOME OCCUPATION, shall have exterior**
32 **lighting that is full-cutoff type lighting fixtures with limited light output and other relevant**
33 **restrictions.**
34
- 35 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
36 sign the witness register for that public hearing. He reminded the audience that when they sign the
37 witness register they are signing an oath.
38
- 39 Mr. Thorsland asked the petitioner if he desired to make a statement outlining the nature of his request.
40
- 41 Mr. John Hall, Zoning Administrator, distributed a new Supplemental Memorandum dated August 15,

1 2013, for the Board's review. He said that the memorandum indicates a change to the proposed amendment
2 because the Board had originally expressed an interest that exterior lighting for outdoor storage and/or
3 operations was necessary and staff extended it into the parking area. He said that as he has been working on
4 bringing Case 732-AT-12 up to what the Board reviewed earlier he wondered if the Board believes that
5 exterior lighting on a new building that is part of a RHO should also be full-cutoff, if it is just a security
6 light.
7
8 Mr. Passalacqua asked if this means after hours no lighting issues.
9
10 Mr. Hall stated yes.
11
12 Mr. Hall stated that this modest expansion was not included in the legal therefore if the Board feels that it is
13 necessary then the case should be re-advertised.
14
15 Mr. Passalacqua stated that the Board has had a lot of support for full cut-off in the rural areas because of the
16 dark skies.
17
18 Mr. Hall stated yes.
19
20 Mr. Thorsland asked the Board if they wanted to include the modest expansion and if so does the Board want
21 to re-advertise the case.
22
23 Mr. Passalacqua stated he believes that the modest expansion should be added but he does not know if it the
24 case needs to be re-advertised.
25
26 Mr. Hall stated that right now if this amendment went to the County Board like this and someone walked in
27 to the County Board meeting and said that what they are approving is not what was advertised then there will
28 be a problem.
29
30 The consensus of the Board was to include the modest expansion and re-advertise Case 756-AT-13.
31
32 Mr. Hall stated that another thing that staff did with this change was manage to eliminate some lines of text
33 just by simplifying it. He said that between now and when the case comes back he would appreciate it if the
34 Board would see if they liked the way that staff has tried to cut out lines of text.
35
36 Mr. Thorsland entertained a motion to continue Case 756-AT-13 to the September 26, 2013, meeting.
37
38 **Mr. Passalacqua moved, seconded by Mr. Palmgren to continue Case 756-AT-13 to the September 26,**
39 **2013, meeting. The motion carried by voice vote.**
40
41 Mr. Thorsland stated that the Board will now hear new public hearing Case 761-AT-13.

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6. New Public Hearings

Case 761-AT-13 Petitioner: Champaign County Zoning Administrator Request to amend the Champaign County Zoning Ordinance by amending the Champaign County Land Evaluation and Site Assessment (LESA) System that is referred to in Section 3; and Footnote 13 in Section 5.3; and subsection 5.4, as follows: Part A. Revise Table A in Appendix A of the Champaign County LESA System to correct certain non-best prime farmland soil data and reclassify those soils to appropriate Agriculture Value Groups as necessary. Part B. Revise Table A in Appendix A of the Champaign County LESA System to revise the Farmland Classification category to be consistent with the USDA Natural Resource Conservation Service “Farmland Classification” categories.

Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register they are signing an oath.

Mr. Thorsland asked the petitioner if he desired to make a statement outlining the nature of his request.

Mr. John Hall, Zoning Administrator, stated that this is not a ground breaking text amendment. He said that the new LESA was adopted within the last year and during the preparation of the new LESA staff had consulted with the, State Soil Scientist with the USDA Natural Resource Conservation Service. Mr. Hall said that after the LESA was adopted a copy was sent to the USDA/NRCS for their files. He said that the new Soil Scientist with the USDA/NRCS reviewed it and read their own soil data that the County had used and determined that they had bad soil data available to the public. He said that the bad soil data did not affect any of the best prime farmland soils but it effected soils with an LE as high as 85 although it did not change any of their productivity indices or the relative LE and only changed the LE for one soil and that was Muskego Silty Clay Loam which is the one true muck soil that we have in the County and there is less than 50 acres in the whole County. He said that this is the soil that they built the wetland on up at the Middle Fork Park because it is the best soil for the wetlands because it is a muck. He said that since it changed the LE on that one soil it could conceivably change a best prime farmland determination on a property that has that soil. He said that when the Board reviews the Summary Finding of Fact the Board will see that there are a lot of LRMP objectives that staff is recommending that this amendment will help achieve and that is because it could affect a best prime farmland determination and so many of the LRMP objectives are related to best prime farmland.

Mr. Thorsland asked Mr. Hall that by stating effecting he means the LESA score.

Mr. Hall stated that it would probably lower the LESA score. He said that staff is being a little obsessive with this but it is precisely because staff does not want to give anyone the chance to come in and say that we are not being careful enough with this amendment. He said that we know that the LESA is defective and this amendment will correct it and he doesn't believe that it is likely that it will ever affect a case that will come

1 before this Board but there is that chance.

2
3 Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.

4
5 Mr. Thorsland stated that the Board should turn to the Summary Finding of Fact on page 18 of the Draft
6 Finding of Fact and Final Determination dated August 15, 2013. He said that there are no decision points for
7 the Board unless they disagree with staff's recommendations and if the Board is happy with the Summary of
8 Evidence the Board can move forward without making any revisions. He said that he will not read the entire
9 Summary of Evidence because it will be included in the record.

10
11 **Summary Finding of Fact for Case 761-AT-13:**

12
13 From the documents of record and the testimony and exhibits received at the public hearing conducted
14 on, **August 15, 2013**, the Zoning Board of Appeals of Champaign County finds that:

15
16 1. The proposed text amendment will **HELP ACHIEVE** the Land Resource Management Plan
17 because of the following (objectives and policies are very briefly summarized):

18 A. The proposed text amendment will **HELP ACHIEVE** the following LRMP goals:

19
20 **Goal 4 Agriculture** because while it will either not impede or is not relevant to the other
21 Objectives and Policies under this goal, it will **HELP ACHIEVE** the following:

- 22 • Objective 4.1 requiring minimization of the fragmentation of farmland, conservation
23 of farmland, and stringent development standards on best prime farmland because it
24 will **HELP ACHIEVE** the following:
 - 25 • Policy 4.1.1 requiring that other land uses only be accommodated under very
26 restricted conditions or in areas of less productive soils (see Item 9.A.(1)).
 - 27 • Policy 4.1.5 requiring the County to allow landowner by right development that is
28 proportionate to tract size on lots that are greater than 5 acres in area (see Item
29 9.A.(2)).
 - 30 • Policy 4.1.6 requiring that the use, design, site and location are consistent with
31 policies regarding suitability, adequacy of infrastructure and public services,
32 conflict with agriculture, conversion of farmland, and disturbance of natural areas
33 (see Item 9.A.(3)).
 - 34 • Policy 4.1.7 requiring a maximum lot size on new lots established by right on best
35 prime farmland (see Item 9.A.(4)).
 - 36 • Policy 4.1.8 requiring the County to consider LESA ratings when making land use
37 decisions regarding a discretionary development (see Item 9.A.(5)).
- 38 • Objective 4.3 requiring any discretionary development to be on a suitable site
39 because it will **HELP ACHIEVE** the following:
40

- 1 • Policy 4.3.2 requiring a proposed business in a rural area to support agriculture or
2 provide a service that is better provided in the rural area (see Item 9.B.(1)).
3 • Policy 4.3.5 requiring any business on best prime farmland to be appropriate in a
4 rural area and on a site that is well suited (see Item 9.B.(2)).
5
6 • It will **HELP ACHIEVE** Objective 4.5 requiring the County to review the Site
7 Assessment portion of the LESA for possible updates (see Item 9.C.).
8
9 **Goal 5 Urban Land Use** because while it will either not impede or is not relevant to the other
10 Objectives and Policies under this goal, it will **HELP ACHIEVE** the following:
11 • Objective 5.1 ensure that the population growth and economic development is
12 accommodated by new urban development in or adjacent to existing population
13 centers because it will **HELP ACHIEVE** the following:
14 • Policy 5.1.4 requiring that discretionary development outside of the CUGA, but
15 within an ETJ to be consistent with the municipal comprehensive plan, if the site is
16 best prime farmland it must be well-suited, and the development is consistent with
17 the LRMP (see Item 10.A.(1)).
18 • Policy 5.1.9 requiring discretionary development that is located within an ETJ and
19 subject to an annexation agreement to undergo a coordinated municipal and
20 County review process (see Item 10.A.(2)).
21
22 • Objective 5.2 encourage any urban development to demonstrate good stewardship of
23 natural resources because it will **HELP ACHIEVE** the following:
24 • Policy 5.2.2 ensure that urban development on best prime farmland is efficiently
25 designed to avoid unnecessary conversion and encourage other jurisdictions to do
26 the same (Item 10.B.(1)).
27
28 **Goal 8 Natural Resources** because while it will either not impede or is not relevant to the
29 other Objectives and Policies under this goal, it will **HELP ACHIEVE** the following:
30 • Objective 8.1 requiring the County to ensure adequate and safe supplies of
31 groundwater because it will **HELP ACHIEVE** the following:
32 • Policy 8.1.1 requiring the County to ensure that a proposed discretionary
33 development will have an adequate supply of water for the proposed use (see Item
34 13.A.(1)).
35 • Policy 8.1.5 requiring the County to ensure that groundwater contributions to
36 natural surface hydrology are not disrupted by discretionary development (see
37 Item 13.A.(2)).
38
39 • Objective 8.2 requiring the County to conserve its soil resources to provide the
40 greatest benefit to current and future generations because it will **HELP ACHIEVE** the
41 following:

- 1 • Policy 8.2.1 requiring the County to minimize the destruction of its soil resources by
2 non-agricultural development and will give special consideration to best prime
3 farmland (see Item 13.B.(1)).
4
- 5 • Objective 8.4 requiring the County to ensure that new development and ongoing
6 land management practices maintain and improve surface water quality because it
7 will HELP ACHIEVE the following:
8 • Policy 8.4.1 requiring the County to incorporate the recommendations of adopted
9 watershed plans in discretionary review of new development (see Item 13.C.(1)).
10
- 11 • Objective 8.5 requiring the County to encourage the maintenance and enhancement
12 of aquatic and riparian habitats because it will HELP ACHIEVE the following:
13 • Policy 8.5.1 requiring discretionary development to preserve existing habitat,
14 enhance degraded habitat and restore habitat (see Item 13.D.(1)).
15 • Policy 8.5.2 requiring discretionary development to cause no more than minimal
16 disturbance to the stream corridor environment (see Item 13.D.(2)).
17
- 18 • Objective 8.6 that avoids loss or degradation of habitat because it will HELP
19 ACHIEVE the following:
20 • Policy 8.6.2 requiring new development to minimize the disturbance of habitat or to
21 mitigate unavoidable disturbance of habitat (see Item 13.E.(1)).
22 • Policy 8.6.3 requiring the County to use credible sources of information to identify
23 priority areas for protection, restoration, preservation or enhancement (see Item
24 13.E.(2)).
25 • Policy 8.6.4 requiring implementation of IDNR recommendations for discretionary
26 development sites that contain endangered or threatened species (see Item 13.E.(3)).
27
- 28 • Objective 8.7 that requires the County to protect existing rural parkland and
29 natural area preserves because it will HELP ACHIEVE the following:
30 • Policy 8.7.1 requiring discretionary development to minimize the disturbance of
31 natural quality, habitat value and aesthetic character of existing public and private
32 parks (see Item 13.F.(1)).
33 • Policy 8.7.3 requiring discretionary development to a reasonable contribution to
34 support development of parks and preserves (see Item 13.F.(2)).
35
- 36 • Objective 8.8 that requires the County to encourage minimizing impacts on the
37 atmosphere because it will HELP ACHIEVE the following:
38 • Policy 8.8.1 requiring the County to require compliance with IEPA and IPCB
39 standards for air quality in discretionary development (see Item 13.G.(1)).
40 • Policy 8.8.2 requiring the County to identify existing source of air pollution and
41 avoid locating sensitive land uses near those (see Item 13.G.(2)).

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- It will **HELP ACHIEVE** Objective 8.9 requiring the County to adopt a natural resources specific assessment system (see Item 13.H.).

B. The proposed text amendment will **NOT IMPEDE** the following LRMP goal(s):

- **Goal 1 Planning and Public Involvement**
- **Goal 2 Governmental Coordination**
- **Goal 6 Public Health and Public Safety**
- **Goal 7 Transportation**
- **Goal 9 Energy Conservation**

C. The proposed text amendment is **NOT RELEVANT** the following LRMP goal(s):

- **Goal 3 Prosperity**
- **Goal 10 Cultural Amenities**

2. The proposed Zoning Ordinance map amendment will **HELP ACHIEVE the purpose of the Zoning Ordinance** because it is either not directly related to the purposes of the Zoning Ordinance or is directly related to the following purpose:
 - Protecting productive agricultural lands from haphazard and unplanned intrusions of urban uses (Purposed 2.0n.).
3. The proposed text improvement **WILL IMPROVE the Zoning Ordinance** as follows:
 - Correct information in the LESA System to be consistent with the NRCS.
 - Provide updated soils data to ensure that LESA scores are being calculated correctly.

Mr. Passalacqua stated that he has no revisions to the Summary Finding of Fact.

Mr. Thorsland asked the Board if there were any necessary revisions to the Summary Finding of Fact and there were none.

Mr. Thorsland entertained a motion to adopt the Finding of Fact, Documents of Record and Summary Finding of Fact as amended.

Mr. Passalacqua moved, seconded by Ms. Capel to adopt the Finding of Fact, Documents of Record and Summary Finding of Fact as amended. The motion carried by voice vote.

Mr. Thorsland entertained a motion to move to the Final Determination.

Mr. Palmgren moved, seconded by Ms. Capel to move to the Final Determination. The motion carried by voice vote.

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Mr. Thorsland informed the petitioner that one Board member is absent and one Board seat is vacant therefore it is at his discretion to either continue Case 761-AT-13 until a full Board is present or request that the present Board move forward to the Final Determination. He informed the petitioner that four affirmative votes are required for approval.

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

Final Determination for Case 761-AT-13:

Mr. Passalacqua moved, seconded by Ms. Capel that pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that the Zoning Ordinance Amendment requested in Case 761-AT-13 should BE ENACTED by the County Board in the form attached hereto.

Mr. Thorsland requested a roll call vote.

The roll was called as follows:

Capel-yes	Miller-absent	Palmgren-yes
Passalacqua-yes	Randol-yes	Thorsland-yes

7. Staff Report

None

8. Other Business

A. Review of Docket

Mr. Passalacqua asked staff if anyone has applied for the vacant Board seat.

Mr. Hall stated he has not received any notification of anyone applying for the vacant Board seat.

Mr. Hall asked Mr. Kass if there have been any new cases filed.

Mr. Kass stated that no new cases have been submitted since June.

Mr. Hall stated that the Board might note that in regards to Case 687-AM-11, Phillip and Sarabeth Jones, the ZBA made a recommendation of denial, and ELUC recommended denial at their meeting in May, and then a decision came from a pending court case that might have some bearing on that case therefore Case 687-AM-11 was held at the County Board for two months. He said that in July the County Board sent the case back to

1 ELUC and on August 8th ELUC upheld the ZBA’s recommendation for denial with no discussion. He said
2 that a lot of new information was distributed to ELUC by the petitioner which included a completely
3 alternative Finding of Fact with different recommendations on almost every goal. He said that the State’s
4 Attorney has now determined that if the County Board wants to override the ZBA recommendation they can
5 in fact do so, if they do it in the right way which is using the evidence from the public hearing to determine a
6 different finding and to be fair that is what the petitioner attempted to do at the August 8th meeting. He said
7 that ELUC was very comfortable with the ZBA’s recommendation and upheld that decision. He said that he
8 believes that the County Board will also uphold the ZBA’s recommendation and that we will be in court for
9 another case very soon.

10
11 Mr. Thorsland reminded the Board that the September 12th meeting has been cancelled.

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

14
15 None

16
17 **10. Adjournment**

18
19 Mr. Thorsland entertained a motion to adjourn the meeting.

20
21 **Mr. Passalacqua moved, seconded by Mr. Palmgren to adjourn the meeting. The motion carried by**
22 **voice vote.**

23
24 The meeting adjourned at 9:11 p.m.

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28 Respectfully submitted

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33 Secretary of Zoning Board of Appeals
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5 **MINUTES OF REGULAR MEETING**
6
7 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**
8 **1776 E. Washington Street**
9 **Urbana, IL 61802**

10
11 **DATE:** November 14, 2013 **PLACE:** Lyle Shields Meeting Room
12 **TIME:** 6:30 p.m. **1776 East Washington Street**
13 **Urbana, IL 61802**

14
15 **MEMBERS PRESENT:** Catherine Capel, Paul Palmgren, Jim Randol, Eric Thorsland, Brad
16 Passalacqua

17
18 **MEMBERS ABSENT :** Roger Miller

19
20 **STAFF PRESENT :** Connie Berry, John Hall, Andrew Kass

21
22 **OTHERS PRESENT :** Shawn Bickers, Lars Johnson, David Anderson, Randy Hopkins

23
24
25 **1. Call to Order**

26
27 The meeting was called to order at 6:30 p.m.

DRAFT

28
29 **2. Roll Call and Declaration of Quorum**

30
31 The roll was called and a quorum declared present with one member absent and one vacant Board seat.

32
33 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
34 sign the witness register for that public hearing. He reminded the audience that when they sign the
35 witness register they are signing an oath.

36
37 **3. Correspondence**

38
39 None

40
41 **4. Approval of Minutes (June 27, 2013; September 12, 2013; September 26, 2013; and October**
42 **17, 2013)**

43
44 Mr. Thorsland entertained a motion to approve the June 27, 2013, September 12, 2013, September 26, 2013
45 and October 17, 2013, minutes.

46
47 **Mr. Passalacqua moved, seconded by Ms. Capel to approve the June 27, 2013, September 12, 2013,**
48 **September 26, 2013, and October 17, 2013, minutes.**

49
50 Mr. Thorsland asked the Board if there were any corrections or additions to the minutes.

51
52 Ms. Capel stated that Line 40 on page 28 of the June 27, 2013, minutes should be revised as follows: He
53 said that there would be some truck traffic on the road but generally there are more cars traveling that road

1 than trucks. She said that Line 39 on page 23 of the September 12, 2013, minutes should be revised as
2 follows: Mr. Randol moved, seconded by Mr. Palmgren to approve special condition L. as amended.

3

4 The motion carried by voice vote.

5

6 **5. Continued Public Hearing**

7

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

27

28 Mr. Hall, Zoning Administrator, stated that staff has been working on the draft Erosion Control Ordinance
29 and has not had time to prepare new information for this case tonight. He requested that Case 685-AT-11 be
30 continued to the December 12, 2013, meeting.

31

32 Mr. Thorsland entertained a motion to continue Case 685-AT-11 to the December 12, 2013, meeting.

33

34 Mr. Palmgren moved, seconded by Mr. Randol to continue Case 685-AT-11 to the December 12, 2013,
35 meeting. The motion carried by voice vote.

36

37 **6. New Public Hearings**

38

39 **Case 763-AM-13 Petitioner: David A. Andersen Request to amend the Zoning Map to change the**
40 **zoning district designation from the B-1 Rural Trade Center Zoning District to the AG-2 Agriculture**
41 **Zoning District. Location: An approximate 1 acre lot located in the Southeast Quarter of the**

1 **Southwest Quarter of the Southeast Quarter of Section 26 of St. Joseph Township and commonly**
2 **known as the house and building at 2270 CR 1300N, St. Joseph.**
3

4 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
5 sign the witness register for that public hearing. He reminded the audience that when they sign the
6 witness register they are signing an oath.
7

8 Mr. Thorsland asked the petitioner if he desired to make a statement outlining the nature of his request.
9

10 Mr. David Anderson stated that he is requesting to rezone the property so that he can sell the property. He
11 said that the house is in disrepair and no one desires to purchase the property because, due to the current
12 zoning, they could not build a new house on the property.
13

14 Mr. Thorsland asked the Board if there were any questions for Mr. Anderson and there were none.
15

16 Mr. Thorsland called John Hall.
17

18 Mr. John Hall, Zoning Administrator, stated that he does not know why there is an island of AG-2 around
19 this location. He said that normally if you would rezone from B-1 it would go to AG-1 but this property has
20 AG-2 around it and from a zoning perspective the most important thing is the amount of land. He said that
21 this is approximately one acre therefore the zoning district does not make much difference and AG-2 is the
22 same as the zoning that exists on either side. He said that in the Finding of Fact staff recommended that the
23 proposed rezoning either HELPED ACHIEVE or DOES NOT IMPEDE and there were no questions on any
24 of the goals and policies. He said that this case is very straight forward.
25

26 Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.
27

28 Mr. Thorsland stated that, in relation to the achievement of Goal 5, based on previous cases when a
29 residence is placed by other residences it is sometimes determined that a proposed amendment will not only
30 NOT IMPEDE but HELP ACHIEVE Goal 5. He read Goal 5 as follows: Champaign County will encourage
31 urban development that is compact and contiguous to existing cities, villages, and existing unincorporated
32 settlements. He said that staff recommends that the proposed amendment will NOT IMPEDE the
33 achievement of Goal 5 although he believes that it could possibly fall under HELP ACHIEVE because there
34 is a little unincorporated settlement near the property and the proposed amendment will make is consistent
35 with keeping it contiguous that settlement.
36

37 Ms. Capel stated that she agrees with Mr. Thorsland and it also encourages redevelopment.
38

39 Mr. Hall asked the Board if they would be comfortable in indicating that the proposed amendment HELPS
40 ACHIEVE Goal 5 and not breaking it down to why. He said that staff did break it down and there was a lot
41 of evidence for Goal 5 but his concern was that in the future if someone looked at the Finding of Fact they

1 might get the impression that Goal 5 should be completely analyzed for a completely rural location.
 2
 3 Ms. Capel stated that she understands Mr. Hall’s concern and that changing the recommendation for Goal 5
 4 to HELP ACHIEVE could set precedence for rural review.
 5
 6 Mr. Hall stated that if the Board believes that it does help Goal 5 they could indicate that the proposed
 7 amendment will HELP ACHIEVE the achievement of Goal 5 and then add a statement that in general this is
 8 more relevant to Goal 4 because this is in an area of other homes near Tipton. He said that Goal 5 does
 9 discuss unincorporated settlements and Tipton is one of Champaign County’s unincorporated settlements.
 10
 11 Mr. David Andersen stated that Tipton is no longer a town and it is his understanding the existing structure
 12 on his property was originally a general store for Tipton. He said that he would not have purchased the
 13 property if he had known that he could not tear down the house and rebuild a home. He said that there used
 14 to be a small town near the railroad tracks but the town has ceased to exist.
 15
 16 Mr. Passalacqua stated that for the purposes of the rezoning he believes that the Board is getting too deep in
 17 the history of the area. He said that he believes that the Board should go with staff’s recommendation of
 18 NOT IMPEDE.

19
 20 Mr. Thorsland and Ms. Capel agreed.

21
 22 Mr. Thorsland stated that the Board will now review the Summary Finding of Fact.

23
 24 **Summary Finding of Fact for Case 763-AM-13:**

25
 26 From the documents of record and the testimony and exhibits received at the public hearing conducted on
 27 November 14, 2013, the Zoning Board of Appeals of Champaign County finds that:

- 28
 29 1. Regarding the effect of the proposed amendment on the Land Resource Management Plan
 30 (LRMP):
 31 A. **Regarding Goal 4:**
 32 • **Objective 4.3 requiring any discretionary development to be on a suitable site**
 33 **because it will HELP ACHIEVE the following:**
 34 • **Policy 4.3.4 requiring existing public infrastructure be adequate to support**
 35 **the proposed development effectively and safely without undue public**
 36 **expense (see Item 13.C.(3)).**
 37 • **Policy 4.3.3 requiring existing public services be adequate to support the**
 38 **proposed development effectively and safely without undue public expense**
 39 **(see Item 13.C.(2)).**
 40 • **Policy 4.3.2 requiring a discretionary development on best prime farmland to**
 41 **be well-suited overall (see Item 13.C.(1)).**
 42

- 1 ● Objective 4.2 requiring discretionary development to not interfere with
2 agriculture because it will *HELP ACHIEVE* the following:
3 • Policy 4.2.2 requiring discretionary development in a rural area to not
4 interfere with agriculture or negatively affect rural infrastructure (see Item
5 13.B.(1)).
6
- 7 ● Objective 4.1 requiring minimization of the fragmentation of farmland,
8 conservation of farmland, and stringent development standards on best prime
9 farmland because it will *HELP ACHIEVE* the following:
10 • Policy 4.1.6 requiring that the use, design, site and location are consistent
11 with policies regarding suitability, adequacy of infrastructure and public
12 services, conflict with agriculture, conversion of farmland, and disturbance
13 of natural areas (see Item 13.A.(2)).
14 • Policy 4.1.1 requiring that other land uses only be accommodated under very
15 restricted conditions or in areas of less productive soils (see Item 13.A.(1)).
16
- 17 ● Based on achievement of the above Objectives and Policies and because it will either
18 not impede or is not relevant to the other Objectives and Policies under this goal, the
19 proposed map amendment will *HELP ACHIEVE* Goal 4 Agriculture.
20
- 21 B. Regarding Goal 6:
22 ● Objective 6.1 ensuring that development does not endanger public health or safety
23 because it will *HELP ACHIEVE* the following:
24 • Policy 6.1.1 establishing minimum lot dimensions for rural residential
25 development to provide adequate area for wastewater systems (see Item
26 15.A.(1)).
27
- 28 ● Based on achievement of the above Objectives and Policies and because it will either
29 not impede or is not relevant to the other Objectives and Policies under this goal, the
30 proposed map amendment will *HELP ACHIEVE* Goal 6 Public Health and Public
31 Safety.
32
- 33 C. The proposed amendment will *NOT IMPEDE* the following LRMP goal(s):
34 ● Goal 1 Planning and Public Involvement
35 ● Goal 2 Governmental Coordination
36 ● Goal 3 Prosperity
37 ● Goal 5 Urban Land Use
38 ● Goal 7 Transportation
39 ● Goal 8 Natural Resources
40 ● Goal 9 Energy Conservation
41 ● Goal 10 Cultural Amenities
42

- 1 D. Overall, the proposed map amendment will *HELP ACHIEVE* the Land Resource
- 2 Management Plan.
- 3
- 4 2. The proposed Zoning Ordinance map amendment *IS* consistent with the *LaSalle* and *Sinclair* factors
- 5 because of the following:
- 6 ● The amendment will allow the subject property to be redeveloped.
- 7
- 8 ● The subject property is suitable for the existing and proposed use.
- 9
- 10 ● The proposed amendment will help improve the condition of the property and the
- 11 surrounding area.
- 12
- 13 3. The proposed Zoning Ordinance map amendment will *HELP ACHIEVE* the purpose of the
- 14 **Zoning Ordinance** because:
- 15 ● Establishing the AG-2 District at this location will, help classify, regulate, and
- 16 restrict the location of the uses authorized in the AG-2 District (Purpose 2.0 (i) see
- 17 Item 21.I.).
- 18
- 19 ● Establishing the AG-2 District at this location will, help divide the entire County
- 20 into districts of such number, shape, area, and such different classes according to
- 21 the use of land, buildings, and structures, intensity of the use of lot area, area of
- 22 open spaces, and other classification (Purpose 2.0 (j) see Item 21.J.).
- 23
- 24 ● Establishing the AG-2 District at this location will, help fix regulations and
- 25 standards to which buildings, structures, or uses therein shall conform (Purpose
- 26 2.0 (i) see Item 21.K.).
- 27
- 28 ● Establishing the AG-2 District at this location will, help prohibit uses, buildings,
- 29 or structures incompatible with the character of such districts (Purpose 2.0 (i) see
- 30 Item 21.L.).
- 31
- 32 ● Establishing the AG-2 District at this location will, help protect the most
- 33 productive farmland from unplanned intrusions of urban uses (Purpose 2.0 (i) see
- 34 Item 21.N.).
- 35
- 36 4. Regarding the error in the present Ordinance that is to be corrected by the proposed change:
- 37 ● The subject property has been zoned as it is since 1973 and the long term use of
- 38 the property has been residential instead of commercial.
- 39
- 40 Mr. Thorsland stated that there are no new Documents of Record.
- 41

1 Mr. Thorsland entertained a motion to adopt the Summary of Evidence, Documents of Record and
2 Summary Finding of Fact.

3
4 **Ms. Capel moved, seconded by Mr. Palmgren to adopt the Summary of Evidence, Documents of
5 Record and Summary Finding of Fact. The motion carried by voice vote.**

6
7 Mr. Thorsland entertained a motion to move to the Final Determination for Case 763-AM-13.

8
9 **Mr. Passalacqua moved, seconded by Mr. Palmgren to move to the Final Determination for Case
10 763-AM-13. The motion carried by voice vote.**

11
12 Mr. Thorsland informed the petitioner that one Board member is absent and one Board seat is vacant
13 therefore it is at his discretion to either continue Case 763-AM-13 until a full Board is present or request that
14 the present Board move forward to the Final Determination. He informed the petitioner that four affirmative
15 votes are required for approval.

16
17 Mr. Andersen requested that the present Board move to the final determination for Case 763-AM-13.

18
19 **Final Determination for Case 763-AM-13:**

20
21 **Ms. Capel moved, seconded by Mr. Passalacqua that pursuant to the authority granted by Section 9.2
22 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County
23 determines that the Zoning Ordinance Amendment requested in Case 763-AM-13 should BE
24 ENACTED by the County Board in the form attached hereto.**

25
26 Mr. Thorsland requested a roll call vote.

27
28 The roll was called:

	Palmgren-yes	Passalacqua-yes	Randol-yes
	Miller-absent	Capel-yes	Thorsland-yes

29
30
31
32
33 Mr. Hall informed Mr. Andersen that he has received a recommendation for approval therefore Case 763-
34 AM-13 will be forwarded to the Environment and Land Use Committee meeting on December 5, 2013. He
35 informed Mr. Andersen that the ELUC meeting begins at 6:00 p.m. and is held in the Lyle Shields Meeting
36 Room.

37
38 **Case 764-V-13 Petitioner: Lars Johnson with agent Shawn Bickers Request to authorize the following
39 in the R-4 Multiple Family Residence Zoning District to authorize the construction of an addition to
40 an existing townhouse: Part A. Variance for a side yard of 1 foot in lieu of the minimum required 5
41 feet; Part B. Variance for lot coverage of 44% in lieu of the maximum allowed 40%; and Part C.**

1 Variance for a front setback for an existing townhome of 40 feet from the centerline of Briar Hill
2 Drive in lieu of the minimum required 55 feet' and Part D. Variance for a front yard for an existing
3 townhome of 20 feet in lieu of the minimum required 25 feet; and Part E. Variance from Section
4 4.2.2D. requirement that no construction shall take place in a recorded utility easement. Location:
5 Lot 1 of Wisegarver's Subdivision in the Southeast Quarter of Section 21 of Champaign Township
6 and commonly known as the townhome at 2120 Briar Hill Drive, Champaign.
7

8 Mr. Thorsland informed the audience that Case 764-V-13 is an Administrative Case and as such the County
9 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a
10 show of hands for those who would like to cross examine and each person will be called upon. He requested
11 that anyone called to cross examine go to the cross examination microphone to ask any questions. He said
12 that those who desire to cross examine are not required to sign the witness register but are requested to
13 clearly state their name before asking any questions. He noted that no new testimony is to be given during
14 the cross examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are
15 exempt from cross examination.
16

17 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
18 sign the witness register for that public hearing. He reminded the audience that when they sign the
19 witness register they are signing an oath.
20

21 Mr. Passalacqua stated that he has a few construction projects out for bid in which Mr. Shawn Bickers,
22 co-petitioner, will be a sub-contractor for those projects, therefore due to this conflict he must remove
23 himself from this case.
24

25 Mr. Thorsland stated that the record should show that Mr. Passalacqua has recused himself from Case
26 764-V-13.
27

28 Mr. Thorsland asked the petitioners if they desired to make a statement outlining the nature of their request.
29

30 Mr. Lars Johnson, who resides at 1956 W. Berwyn, Chicago, stated that Parts B, C and D of the requested
31 variance were existing conditions when the structure was built in 1976. He said that it appears that there was
32 some sort of staff error in allowing the structure to be built at its current location.
33

34 Mr. Andrew Kass, Associate Planner, stated that when he reviewed the Zoning Use Permit that authorized
35 the construction of the townhomes he noticed that construction was started prior to obtaining an approved
36 permit. He said that the Zoning Administrator at the time sent a letter to the contractor notifying them of the
37 need for a permit. Mr. Kass stated that when the permit was approved a 29 foot front yard was being
38 indicated but that is not the case. He said that as Mr. Johnson indicated Parts B, C, and D are existing
39 conditions that were present when he agreed to purchase the property. He said that this case is just like any
40 other variance case that is before the Board in that any necessary variance possible is included in case there
41 is a fire or tornado the townhomes can be rebuilt within the same footprint.

1

2 Mr. Johnson stated that in regards to Part A, the addition will be built upon the footprint of an existing hot
3 tub enclosure and will not be expanding beyond that footprint. He said that in regards to Part E. the recorded
4 utility easement is within an area which is 45 to 50 feet between the adjacent townhomes therefore there is
5 ample room to bring in equipment for maintenance within the easement.

6

7 Mr. Thorsland asked the Board if there were any questions for Mr. Johnson.

8

9 Mr. Randol asked Mr. Johnson if there were any utilities, such as water or sewer, within the recorded
10 easement at this time.

11

12 Mr. Johnson stated no. He said that Ameren visited the site and indicated that they did not have any
13 facilities within the easement and the Urbana-Champaign Sanitary District visited the site today and
14 indicated that the sewer is south of the proposed addition.

15

16 Mr. Hall stated that staff knew that Urbana Champaign Sanitary District was supposed to visit the site today
17 but staff has not received any word yet from their representative.

18

19 Mr. Johnson stated that he met with the representatives from the Urbana Champaign Sanitary District at the
20 site and they were unable to locate the manhole cover but from the sewer access in the street they could see
21 that it would barely miss the addition. He said that the representatives told him that they would return
22 tomorrow with a camera so that they could accurately locate the sewer lines.

23

24 Mr. Hall asked Mr. Johnson if the representatives indicated if the sewer line was actually located in the
25 recorded easement.

26

27 Mr. Johnson stated no.

28

29 Mr. Kass stated that the sewer line could be located in an easement for the subdivision which is located to
30 the south of the subject property.

31

32 Mr. Hall asked Mr. Kass if there is a recorded easement for the adjacent subdivision to the south.

33

34 Mr. Kass stated that he does not have any information tonight regarding the subdivision to the south of the
35 subject property.

36

37 Mr. Hall stated that if the Board does not make a final determination on this case tonight staff should
38 investigate this issue.

39

40 Mr. Randol stated that he would like to know the depth of the sewer line and whether or not maintenance,
41 such as digging, would hinder the addition to Mr. Johnson's townhome.

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Mr. Johnson stated that the Urbana Champaign Sanitary District representatives indicated that they will go back to the property tomorrow and use a camera so that they can be 100% sure where the sewer line is located. He said that he is not sure if there is an easement located on the other lot between the buildings.

Mr. Hall asked Mr. Johnson when the Urbana Champaign Sanitary District representatives will be at the subject property with the camera.

Mr. Johnson stated that the representative will be at the subject property tomorrow with the camera.

Mr. Thorsland asked the Board and staff if there were any additional questions for Mr. Johnson and there were none.

Mr. Thorsland called Andrew Kass to testify.

Mr. Andrew Kass, Associate Planner, distributed a new Supplemental Memorandum dated November 14, 2013, to the Board for review. He said that the memorandum includes an e-mail dated November 12, 2013 from Mark Radi, Director of Engineering Services, Urbana-Champaign Sanitary District. He said that after tonight’s testimony from Mr. Johnson it appears that the e-mail includes some outdated information. Mr. Kass read Mr. Radi’s e-mail as follows: “Andy, any building upon an easement would require specific approval from the district’s Board. Based upon the extremely limited information we have today, staff would recommend not allowing the encroachment. The owner would need to explain why this is unavoidable.” Mr. Kass stated that he assumes a new e-mail will be sent from Mr. Radi after the Urbana Champaign Sanitary District representatives investigate the location of the sewer line with the camera mechanism is utilized at the easement location.

Mr. Thorsland stated that the Urbana Champaign Sanitary District Board would still have to give approval of the proposed construction within the easement.

Mr. Kass stated that Mr. Thorsland is correct. He said that if there is no sewer line within the easement he is pretty sure that Mr. Radi would not be as opposed to the proposed construction at that location although he cannot speak for Mr. Radi.

Mr. Thorsland asked the Board if there were any questions for Mr. Kass and there were none.

Mr. Hall stated that in a situation like this the question arises as to how much work the Urbana Champaign Sanitary District is going to do in locating the sewer line versus the information the ZBA needs to make a decision for the variance. He said that he wonders if the Board would want the petitioner to go so far as to have a technical drawing completed by an engineer/surveyor who would accurately report depth and separation.

1 Mr. Randol indicated that he would prefer a technical drawing because the ZBA does not want to make a bad
2 situation worse. He said that the more accurate information we can have the better. He said that if there is a
3 sewer easement there and the district hasn't used it the ZBA needs to know if they have any future intent of
4 using the easement.

5
6 Mr. Hall stated that it would be good to have something from the Urbana Champaign Sanitary District about
7 the fact that the easement exists even though there is no sewer line there currently and what their position is
8 on the easement. He said that the Urbana Champaign Sanitary District has responded to Mr. Johnson's
9 situation very quickly therefore by the December 12th meeting the ZBA could have the information needed to
10 make a decision.

11
12 Mr. Thorsland stated that he gets the impression from Mr. Radi's e-mail that the Urbana Champaign Sanitary
13 District Board makes the decision on these matters once they have adequate information to base their
14 decision upon.

15
16 Mr. Thorsland called Shawn Bickers to testify.

17
18 Mr. Shawn Bickers, who resides at 4306 Summerfield Road, Champaign, stated that the reason why he and
19 Mr. Johnson decided not to construct the addition to the rear of the building is because the architectural
20 design of the condominiums is that the entire rear of the structure is glass therefore when you are inside the
21 condominium the entire family room on the first floor has a glass wall. He said that if the addition was built
22 on the rear of the structure the family room would be trapped without a view. He said that they decided to
23 construct the addition on the south because there was an existing trellis structure at that location with 47 feet
24 between the subject property and the adjacent townhome. He said that there is a landscape buffer of pine
25 trees and leafy trees on the street and south sides of the structure therefore the addition would be inside of
26 that buffer and would be hidden from view for both sides.

27
28 Mr. Thorsland stated that the photographs indicate that construction has been started on the addition.

29
30 Mr. Bickers stated that there are three different phases to the project. He said that there is an interior trim for
31 the cabinetry portion of the job and the cedar siding on the structure had gone bad therefore it has to be
32 removed and replaced. He said that he was hired by the Condominium Association to replace the cedar
33 siding and Mr. Johnson hired him to construct the addition at the same time therefore he went to the County
34 to obtain a permit. He said that in Champaign, Urbana and Savoy a check is not required until the
35 application is approved therefore after he went to the County with his application and fees he spoke with the
36 excavator and the excavator incorrectly assumed that the permit was issued and began excavating the
37 foundation. Mr. Bickers stated that he was out of town when the excavator dug the footings and installed the
38 block foundation and when he returned he informed the excavator that he did not have the approved permit
39 from the County yet. He said that he called the County to determine the status of the permit and that is when
40 staff informed him that there was an issue with the side yard of the addition and the existing easement
41 therefore he ceased all further work on the project. He said that the siding that has been removed from the

1 townhome has not been replaced and will not be replaced until the Board determines the outcome of the
2 variance request.

3
4 Mr. Thorsland asked Mr. Bickers if the addition will be accessed from the interior or exterior of the
5 townhome.

6
7 Mr. Bickers stated that the addition, which will be utilized as an office and golf cart bay, will be accessed
8 from the family room of the townhome. He said that the golf cart bay will be accessed through a garage door
9 that will be located on the south side of the addition although they could go to the west and still be within the
10 landscape buffer.

11
12 Mr. Thorsland asked Mr. Bickers if the garage door is to be placed on the south side of the addition, which is
13 already one foot from the side yard, Mr. Johnson would have to cross the neighbor's lot to access the golf
14 cart bay.

15
16 Mr. Bickers stated yes. He said that on the original plans that were drawn it was realized that there was only
17 a one foot side yard therefore an access in the block foundation was not built so that the access can be shifted
18 if necessary to the west, street side, of the addition. He said that the neighbor who lives in the condominium
19 to the south of the subject property was under the same assumption for the location of the lot line and that
20 neighbor has a mowing agreement where they split the mowing responsibility of the area in between the two
21 structures. He said that the neighbor to the south is now concerned about the trees that are located in the area
22 that was assumed to be Mr. Johnson's property and their responsibility for maintenance of those trees. He
23 said that the neighbors have been very cooperative in discussing the addition.

24
25 Mr. Thorsland asked the Board if there were any questions for Mr. Bickers and there were none.

26
27 Mr. Thorsland asked if staff had any questions for Mr. Bickers and there were none.

28
29 Mr. Hall asked the Board if they were concerned about where the golf cart enters the addition.

30
31 Mr. Thorsland stated that the Board is potentially granting a variance of a one foot side yard therefore he has
32 a concern that the garage door is going to be pointed into the neighbor's yard.

33
34 Mr. Randol stated that the current neighbor may not always be at that location therefore it is unknown what a
35 future owner may think about Mr. Johnson crossing their yard.

36
37 Mr. Thorsland stated that he wants to make sure that the Urbana Champaign Sanitary District Board has
38 decided whether or not they are going to allow the addition to be built within that easement. He said that he
39 would like to have something in writing from the Urbana Champaign Sanitary District Board regarding their
40 determination. He said that he does not want the garage door for the golf cart bay to be directed towards the
41 neighbor's yard.

1
2 Mr. Hall stated that this is good guidance for the petitioner to contact the neighbor to the south to see if they
3 would document their agreement to allow access to the golf cart bay across their property.
4
5 Mr. Bickers stated that if they could get access or a document from the neighbor regarding access to the golf
6 cart bay from the south, it would be better because there are two air conditioning units which are located on
7 the west side of the subject structure which would need to be relocated for the golf cart to enter from that
8 side. He said that it is common practice in this area for the golf cart traffic to travel within those easements.
9 He said that there are similar structures constructed on two other condominiums which are located to the
10 south of the subject property.
11
12 Mr. Thorsland stated that even though it is common practice for the golf carts to travel across the easement
13 now does not mean that a new owner of the condominium to the south will allow it in the future.
14
15 Mr. Bickers stated that if it is necessary they could move the two air conditioning units.
16
17 Mr. Thorsland stated that he would like to have a final determination from the Urbana Champaign Sanitary
18 District Board and a complete site plan indicating the location of the access.
19
20 Mr. Randol stated that before the ZBA makes any final determination this Board needs to know what the
21 Urbana Champaign Sanitary District Board has determined because ZBA should not allow the variance if
22 they are opposed.
23
24 Mr. Hall asked Mr. Johnson if the Urbana Champaign Sanitary District gave him a timeline as to when they
25 would have a decision.
26
27 Mr. Johnson stated that the representatives only indicated that they would return to the site tomorrow with
28 their camera to determine the location of the sanitary sewer line.
29
30 Mr. Hall stated that if there is some kind of formal process whereby the Urbana Champaign Sanitary District
31 Board takes action then the ZBA would like to have that action completed before they make a determination
32 for the variance. He said that if a decision from the Urbana Champaign Sanitary District Board has not made
33 a decision by the December 12th meeting date then the ZBA will not make a final determination at that
34 meeting.
35
36 Mr. Johnson stated that as this process moves along he will need to weigh the possible costs involved with
37 this project. He said that he will check with the Urbana Champaign Sanitary District regarding their findings
38 tomorrow and what procedural movement that they must complete to approve the construction within the
39 easement. He said there is over 47 feet between the two condominium buildings therefore if it is a matter of
40 obtaining a document indicating that the homeowner's associations of both subdivisions agree to the access
41 issue then he will pursue obtaining that documentation.

1
2 Mr. Thorsland stated that Mr. Johnson may need a golf cart easement over the utility easement.

3
4 Mr. Randol stated if the Urbana Champaign Sanitary District is agreeable.

5
6 Mr. Thorsland informed Mr. Johnson that he should call staff as soon as he has a determination of the
7 location of the sewer line from the Urbana Champaign Sanitary District. He said that this case will be
8 continued to the December 12th meeting therefore it would be good if all of the required information is
9 completed prior to that meeting. He said that the ZBA would like to have a formal document indicating
10 where the golf cart bay access will be located. He said that the Board understands that the cost of moving
11 the air conditioning units will be greater than removing a few trees and fortunately no further construction
12 has occurred but unfortunately the block foundation has been installed.

13
14 Mr. Johnson stated that there are metal gates at the end of the street and everyone drives their golf carts
15 down their street into the Lincolnshire Fields Golf Course.

16
17 Mr. Thorsland stated that the Board understands what currently occurs but if the ZBA started approving
18 garages that empty out onto other property owner's lots it would cause the County a lot of grief.

19
20 Mr. Hall stated that the Board would like to see a scaled drawing indicating the location and depth of the
21 sewer line.

22
23 Mr. Randol stated that the drawing should indicate the location of the sewer line in relationship to the
24 property line and the proposed construction.

25
26 Mr. Hall stated that Mr. Johnson should hire a surveyor to prepare an accurate scaled drawing.

27
28 Ms. Capel asked Mr. Hall if the trees should be indicated on the drawing as well.

29
30 Mr. Hall stated that the important thing is that the drawing is drawn at a usable scale and accurate.

31
32 Mr. Johnson stated that he will wait for the determination from the Urbana Champaign Sanitary District
33 Board and if it is a positive determination he will call a surveyor. He said that he should know more
34 tomorrow. He noted that the photographs before the Board tonight indicate the existing bushes and trees on
35 the property. He said that the two pine trees behind and west of the structure will hide the addition from the
36 street.

37
38 Mr. Hall asked Mr. Bickers if there will be a problem with the foundation and the bare wall being exposed to
39 the winter elements.

40
41 Mr. Bickers stated no. He said that he intends to cover the foundation and weatherproof the bare wall.

1
2 Mr. Thorsland entertained a motion to continue Case 764-V-13 to the December 12, 2013, meeting.

3
4 **Mr. Randol moved, seconded by Ms. Capel to continue Case 764-V-13 to the December 12, 2013, meeting. The motion carried by voice vote.**

5
6
7 **7. Staff Report**

8
9 Mr. Kass informed the Board that November 15th is his last day with Champaign County. He said that he
10 has accepted a City Planner II position with the City of Waukee, Iowa and is looking forward to moving back
11 to Iowa with his family.

12
13 The Board congratulated Mr. Kass.

14
15 **8. Other Business**
16 **A. Review of Docket**

17
18 Mr. Hall distributed the current docket to the Board for review.

19
20 **B. Monthly Report**

21
22 Mr. Hall noted that the September report has been posted the County's website. He said that a township
23 protest has been received for Case 732-AT-12 but nonetheless ELUC did recommend approval and has been
24 forwarded to the County Board. He said that Case 732-AT-12 is not on the Consent Agenda but he does
25 believe that all of the ELUC members will support it but since there was a protest ELUC did not believe that
26 the case should be on the Consent Agenda.

27
28 Mr. Thorsland asked Mr. Hall if there was a protest received for the Jesse rezoning.

29
30 Mr. Hall stated that the City of Champaign protested the rezoning but the County Board overrode the protest.

31
32 Mr. Kass stated that the County Board unanimously approved the rezoning.

33
34 Mr. Hall stated that the County is building a string of overrides of municipal protests and he believes that
35 what is behind that is that some of the protests are not well founded.

36
37 Ms. Capel asked Mr. Hall if the Sebens' case is likely to have a protest.

38
39 Mr. Kass did not believe that the Sebens' case will have a protest.

40
41 Mr. Hall stated that he believes that Mr. Sebens' property is located more than one and one-half miles from

1 the Village of Savoy. He said that staff has had a slow spell but we are getting a sprinkle of cases on the
2 docket.

3
4 Mr. Thorsland stated that tonight is also Paul Palmgren's last ZBA meeting. Mr. Thorsland said that Mr.
5 Palmgren has decided to not reapply for reappointment to the Board.

6
7 Mr. Palmgren stated that his term on the Board has been educational and there have been some meetings that
8 he has enjoyed but there are others that he has not. He said that he has always believed that zoning is
9 important and during his time on the Board he has discovered how important it truly is. He congratulated
10 staff for their great work.

11
12 Ms. Capel stated that Mr. Palmgren is correct regarding his statement about the importance of zoning. She
13 said that she attended a meeting last night where a Vermilion County landowner discussed his dismay with
14 the location of the wind farm near his property and how it affected his family. She said that it is a shame that
15 Vermilion County slapped together an ordinance that did not protect the landowners, participating and non-
16 participating.

17
18 Mr. Palmgren stated that Iroquois County is still trying to remedy the conflict with the wind farms and the
19 landowners. He said that noise is an issue and the landowners who have no interest in the wind farm appear
20 to have it forced upon them. He said that he believes that the setback requirements should be even greater
21 but now is not the time to make that argument.

22
23 Mr. Passalacqua stated that the separation distance in Florida is one mile from a non-participating
24 landowner.

25
26 Mr. Palmgren stated that it appears that the wind farm company did not want to spend the money to offer the
27 non-participating landowners an incentive for agreeing to their project therefore it was forced upon those
28 people. He said that he knows an attorney who worked with the developers and he indicated that the
29 efficiency of the wind turbines is between 13 and 25% which is about half of what this Board was told.

30
31 Mr. Passalacqua stated that he was informed that the efficiency of the turbines was not his business.

32
33 Mr. Hall stated that the Board has to make a finding that a use is not injurious and he believes that the
34 efficiency of the wind turbines is a consideration if the Board wants to take the time to get reliable data.

35
36 Mr. Passalacqua stated that it costs money to get reliable data.

37
38 Mr. Thorsland stated that the Board has a member that does not consistently attend meetings. He said that
39 there was a period of attendance by this member because Mr. Thorsland continued to call him about the
40 meetings but the member and even Mr. Thorsland grew tired of that. He said that there are three possible
41 candidates for the Board, one being the reappointment of Ms. Capel, and the other two are new

1 appointments. He said that these three appointments would give the ZBA a full Board but there is always
2 this one member who is nearly continuously absent. He said that the By-laws has a provision that the Board
3 can ask a Board member to step away from the Board and attendance is a factor in that provision. He said
4 that if things go well in December there could potentially be seven members in attendance but more than
5 likely there will only be six. He said that the Board could vacate this member's seat on the Board so that
6 there is potentially always seven Board members in attendance to the meetings.
7

8 Ms. Capel asked Mr. Thorsland if he could explain the procedure for vacating the seat.
9

10 Mr. Thorsland read the provision, Section 3.4, of the ZBA By-laws as follows: The Governing Body shall
11 have the power to remove any member of the Board for cause only after public hearing. Such hearing shall
12 be held no less than 10 days after the member concerned has been given written notice of the charges against
13 him or her. The Chairperson may make a recommendation to the Governing Body for removal of a Zoning
14 Board member due to malfeasance, misfeasance, or nonfeasance generally, and in particular: a) failure to
15 disclose any conflict of interest pursuant to Section 6.8 herein; b) failure to disclose any substantial or
16 material *ex-parte* communications at the earliest opportunity subsequent to any such communications
17 pursuant to Section 7.4 herein; c) failure to attend two meetings within a period of one year, without
18 recorded consent of the Chairperson; or d) repeated or excessive tardiness, as determined by the Chairperson.
19

20 Mr. Passalacqua stated that this is a sad situation because the member does bring a lot to the table but when
21 Mr. Passalacqua interviewed for this position it was indicated that attendance is required and expected at
22 every meeting.
23

24 Mr. Thorsland stated that the Board has come dangerously close to cancelling meetings due to the lack of a
25 quorum and there have been many nights when there have only been four Board members present. He said
26 that Mr. Passalacqua respectfully recused himself from a case tonight therefore there were only four Board
27 members present tonight for voting purposes. He said that if this situation occurs again cases could be
28 delayed.
29

30 Ms. Capel asked when this member's term expires.
31

32 Mr. Hall stated that the member's term expires on 11/30/14.
33

34 Ms. Capel stated that this member could resign at any time.
35

36 Mr. Hall pointed out that in December the Board will be complete with seven members therefore being
37 absent one member occasionally should not be a problem.
38

39 Mr. Thorsland stated that the only reason that he has mentioned this situation is because it is a situation that
40 has been nagging at him and other members of the Board. He said that because there has been a consistent
41 empty seat for such a long time it has been more of a problem than maybe it will be in the future with two

1 new members and a reappointment. He noted that the Board does not need to act upon this situation now.

2
3 Mr. Passalacqua stated that he believes that the Board member in question has great input therefore he would
4 like to see this member have more motivation to attend the meetings as opposed to vacating the seat. He
5 said that everyone has other responsibilities with work and family but we have a responsibility to attend the
6 meetings that we signed on for as members.

7
8 Ms. Capel asked Mr. Thorsland if he has discussed resignation with that Board member.

9
10 Mr. Thorsland stated that he has discussed resignation with the Board member during a private phone
11 conversation. Mr. Thorsland stated he will call the Board member and relay the Board's concerns and
12 encourage a better attendance to the meetings.

13
14 Mr. Passalacqua encouraged Mr. Thorsland to make the call tomorrow. He said that he would hate to lose
15 such a valuable Board member.

16
17 Mr. Thorsland stated that he agrees and his frustration is only with the attendance and not the value of the
18 work of that Board member. He informed the Board that they may also utilize their contact information
19 provided by staff and encourage that Board member to attend the meetings

20
21 Mr. Passalacqua asked Mr. Hall if staff has completed a site visit recently.

22
23 Mr. Hall stated no. He said that Mr. Anderson's permit allows one year for completion. He said that Mr.
24 Anderson received a Neighborhood Home Occupation and the variance allowed some encroachment in some
25 of the side yards but everything in the east yard must be removed and he has one year to do so.

26
27 **9. Audience Participation with respect to matters other than cases pending before the Board**

28
29 None

30
31 **10. Adjournment**

32
33 Mr. Thorsland entertained a motion to adjourn the meeting.

34
35 **Mr. Palmgren moved, seconded by Mr. Passalacqua to adjourn the meeting. The motion carried by**
36 **voice vote.**

37
38 The meeting adjourned at 7:42 p.m.

39
40
41 Respectfully submitted

ZBA

DRAFT SUBJECT TO APPROVAL DRAFT

11/14/13

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Secretary of Zoning Board of Appeals

CASE NO. 764-V-13
SUPPLEMENTAL MEMORANDUM
December 5, 2013

**PLANNING &
ZONING**

Petitioners: **Lars Johnson with Shawn Bickers as agent**

Request: **Authorize the following in the R-4 Multiple Family Residence Zoning District:**

Part A. Authorize the following variance for an existing townhouse:

- (1) lot coverage of 44% in lieu of the maximum allowed 40%; and
- (2) a front setback of 40 feet from the centerline of Briar Hill Drive in lieu of the minimum required 55 feet; and
- (3) a front yard of 20 feet in lieu of the minimum required 25 feet.

Part B. Authorize the following variance for an addition to an existing townhouse:

- (1) authorize construction of a building addition in a recorded utility easement in lieu of the requirement that no construction shall take place in a recorded utility easement; and
- (2) a side yard of 1 foot in lieu of the minimum required 5 feet.

Subject Property: **Lot 1 of Wisegarver's Subdivision in the Southeast Quarter of Section 21 of Champaign Township and commonly known as the townhome at 2120 Briar Hill Drive, Champaign.**

Site Area: **14,840 square feet (0.34 acre)**

Time Schedule for Development: **Unauthorized construction halted and awaiting Variance approval**

Prepared by: **John Hall**
Zoning Administrator

STATUS

This case is continued from the November 14, 2013, public hearing. The minutes from that public hearing are included separately and relevant testimony has been summarized in the Revised Draft Summary of Evidence.

At the direction of the Petitioner, this case was re-advertised (with new public notices) to reflect the actual required amount of variance and the description of the variance was also revised to separate the legacy components of the variance (new Part A) from the new required variance (new Part B).

This Memorandum reviews the follow through that has occurred on the Board's 11/14/13 requests and reviews a possible basis for Special Conditions of Approval and proposes three Special Conditions for the Board's consideration.

A revised Summary of Evidence is included with new evidence indicated with underlining.

FOLLOW THROUGH ON 11/14/13 BOARD REQUESTS

At the November 14, 2013, meeting the Board requested the following information be provided and/or stated the following concerns:

1. **Verify presence of a dedicated utility easement on the adjacent lot.** See the attached annotated copy of the Plat of Briar Hill 2nd Addition Subdivision. A 10-foot wide utility easement is indicated on Lot 5 which is adjacent to the subject property. An aerial photograph of the entire Briar Hill Subdivision with lot boundaries has also been included for illustrative purpose.
2. **Is the Urbana Champaign Sanitary District opposed to the existing construction being located in the utility easement on the subject property?** UCSD staff has determined that the sewer line is on the adjacent property. A November 15, 2013, email from UCSD Director of Engineering Services Mark Radi indicates the sewer is approximately 4 feet south of the addition (see attached) and a December 2, 2013, email from UCSD Director of Engineering Services Mark Radi to Lars Johnson indicates that the sewer line is in the easement on the adjacent property and UCSD does not object to construction as long as the construction is not in an easement occupied by the UCSD (see attached).
3. **If there is a sanitary sewer line on the adjacent property, what is the depth of the sewer line and will maintenance, such as digging to uncover the line for maintenance, pose any risk to the proposed addition to the townhome? The petitioner should provide an accurate technical drawing to scale that indicates the location of the sewer line in relationship to the property line and the proposed construction.** The Petitioner has not provided a technical drawing illustrating the location of the sewer line because he did not think it was warranted. UCSD staff will not go on record regarding this issue.
4. **The ZBA is concerned about granting a variance that will result in the door of the golf cart garage facing the adjacent property and being only one foot away from the property line and would like to have a formal document indicating where the golf cart bay access will be located.** The Petitioner has told the Zoning Administrator that he is willing to eliminate the golf cart garage from the addition if the neighboring homeowners association will not approve golf cart traffic in writing. No new information has been received.

SPECIAL CONDITIONS OF APPROVAL

The Board cannot approve the Variance if just one of the Ordinance criteria and the related Finding (reviewed as item 6.B. in the Summary of Evidence) cannot be determined to be in the affirmative. If necessary to make an affirmative Finding the Board may "...prescribe appropriate conditions and safeguards in conformity with this ordinance."

Case law has established that a Special Condition can only be imposed if the Petitioner agrees to that Special Condition. If the Board believes the Special Condition to be necessary but the Petitioner will not agree to that Condition, then presumably at least one of the required Findings will not be in the affirmative and the Variance cannot be approved.

Possible Need for Special Conditions

As reviewed in item 10.C.(2)(b) of the Revised Draft Summary of Evidence (see p. 14), there is no evidence that the unauthorized construction has disturbed any existing utility line but it is not known whether the unauthorized construction will present a problem for some future utility need.

A more desirable approach would have been for the Petitioner to go through the process of formally vacating the easement and securing all necessary zoning approvals prior to construction. If all relevant utilities had agreed to vacate the easement then there could be no possibility of a future problem. In fact, in an email dated October 10, 2013, from Elmer Crawford, Ameren Illinois Senior Engineering Representative, Mr. Crawford indicated that his comment was "...not a vacation of the south easement." See item 11.E.(3).

Vacation of a utility easement is done by means of a duly approved Plat of Easement Vacation which at this location would be approved by the City of Champaign. The approval process for a Plat of Easement Vacation involves securing the agreement of all relevant utilities. There is no guarantee that a Plat of Easement Vacation would be approved. However, successfully vacating the easement is the only sure method by which the Petitioner could prove that the construction will not present a problem for some future utility need.

It remains for the Board to determine how significant that "possible problem for some future utility need" is in the context of the required Findings.

Draft Special Conditions

The following Special Conditions of Approval are proposed for the Board's consideration and have been also been included on pages 16 -17 of the revised Summary of Evidence. The three Special Conditions are interrelated and based on item 10.C.(2)(b) of the Revised Draft Summary of Evidence (see p. 14) regarding whether the unauthorized construction will present a problem for some future utility need. If Condition A (or some modification of it) is not necessary then there is no need for Conditions B and C.

The Board should not feel obligated to accept these Special Conditions. However, if the Board feels that these conditions are warranted, the Petitioner must agree to the Special Conditions in order for the Board to impose the Special Conditions.

The Special Conditions are as follows:

- A. In regards to construction within the recorded utility easement, this Variance authorizes the following:**
- (1) Construction of the building addition may be completed as indicated on the approved site plan and approved floor plan provided that Zoning Use Permit No. 249-13-01 is authorized by the Zoning Administrator.**
 - (2) The addition may be occupied provided that the Zoning Administrator authorizes a Zoning Compliance Certificate.**

- (3) If the addition is damaged or destroyed to more than 50% of the replacement value the addition shall not be repaired and in fact shall be removed completely including the footings, unless a Plat of Vacation of Utility Easement is duly approved and filed with the Champaign County Recorder of Deeds for only that part of the easement occupied by the addition, in which case the addition may be reconstructed in the same footprint and same location.**

The special condition stated above is required to ensure the following:

Preserving the public interest in the original utility easement unless and until the easement is officially vacated.

- B. Within 30 days of the Final Determination for Case 764-V-13 the petitioner shall do the following:**

- (1) Attachment H to the Supplemental Memorandum dated December 5, 2013, shall be filed as a "Miscellaneous Document" with the Champaign County Recorder of Deeds.**
- (2) Provide a photocopy of the recorded document (with Recorder's Document Number) to the Zoning Administrator.**

The special condition stated above is required to ensure the following:

That potential buyers of the property are aware of the limitation imposed in the special conditions of Case 764-V-13.

- C. The Zoning Administrator shall not authorize Zoning Use Permit Application No. 249-13-01 unless, in addition to all other requirements, the Petitioner has provided a photocopy of the recorded Attachment H to the Supplemental Memorandum dated December 5, 2013, that shall have been filed as a "Miscellaneous Document" with the Champaign County Recorder of Deeds.**

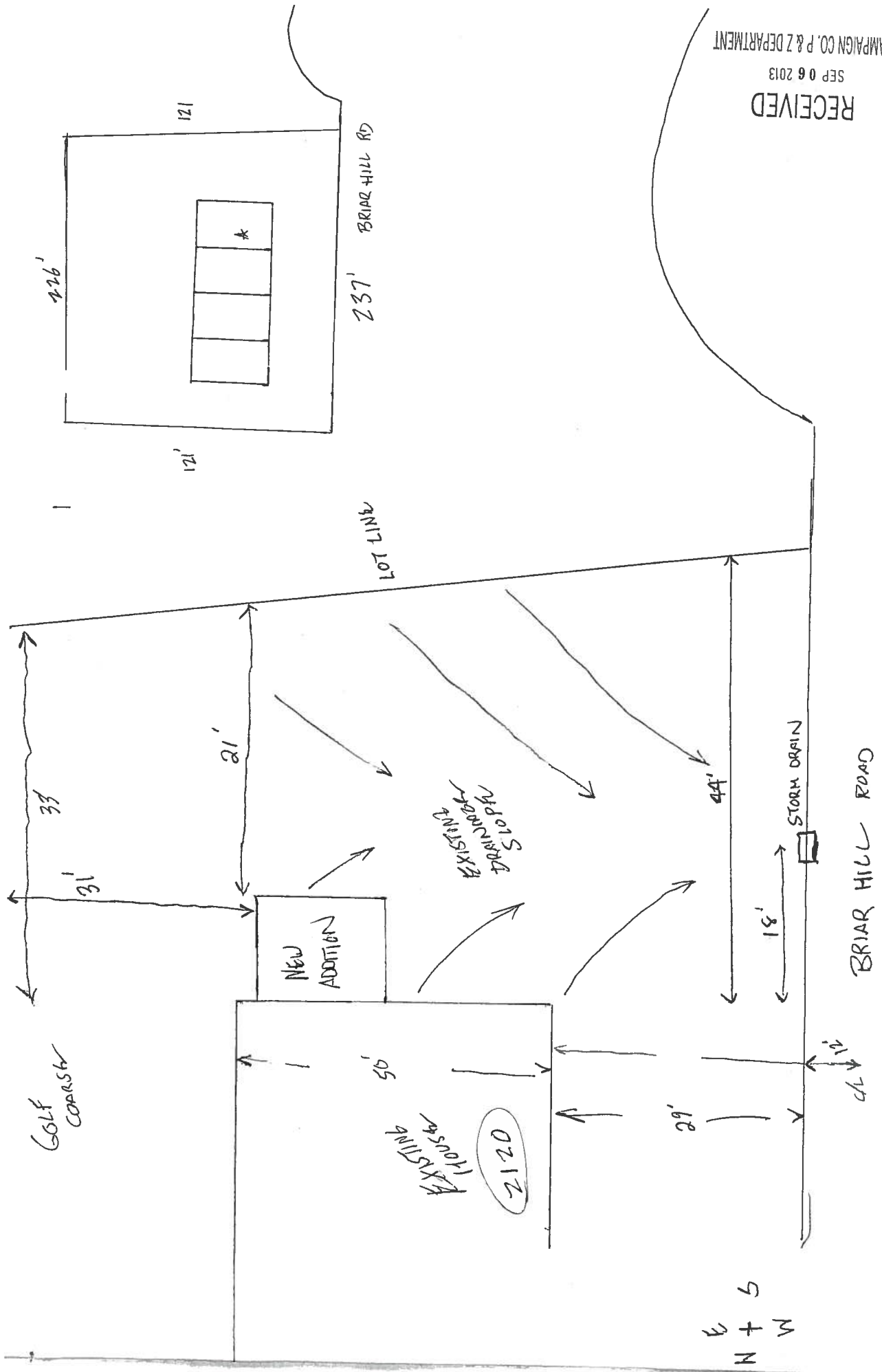
The special condition stated above is required to ensure the following:

Full compliance with the approval of Case 764-V-13.

ATTACHMENTS

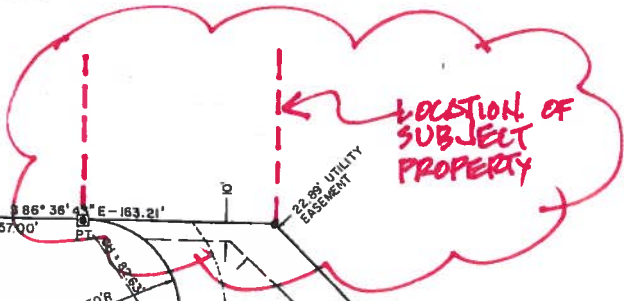
- A** Draft Minutes of November 14, 2013, public hearing for Case 764-V-13 (included separately with the minutes of the whole public hearing)
- B** Site Plan received September 6, 2013
- C** Copy of Plat of BRIAR HILL 2nd ADDITION (Annotated to show location of subject property; 2 pages total)
- D** Aerial photograph of Briar Hill Subdivision with superimposed lot lines, address numbers, and partial PINs (included separately in color)
- E** Email dated November 15, 2013, from UCSD Director of Engineering Services Mark Radi to Lars Johnson (and subsequently forwarded to Zoning Administrator John Hall)
- F** Email dated December 2, 2013, from UCSD Director of Engineering Services Mark Radi, UCSD to Lars Johnson (and subsequently forwarded to Zoning Administrator John Hall)
- G** Excerpt of Sheet P14 of Illinois American Water Distribution System Map Champaign District dated March 2010 (Redacted to omit unnecessary information)
- H** Document to be Filed With Recorder of Deeds as a Miscellaneous Document
- I** Revised Draft Summary of Evidence, Finding of Fact, and Final Determination

RECEIVED
SEP 06 2013
CHAMPAIGN CO. P & Z DEPARTMENT



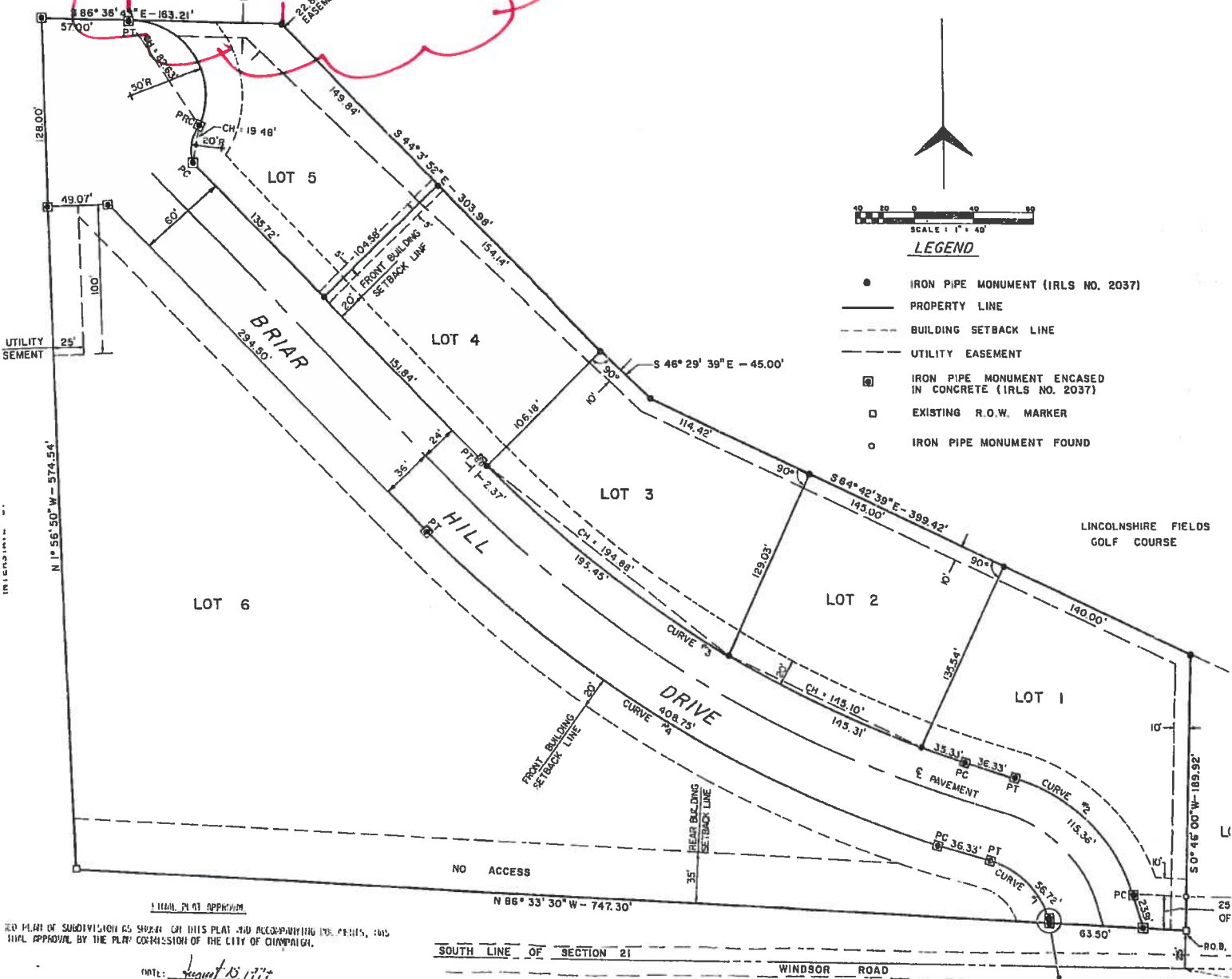
E + S
N

PLAT OF
BRIAR HILL 2ND ADDITION
 CHAMPAIGN COUNTY, ILLINOIS



LEGEND

- IRON PIPE MONUMENT (IRLS NO. 2037)
- PROPERTY LINE
- - - BUILDING SETBACK LINE
- - - UTILITY EASEMENT
- ⊠ IRON PIPE MONUMENT ENCASED IN CONCRETE (IRLS NO. 2037)
- EXISTING R.O.W. MARKER
- IRON PIPE MONUMENT FOUND



LEGAL PLAT APPROVAL

THIS PLAT OF SUBDIVISION IS HEREBY APPROVED BY THE PLAT COMMISSION OF THE CITY OF CHAMPAIGN.

DATE: August 15, 1972
 BY: [Signature]
 PLAT COMMISSIONER OF THE CITY OF CHAMPAIGN

ALL AND TWO COPIES OF THE FINAL PLAT TO BE SUBMITTED TO THE CITY OF CHAMPAIGN FOR ITS TENTATIVE APPROVAL. IF SO APPROVED BY THE CITY OF CHAMPAIGN, THE SAID PLAT SHALL BE CONSIDERED AS VALID.
 APPROVED BY THE COUNCIL OF THE CITY OF CHAMPAIGN, ILLINOIS, ON 20th AUGUST 1972
 [Signature]
 [Signature]

CURVE DATA				
Curve No.	PC	PT	Length	Area
1	28°56'10"	193.33'	178.44'	7.6463*
2	28°56'11"	208.81'	408.73'	7.0794*

- NOTE:
1. THE AREA COVERED BY THIS PLAT IS WITHIN THE 1-1/2ND QUARTER SECTION 21 OF THE CITY OF CHAMPAIGN, ILLINOIS.
 2. A PART OF THE AREA COVERED BY THIS PLAT IS NOT W/ FIELD OF A SURFACE DRAIN OF WATER COURSE SERVING A TENTATIVE AREA OF 640 ACRES OF FORD.

RECEIVED

NOV 19 2013

CHAMPAIGN CO. P & Z DEPARTMENT

Sh. 1 of 2

PLAT OF HILL 2nd ADDITION

N COUNTY, ILLINOIS

SURVEORS CERTIFICATE

STATE OF ILLINOIS)
COUNTY OF CHAMPAIGN) S.S.

I, GARY E. JAHRAUS, ILLINOIS REGISTERED LAND SURVEYOR NO. 2037, DO HEREBY CERTIFY THAT I HAVE CAUSED A SURVEY TO BE MADE OF THE PARCEL REPRESENTED BY THE AFFIXED PLAT AND DESCRIPTION, AND FURTHER THAT THE SAID PLAT AND DESCRIPTION IS A TRUE REPRESENTATION OF SAID SURVEY AND THAT MEASUREMENTS ARE AS SHOWN HEREOF.

SIGNED AND SEALED THIS 12th DAY OF August, 1974

Gary E. Jahraus
GARY E. JAHRAUS,
ILLINOIS REGISTERED LAND SURVEYOR NO. 2037

LEGAL DESCRIPTION

PART OF THE SW 1/4 OF THE SE 1/4 OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON PIPE MONUMENT AT THE SOUTHWEST CORNER OF SAID SECTION 21, THENCE N 99°14'00" W, AN ASSURED BEARING, ALONG THE SOUTH LINE OF SAID SECTION 21 1740.93 FEET; THENCE N 0°00'00" E 25 FEET TO AN IRON PIPE MONUMENT AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY OF WINDSOR ROAD, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE N 86°33'50" W 174.30 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE OF WINDSOR ROAD TO A CONCRETE RIGHT-OF-WAY MARKER AT THE INTERSECTION OF SAID NORTH RIGHT-OF-WAY LINE OF WINDSOR ROAD AND THE EAST RIGHT-OF-WAY LINE OF F.A.I. ROUTE 57; THENCE NORTHERLY 574.54 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF F.A.I. ROUTE 57 BEING A CURVE TO THE RIGHT, HAVING A RADIUS OF 17,048.74 FEET AND A CHORD BEARING N 1°56'50" W TO AN IRON PIPE MONUMENT FOUND; THENCE S 44°3'52" E 303.98 FEET TO AN IRON PIPE MONUMENT; THENCE S 46°29'39" E 45.00 FEET TO AN IRON PIPE MONUMENT; THENCE S 64°42'39" E 399.42 FEET TO AN IRON PIPE MONUMENT; THENCE S 0°46'00" W 189.92 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 6.74 ACRES, MORE OR LESS AND ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

I FURTHER CERTIFY THAT ALL MONUMENTS WERE SET AS SHOWN.

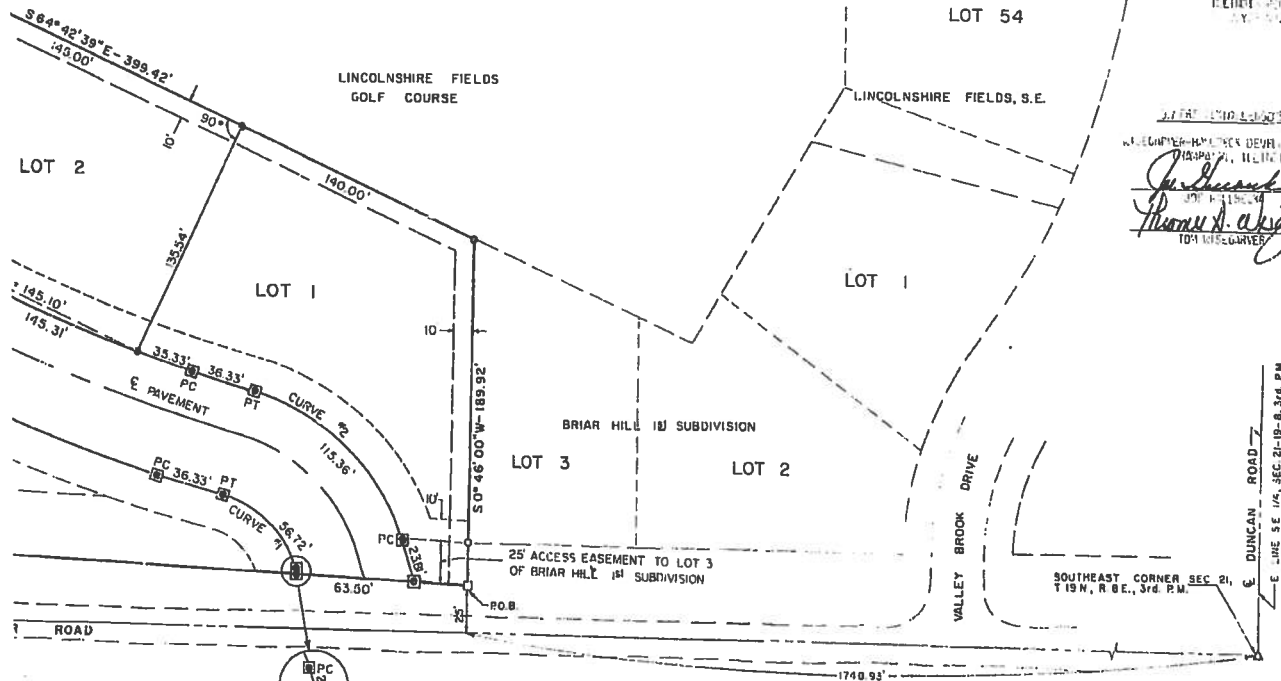
SIGNED AND SEALED THIS 12th DAY OF August, 1974

Gary E. Jahraus
GARY E. JAHRAUS,
ILLINOIS REGISTERED LAND SURVEYOR NO. 2037



LEGEND

- IRON PIPE MONUMENT (IRLS NO. 2037)
- PROPERTY LINE
- - - BUILDING SETBACK LINE
- - - UTILITY EASEMENT
- ⊠ IRON PIPE MONUMENT ENCASED IN CONCRETE (IRLS NO. 2037)
- EXISTING R.O.W. MARKER
- IRON PIPE MONUMENT FOUND



- NOTE:
1. THE AREA COVERED BY THIS PLAT IS WITHIN THE 1-1/2 MILE CORPORATE LIMITS OF THE CITY OF CHAMPAIGN, ILLINOIS.
 2. A PART IN THE AREA COVERED BY THIS PLAT IS NOT WITHIN 500 FEET OF A SURFACE WATER OR WATER COURSE SERVING A THIRTY-THREE (33) ACRES OR MORE.

7.6463°
7.0794°

1. ALL LOTS ARE PERMITTED FOR 7th DISTRICT USE UNLESS OTHERWISE NOTED.
2. PROTECTIVE EASEMENTS WILL BE REQUIRED FOR ALL LOTS AND THE PERMITTED USE AND DURATION THEREOF WILL BE AS SHOWN HEREOF.

RECEIVED # 7209

NOV 19 2013

CHAMPAIGN CO. P & Z DEPARTMENT

Sh. 2 of 2

John Hall

From: Mark Radi [mlradi@u-csd.com]
Sent: Friday, November 15, 2013 10:36 AM
To: 'Lars Johnson'
Cc: Steve Bickers; Vickie Lyons; Rick Manner; Shawn Bickers; John Hall
Subject: RE: 2120 Briar Hill

District personnel have determined that the south edge of the building addition is approximately 4' north of our sewer. It appears as though the new addition infringes on District easement. We are currently evaluating what actions are required.

From: Lars Johnson [mailto:larsrjohnson@gmail.com]
Sent: Wednesday, November 13, 2013 12:03 PM
To: Mark Radi
Cc: Steve Bickers; Vickie Lyons; Rick Manner; Shawn Bickers
Subject: RE: 2120 Briar Hill

Attached are manhole and storm locations we found.

From: Mark Radi [mailto:mlradi@u-csd.com]
Sent: Wednesday, November 13, 2013 11:38 AM
To: 'Lars Johnson'
Cc: Steve Bickers; Vickie Lyons; Rick Manner
Subject: RE: 2120 Briar Hill

I think the sewer that runs east to west on the south side is not on your property. Please see the attached. The sewer I think you are connected to runs from south to north, west of your townhome, up to our Interceptor. Please see if the manholes shown to the south are exposed. We may be over there later today to confirm the sewer locations.

From: Lars Johnson [mailto:larsrjohnson@gmail.com]
Sent: Wednesday, November 13, 2013 10:44 AM
To: Mark Radi
Subject: RE: 2120 Briar Hill

Sorry about that.

From: Mark Radi [mailto:mlradi@u-csd.com]
Sent: Wednesday, November 13, 2013 10:37 AM
To: 'Lars Johnson'
Subject: RE: 2120 Briar Hill

Please put a north arrow on the layout sketch

From: Lars Johnson [mailto:larsrjohnson@gmail.com]
Sent: Wednesday, November 13, 2013 9:16 AM
To: Mark Radi
Cc: akass@co.champaign.il.us; Shawn Bickers
Subject: 2120 Briar Hill

Mark, my first email didn't go through to you. Here is a copy of the plat and the drawing of our small office addition. There will be no plumbing whatsoever in this office.

Feel free to call me if you have any further questions. Thanks

Lars Johnson
312.656.0440

John Hall

From: Lars Johnson [larsjohnson@gmail.com]
Sent: Monday, December 02, 2013 12:29 PM
To: John Hall
Cc: Shawn Bickers
Subject: FW: 2120 Briar Hill

Looks like we are not in their easement. Good news.

From: Mark Radi <mlradi@u-csd.com>
Date: Monday, December 2, 2013 11:54 AM
To: Lars Johnson <larsjohnson@gmail.com>
Cc: 'Shawn Bickers' <shawnbickers@gmail.com>
Subject: RE: 2120 Briar Hill

Lars, the Sanitary Districts easement does not appear to be on your property. According to the available recorded documents, the District has an easement for the north 10' of the Briar Hill 2nd Addition, which is immediately south of your property. The District does not object to construction activity which is not on our easement.

From: Lars Johnson [mailto:larsjohnson@gmail.com]
Sent: Tuesday, November 26, 2013 9:10 AM
To: Mark Radi
Cc: 'Shawn Bickers'
Subject: 2120 Briar Hill

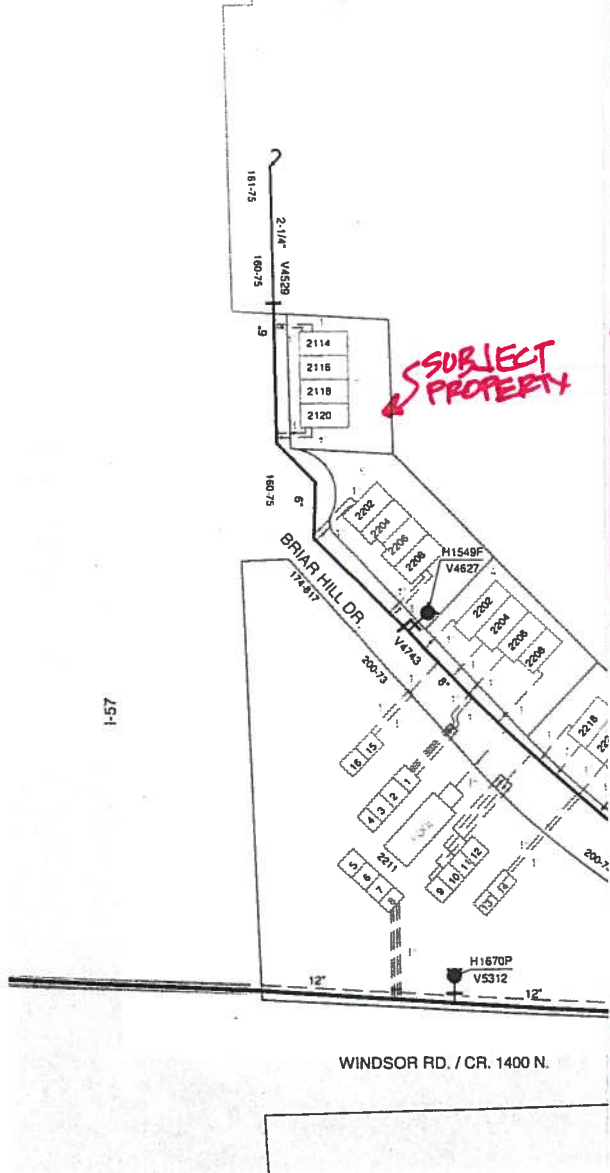
Mark, is it possible to send us a letter or even just an email stating that the UCSD has found that our proposed addition is not in the easement? They re-advertised and we are trying to wrap this up at the December 12th board meeting. Thanks for all your help.

Lars Johnson
312.656.0440

SEE MAP P13

I-57

I-57



SUBJECT PROPERTY

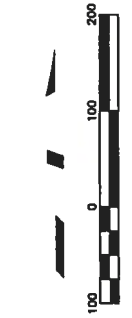
REDACTED

A86	O13	O14	O15
	P13	P14	P15
	Q13	Q14	Q15

KEY

DISTRIBUTION SYSTEM MAP
 CHAMPAIGN DISTRICT
 REVISION DATE - MARCH 2010

SEE MAP P15



ILLINOIS
 AMERICAN WATER

PROPRIETARY AND CONFIDENTIAL

CHAMPAIGN
 SHEET
 P14

LOCATION OF WATER MAINS AS INDICATED ARE APPROXIMATE. FIELD MEASUREMENTS MAY DIFFER.

Attachment H. Document to be Filed With Recorder of Deeds as a Miscellaneous Document
Case 764-V-13
DECEMBER 5, 2013

TO: Interested Parties

FROM: Champaign County Zoning Board of Appeals

RE: Special Condition of Approval in Variance Case 764-V-13

Be it known that this document was a requirement of a Special Condition of Approval of Zoning Case 764-V-13 to ensure that any interested party is aware of the following:

1. A Variance was granted in Zoning Case 764-V-13 to authorize the construction of a building addition in a recorded utility easement in lieu of the requirement that no construction shall take place in a recorded utility easement.
2. Because there is a public interest in preserving the original whole utility easement unless and until the relevant portion of the easement is officially vacated, the Champaign County Zoning Board of Appeals imposed the following special condition of approval to which any owner of the property must comply:

If the addition authorized by Case 764-V-13 is damaged or destroyed to more than 50% of the replacement value the addition shall not be repaired and in fact shall be removed completely including the footings, unless a Plat of Vacation of Utility Easement is duly approved and filed with the Champaign County Recorder of Deeds for only that part of the easement occupied by the addition, in which case the addition may be reconstructed in the same footprint and same location.

3. For further information interested parties should contact the Champaign County Department of Planning and Zoning.

REVISED DRAFT 12/5/13

764-V-13

**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: December 12, 2013

Petitioners: Lars Johnson with Shawn Bickers as agent

Request: Authorize the following in the R-4 Multiple Family Residence Zoning District:

Part A. Authorize the following variance for an existing townhouse:

- (1) lot coverage of 44% in lieu of the maximum allowed 40%; and
- (2) a front setback of 40 feet from the centerline of Briar Hill Drive in lieu of the minimum required 55 feet; and
- (3) a front yard of 20 feet in lieu of the minimum required 25 feet.

Part B. Authorize the following variance for an addition to an existing townhouse:

- (1) authorize construction of a building addition in a recorded utility easement in lieu of the requirement that no construction shall take place in a recorded utility easement; and
- (2) a side yard of 1 foot in lieu of the minimum required 5 feet.

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SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **November 14, 2013, and December 12, 2013**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner Lars Johnson, 1956 West Berwyn Ave, Chicago, IL, owns the subject property. Shawn Bickers, 1305 North Harris, Champaign, is his agent and contractor.
2. The subject property is Lot 1 of Wisegarver's Lot 1 Subdivision in the Southeast Quarter of Section 21 of Champaign Township and commonly known as the townhome at 2120 Briar Hill Drive, Champaign.
3. The subject property is within the one and one-half mile extraterritorial jurisdiction (ETJ) of the City of Champaign, a municipality with zoning. Municipalities do not have protest rights on a variance and are not notified of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Regarding land use and zoning on the subject property and adjacent to it:
 - A. The subject property is zoned R-4 Multiple Family Residence, and is in residential use.
 - B. Land to the north is zoned R-4 Multiple Family Residence, and is in residential use.
 - C. Land to the east is zoned R-4 Multiple Family Residence, and is in use for a golf course.
 - D. Land to the west is Interstate 57.
 - E. Land to the south is zoned R-4 Multiple Family Residence, and is in residential use.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan of the subject site:
 - A. The subject property is 106 feet deep by 140 feet wide and approximately 14,840 square feet in total.
 - B. The Site Plan submitted with Zoning Use Permit Application No. 249-13-01 on September 6, 2013, can be summarized as follows:
 - (1) The site plan includes lot dimensions that are much larger than the dimensions indicated on the Final Plat of Wisegarver's Lot 1 Subdivision.
 - (2) The location of the building relative to Briar Hill Circle is not at all similar to the actual relationship that is clearly visible in an aerial photograph.
 - (3) The distance from the south wall of the existing building to the south lot line of the subject property is indicated as 44 feet.

- C. The Site Plan received with the Variance application on October 31, 2013, indicates the following:
- (1) The site plan includes lot dimensions identical to those on the Final Plat of Wisegarver's Lot 1 Subdivision.
 - (2) The location of the existing 6,496 square feet building (four townhomes).
 - (3) The location of the proposed 264 square feet (12' × 22') addition on the south side of the existing building. According to the site plan the proposed addition will be 1 foot from the south property line. Earlier site plans had indicated 2 feet and that dimension was used in the original legal advertisement but the case was readvertised. The foundation for the proposed addition has been constructed but no Zoning Use Permit been authorized.
 - (4) The yards and setback for the existing home and proposed addition.
 - (5) An indication that the nearest adjacent building is 47 feet away.
- D. The floor plan of the proposed addition received October 15, 2013, indicates the following:
- (1) The 12' × 22' addition.
 - (2) An 8' × 12' golf cart bay with an overhead door opening on the south side.
 - (3) A 14' × 12' office.
 - (4) The location of existing and proposed doors.
 - (5) An elevation profile of the proposed addition. The proposed addition will be 14 feet in height.
- E. The required variance is as follows:
- (1) Regarding Part B of the variance:
 - (a) Variance for a side yard of 1 foot in lieu of the minimum required 5 feet. At the petitioners risk the original legal advertisement indicated two feet in lieu of the required 5 feet ~~It is recommended that this~~ but the Case be was re-advertised with the actual required Variance.
 - (b) Variance from Section 4.2.2D. requirement that no construction shall take place in a recorded utility easement.
 - (2) Regarding Part A of the variance:
 - (a) Variance for lot coverage of 44% in lieu of the maximum allowed 40%.
 - (b) Variance for a front setback for an existing townhome of 40 feet from the centerline of Briar Hill Drive in lieu of the minimum required 55 feet.

- (c) Variance for a front yard for an existing townhome of 18 feet in lieu of the minimum required 25 feet.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variances (capitalized words are defined in the Ordinance):
- (1) "AREA, BUILDING" is the total area taken on a horizontal plane at the largest floor level of the MAIN or PRINCIPAL BUILDING and all ACCESSORY BUILDINGS on the same LOT exclusive of uncovered porches, terraces, steps, or awnings, marquees, and non-permanent CANOPIES and planters.
 - (2) "AREA, LOT" is the total area within the LOT LINES.
 - (3) "BUILDING" is an enclosed STRUCTURE having a roof supported by columns, walls, arches, or other devices and used for the housing, shelter, or enclosure of persons, animals, and chattels.
 - (4) "BUILDING, MAIN or PRINCIPAL" is the BUILDING in which is conducted the main or principal USE of the LOT on which it is located.
 - (5) "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.
 - (6) "COVERAGE" the percentage of the LOT AREA covered by BUILDING AREA.
 - (7) "DWELLING" is a BUILDING or MANUFACTURED HOME designated for non-transient residential living purposes and containing one or more DWELLING UNITS and/or LODGING UNITS.
 - (8) "DWELLING UNIT" is one or more rooms constituting all or part of a DWELLING which are used exclusively as living quarters for one FAMILY, and which contains a bathroom and kitchen.
 - (9) "DWELLING, MULTI-FAMILY" is a SWELLING containing three or more DWELLING UNITS.
 - (10) "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.
 - (11) "LOT LINE, FRONT" is a line dividing a LOT from a STREET or easement of ACCESS. On a CORNER LOT or a LOT otherwise abutting more than one STREET or easement of ACCESS only one such LOT LINE shall be deemed the FRONT LOT LINE.

- (12) “LOT LINE, REAR” is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE. In the case of a triangular or gore shaped lot or where the lot comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at a maximum distance from the FRONT LOT LINE or said tangent.
- (13) “LOT LINES” are the lines bounding a LOT.
- (14) “PUBLIC SANITARY SEWER SYSTEM” is any system, other than an individual septic tank or tile field that is operated by a municipality, governmental agency, or a public utility for the collection, treatment, and disposal of liquid and solid sewage wastes, other than storm waters.
- (15) “PUBLIC WATER SUPPLY SYSTEM” is any system, other than an individual well, that is operated by a municipality, governmental agency, or a public utility for the purpose of furnishing potable water.
- (16) “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.
- (17) “STREET” is a thoroughfare dedicated to the public within a RIGHT-OF-WAY which affords the principal means of ACCESS to abutting PROPERTY. A STREET may be designated as an avenue, a boulevard, a drive, a highway, a lane, a parkway, a place, a road, a thoroughfare, or by other appropriate names. STREETS are identified on the Official Zoning Map according to type of USE, and generally as follows:
- (a) MAJOR STREET: Federal or State highways
 - (b) COLLECTOR STREET: COUNTY highways and urban arterial STREETS.
 - (c) MINOR STREET: Township roads and other local roads.
- (18) “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.
- (19) “USE” is the specific purpose for which land, a STRUCTURE or PREMISES, is designed, arranged, intended, or for which it is or may be occupied or maintained. The term “permitted USE” or its equivalent shall not be deemed to include any NONCONFORMING USE.

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- (20) "VARIANCE" is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning Board of Appeals are permitted to grant.
- (21) "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.
- (22) "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.
- (23) "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.
- (24) "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 relevant numerical standards sought to be varied are the following:

- (1) The minimum required SIDE YARD in the R-4 Single Family Residence Zoning District is established in Section 5.3 of the Zoning Ordinance as 5 feet.
- (2) The maximum LOT COVERAGE in the R-4 Multiple Family Residence Zoning District is established in Section 5.3 of the Zoning Ordinance as 40%.
- (3) The minimum required setback from the centerline of a street and the minimum required FRONT YARD are established in Section 5.3 and Subsection 4.3.2 of the *Zoning Ordinance* as follows:
 - (a) The minimum setback from a MINOR STREET is listed in Section 5.3 and Subsection 4.3.2 as 55 feet.
 - (b) Footnote 3 of Section 5.3 further specifies the following:
 - (a) In no case shall the FRONT YARD be less than 25 feet from a MINOR STREET.
- (4) Section 4.2.2D. establishes the requirement that no USE shall be established, CONSTRUCTION undertaken, nor fill placed in any recorded drainage or utility easement that would interfere with the function of the easement.

- C. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make findings based on criteria listed in paragraph 9.1.9. C.:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9 C. 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.

- D. Paragraph 9.1.9 E. of the *Zoning Ordinance* provides for special conditions of approval of a variance, as follows:

In granting any VARIANCE, the BOARD or the Hearing Officer may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of conditions under which the VARIANCE is granted shall be deemed a violation of this ordinance and punishable as provided in Section 11.2.3 of this ordinance.

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, **“Large distance between buildings.”**

- B. Regarding Part B of the Variance as described in the re-advertisement:
- (1) The subject property is a lot in a subdivision that was approved by the City of Champaign in 1976. The recorded plat indicates a 10 feet wide utility easement along the north, south, and east property lines.
 - (2) The Urbana-Champaign Sanitary District (UCSD) sewer map indicates that a municipal approved collector sewer line is located within the recorded utility easement along the south property line.
 - (3) The foundation for the proposed addition has been constructed but no Zoning Use Permit been authorized.
 - (4) At the petitioners risk the original legal advertisement indicated two feet in lieu of the required 5 feet. ~~It is recommended that this~~ but the Case be was re-advertised with the actual required Variance.
 - (5) There is approximately 50 feet between the shared property line of the proposed addition and the nearest adjacent building.
- C. Regarding Part A.(1) of the Variance as described in the re-advertisement:
- (1) The lot meets the minimum required lot area of 6,500 square feet for the first DWELLING UNIT and 2,000 square feet for each additional DWELLING UNIT. The required lot area is 12,500 square feet and the total lot area is 14,840 square feet.
 - (2) The lot also meets minimum required average lot width of 65 with a width of 140 feet.
 - (3) The existing lot coverage of the building exceeds the maximum lot coverage (43%) and was granted a Zoning Use Permit in 1975 (No. 241-75-02). Presumably staff made an error in the review of this criterion.
- D. Regarding Parts A.(2) and (3) of the Variance as described in the re-advertisement:
- (1) The existing building does not meet the minimum required setback or front yard. The existing building was authorized by a Zoning Use Permit in 1975 (No. 241-75-02) and presumably staff made an error when reviewing the permit, or incorrect measurements were provided when the permit was authorized.
 - (2) It is unlikely that Briar Hill Drive will be widened in front the of the subject property because the subject property is located at the end of the street.
- E. Relevant testimony at the November 14, 2013, public hearing can be summarized as follows:
- (1) Relevant testimony by Petitioner Lars Johnson can be summarized as follows:
 - (a) The addition will be built upon the footprint of an existing hot tub enclosure and will not be expanding beyond that footprint.

- (b) There are no utilities, such as water or sewer, within the recorded easement at this time.
- (c) The recorded utility easement is within an area which is 45 to 50 feet between the adjacent townhomes therefore there is ample room to bring in equipment for maintenance within the easement.
- (2) Relevant testimony by Shawn Bickers, 4306 Summerfield Road, Champaign, and agent for the Petitioner, can be summarized as follows:

 - (a) The reason he and Mr. Johnson decided not to construct the addition to the rear of the townhome is because the architectural design of the condominiums is that the entire rear of the structure is glass therefore when you are inside the condominium the entire family room on the first floor has a glass wall and if the addition was built on the rear of the structure the family room would be trapped without a view.
 - (b) They decided to construct the addition on the south because there was an existing trellis structure at that location with 47 feet between the subject property and the adjacent townhome.
 - (c) There is a landscaped buffer of pine trees and leafy trees on the street and south sides of the structure therefore the addition would be inside of that buffer and would be hidden from view for both sides.
 - (d) The addition, which will be utilized as an office and golf cart bay, will be accessed from the family room of the townhome.
 - (e) The golf cart bay will be accessed through a garage door that will be located on the south side of the addition although they could go to the west and still be within the landscape buffer.
 - (f) The garage door is to be placed on the south side of the addition, which is already one foot from the side yard, Mr. Johnson would have to cross the neighbor's lot to access the golf cart bay.
 - (g) On the original plans that were drawn it was realized that there was only a one foot side yard therefore an access in the block foundation was not built so that the access can be shifted if necessary to the west, street side, of the addition.

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- (h) The neighbor who lives in the condominium to the south of the subject property was under the same assumption for the location of the lot line and that neighbor has a mowing agreement where they split the mowing responsibility of the area in between the two structures.
- (i) The neighbor to the south is now concerned about the trees that are located in the area that was assumed to be Mr. Johnson's property and their responsibility for maintenance of those trees.
- (j) The neighbors have been very cooperative in discussing the addition.
- (k) Access to the golf cart bay from the south would be better because there are two air conditioning units which are located on the west side of the subject structure which would need to be relocated for access from the west (street side).
- (l) It is common practice in this area for the golf cart traffic to travel within those easements.
- (m) There are similar structures constructed on two other condominiums which are located to the south of the subject property.
- (n) He intends to cover the foundation and weatherproof the bare wall and there will be no problem with the foundation being exposed to the winter elements.

F. The Plat of BRIAR HILL 2nd ADDITION indicates the following:

- (1) A 10 feet wide utility easement on the north line of Lot 5 which is the shared or common lot line with the subject property and a 5 feet wide utility easement on both sides of the shared lot line between Lots 5 and 4. Also, the average lot width of both Lots 5 and 4 are greater than 150 feet
- (2) There are no utility easements on the shared lot lines between Lots 1 and 2; or between Lots 2 and 3; or between Lots 3 and 4. The average lot width of Lot 1, Lot 2, and Lot 3 each appear to be 145 feet wide or wider.

G. Comparing the subject lot to the other similar lots on the north side of Briar Hill Drive reveals the following:

- (1) The subject property has an average lot width of only 140 feet and has a 10 feet wide utility easement on each side lot line for an overall net buildable lot width of only 120 feet.
- (2) The other five lots on the North side of Briar Hill Drive have similar sized buildings and are similar in use to the subject property but the lots are 145 feet wide or wider and 3 of the 4 shared lot lines have no utility easements and therefore the smallest net buildable lot width among those five lots appears to be Lot 2 with a net buildable lot width of 145 feet.

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, **“Asking to reduce side setback to allow for addition.”**
 - B. Regarding Part B of the Variance as described in the re-advertisement:
 - (1) Without the proposed variance the petitioner could not finish constructing the proposed addition on the side of the existing townhome and the foundation that has already been constructed will have to be removed. ~~It is unclear why the addition is proposed on the side as opposed to the rear of the townhome. There appears to be adequate area in the rear of the townhome that would not encroach within the required side or rear yard or within the utility easement.~~
 - (2) In an email dated October 10, 2013, from Elmer Crawford, Ameren Illinois, to Shawn Bickers, co-petitioner, Mr. Crawford, indicated that there are electric facilities within the easement along the north and east easement and that there is no immediate plan to use the south easement, but it is not a vacation of the south easement.
 - C. Without Parts A.(1), (2), and (3) of the proposed variance the existing townhouses could not be rebuilt in their current footprint in the event of a fire or natural disaster.
 - D. Relevant testimony at the November 14, 2013, public hearing by Shawn Bickers, 4306 Summerfield Road, Champaign, and agent for the Petitioner, can be summarized as follows:
 - (1) The reason he and Mr. Johnson decided not to construct the addition to the rear of the townhome is because the architectural design of the condominiums is that the entire rear of the structure is glass therefore when you are inside the condominium the entire family room on the first floor has a glass wall and if the addition was built on the rear of the structure the family room would be trapped without a view.
 - (2) They decided to construct the addition on the south because there was an existing trellis structure at that location with 47 feet between the subject property and the adjacent townhome.

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

9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:
 - A. The Petitioner has testified on the application, **“Owner was not aware of side setback.”**
 - B. Generally regarding pending Zoning Use Permit Application (ZUPA) No. 249-13-01:
 - (1) ZUPA No 249-13-01 for the proposed addition was submitted on September 6, 2013.
 - (2) On September 10, 2013, Staff began processing the permit application and contacted Mr. Bickers (co-petitioner) regarding the site plan because Staff believed the site plan was incorrect based on research of the approved subdivision plat and the previously authorized ZUPA (No. 241-75-02) on the property. Mr. Bickers was informed that a Variance would be required because the proposed construction was too close to the south property line.
 - (3) On November 5, 2013, Staff conducted a site visit to the subject property. On this visit staff became aware that the petitioner had already started construction without a Zoning Use Permit. Siding had been removed from the exterior and the foundation for the proposed addition had already been dug. No Zoning Use Permit is required for the removal of siding or digging a foundation.
 - C. The nearest building on neighboring property is approximately 50 feet from the shared property line.
 - D. Relevant testimony at the November 14, 2013, public hearing by Shawn Bickers, 4306 Summerfield Road, Champaign, and agent for the Petitioner, can be summarized as follows:
 - (1) In Champaign, Urbana and Savoy a check is not required until the application is approved therefore after he went to the County with his application and fees he spoke with the excavator and the excavator incorrectly assumed that the permit was issued and began excavating the foundation.
 - (2) He (Mr. Bickers) was out of town when the excavator dug the footings and installed the block foundation and when he (Mr. Bickers) returned he informed the excavator that he did not have the approved permit from the County yet.
 - (3) He (Mr. Bickers) called the County to determine the status of the permit and that is when staff informed him that there was an issue with the side yard of the addition and the existing easement therefore he ceased all further work on the project.
 - (4) The siding that was removed from the townhome has not been replaced and will not be replaced until the Board determines the outcome of the variance request.

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, **“Will match other addition in the neighborhood.”**
 - B. Regarding the amount of the requested Variance:
 - (1) Regarding Part B of the Variance as described in the re-advertisement:
 - (a) The requested variance in Part B.(1) for a side yard of 1 foot is 20% of the minimum required 5 feet for a variance of 80%.
 - (b) The requested variance in Part B.(2) from Section 4.2.2D. to authorize construction within a recorded utility easement is a 100% variance.
 - (2) Regarding Parts A.(1), (2) and (3) of the Variance as described in the re-advertisement:
 - (a) The requested variance in Part A.(1) for lot coverage of 44% is 110% of the maximum allowed 40% for a variance of 110%.
 - (b) The requested variance in Part A.(2) for a front setback of 40 feet is 72% of the minimum required 55 feet for a variance of 28%.
 - (c) The requested variance in Part A.(3) for a front yard of 18 feet is 72% of the minimum required 25 feet for a variance of 28%.
 - C. Regarding the considerations that underlay the requirements that are the subject of Part B. of the Variance:
 - (1) Relative to Part B.(1) of the Variance, 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:
 - (a) Adequate light and air: The subject property is in residential use. The properties to the south and east are in residential use.
 - (b) Separation of structures to prevent conflagration: The subject property is within the Lincolnshire Fields Fire Protection District and the station is approximately 1 road mile from the subject property. The nearest structure on adjacent property ~~to the proposed addition~~ is approximately 50 feet to the south.
 - (c) Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.

- (2) Relative to Part B.(2) of the Variance, Regarding the Zoning Ordinance does not clearly state the considerations that underlay the considerations related to the prohibition on construction in utility easements:
- (a) The prohibition on construction in drainage easements and utility easements in paragraph 4.2.2 D. were added to the Zoning Ordinance in Ordinance No. 544 (Case 105-AT-97 Part D) that was adopted on November 18, 1997. The evidence, testimony, and Finding of Fact for Case 105-AT-97 Part D merely discussed that the amendment gave the Zoning Administrator the authority to prevent construction in these areas where construction is not supposed to occur.
 - (b) Construction should not occur in a dedicated utility easement for at least the following reasons:
 - i. Construction could disturb existing utilities that are already installed in the utility easement. There is no evidence that the existing unauthorized construction has disturbed any existing infrastructure.
 - ii. Construction could prevent installation of necessary future utilities in the utility easement at some future time. At this time it is not known if the existing unauthorized construction will prevent installation of any future utility in the utility easement.
- D. Regarding the considerations that underlay the requirements that are the subject of Part A. of the Variance:
- (1) Relative to Part A.(1) of the Variance, Regarding the Zoning Ordinance does not clearly state the considerations that underlay the maximum lot coverage requirement but in general it is presumably intended to ensure the following:
- (a) Presumably the maximum lot coverage requirements are intended to allow for considerations such as adequate light, air, recreational areas and adequate area for septic systems.
 - (b) The maximum lot coverage in the R-4 District is 40%. The subject property is 14,840 square feet which would allow 5,936 square feet of coverage until the maximum lot coverage would be reached. The existing lot coverage of the building is 43% and was granted a Zoning Use Permit in 1975 (No. 241-75-02). Presumably staff made an error in the review of this criterion.
 - (c) The subject property is served by public water and public sanitary sewer systems.
- (2) Relative to Parts A.(2) and (3) of the Variance, the Zoning Ordinance does not clearly state the considerations that underlay the front setback and front yard requirements but presumably the front setback and front yard are intended to ensure the following:
- (a) Adequate separation from roads.
 - (b) Allow adequate area for road expansion and right-of-way acquisition.

(2) It is unlikely that Briar Hill Drive will be widened in front of the subject property because the subject property is located at the end of the street.

E. The requested variance is not prohibited by the *Zoning Ordinance*.

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

11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
 - A. The Petitioner has testified on the application: **“Allows 43 feet between buildings for firefighting, on a dead end street. Addition would be inside existing tree buffer.”**
 - B. Mr. Keith Padgett, the Champaign Township Road Commissioner, has received notice of this variance and indicated to Andy Kass, Associate Planner, on November 8, 2013, that he has no problem with the requested variance from a road standpoint.
 - C. The Fire Protection District has been notified of this variance but no comments have been received.
 - D. The nearest building on neighboring property is approximately 50 feet from the shared property line.
 - E. Regarding utilities that may or may not be present in the recorded utility easement:
 - (1) There is a 10 feet wide utility easement along the north, south, and east property lines of the subject property.
 - (2) Regarding whether there is a sewer line in the easement:
 - (a) The Urbana-Champaign Sanitary District (UCSD) sewer map indicates that a municipal approved collector sewer line is located within the recorded utility easement along in the vicinity of the south property line.
 - (b) Inspections made by UCSD staff and documented in a November 15, 2013, email from UCSD Director of Engineering Services Mark Radi to Petitioner Lars Johnson indicated that the sewer is approximately 4 feet south of the addition and a December 2, 2013, email from UCSD Director of Engineering Services Mark Radi to Petitioner Lars Johnson indicates that the sewer line is in the easement on the adjacent property and UCSD does not object to construction as long as the construction is not in an easement occupied by the UCSD.

- (3) In an email dated October 10, 2013, from Elmer Crawford, Ameren Illinois Senior Engineering Representative, to Shawn Bickers, co-petitioner, Mr. Crawford indicated that there are electric facilities within the easement along the north and east easement and that there is no immediate plan to use the south easement, but it is not a vacation of the south easement.
- (4) Sheet P14 of Illinois American Water Distribution System Map Champaign District dated March 2010 (redacted to omit unnecessary information) indicates water service lines in the western portion of the utility easement but no water lines in the vicinity of the proposed addition.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

12. Generally regarding and other circumstances which justify the Variance:
 - A. The Petitioner has testified on the application: **“Would replace existing deck and trellis, no larger. Will not impair drainage or increase runoff.”**

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:
 - A. **In regards to construction within the recorded utility easement, this Variance authorizes the following:**
 - (1) **Construction of the building addition may be completed as indicated on the approved site plan and approved floor plan provided that Zoning Use Permit No. 249-13-01 is authorized by the Zoning Administrator.**
 - (2) **The addition may be occupied provided that the Zoning Administrator authorizes a Zoning Compliance Certificate.**
 - (3) **If the addition is damaged or destroyed to more than 50% of the replacement value the addition shall not be repaired and in fact shall be removed completely including the footings, unless a Plat of Vacation of Utility Easement is duly approved and filed with the Champaign County Recorder of Deeds for only that part of the easement occupied by the addition, in which case the addition may be reconstructed in the same footprint and same location.**

The special condition stated above is required to ensure the following:

Preserving the public interest in the original utility easement unless and until the easement is officially vacated.

- B. **Within 30 days of the Final Determination for Case 764-V-13 the petitioner shall do the following:**
 - (1) **Attachment H to the Supplemental Memorandum dated December 5, 2013, shall be filed as a “Miscellaneous Document” with the Champaign County Recorder of Deeds.**
 - (2) **Provide a photocopy of the recorded document to the Zoning Administrator.**

The special condition stated above is required to ensure the following:

That potential buyers of the property are aware of the limitation imposed in the special conditions of Case 764-V-13.

- C. The Zoning Administrator shall not authorize Zoning Use Permit Application No. 249-13-01 unless, in addition to all other requirements, the Petitioner has provided a photocopy of the recorded Attachment H to the Supplemental Memorandum dated December 5, 2013, that shall have been filed as a “Miscellaneous Document” with the Champaign County Recorder of Deeds.**

The special condition stated above is required to ensure the following:

Full compliance with the approval of Case 764-V-13.

DOCUMENTS OF RECORD

1. Zoning Use Permit Application No. 249-13-01 received September 6, 2013, with attachments:
 - A Floor plan and section received September 6, 2013
 - B Site Plan received September 6, 2013
2. Variance Application received on October 15, 2013, with attachments:
 - A Site Plan
 - B Floor Plan
 - C Plot Plans
 - D Email from Elmer Crawford, Ameren Illinois, to Shawn Bickers dated October 10, 2013
3. Zoning Use Permit 241-75-02 file
4. Revised Site Plan received October 31, 2013
5. Preliminary Memorandum dated November 8, 2013 with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received October 31, 2013
 - C Annotated Site Plan
 - D UCSD Sewer Map Excerpt
 - E Floor Plan received October 15, 2013
 - F Copy of Recorded Plat for Wisegarvers Subdivision
 - G Email from Elmer Crawford, Ameren Illinois, to Shawn Bickers dated October 10, 2013
 - H Site Visit Photos
 - I Draft Summary of Evidence, Finding of Fact, and Final Determination
6. Supplemental Memorandum dated December 4, 2013 with attachments:
 - A Draft Minutes of November 14, 2013, public hearing for Case 764-V-13 (included separately with the minutes of the whole public hearing)
 - B Site Plan received September 6, 2013
 - C Copy of Plat of BRIAR HILL 2nd ADDITION (Annotated to show location of subject property; 2 pages total)
 - D Aerial photograph of Briar Hill Subdivision with superimposed lot lines, address numbers, and partial PINs (included separately in color)
 - E Email dated November 15, 2013, from UCSD Director of Engineering Services Mark Radi to Lars Johnson (and subsequently forwarded to Zoning Administrator John Hall)
 - F Email dated December 2, 2013, from UCSD Director of Engineering Services Mark Radi, UCSD to Lars Johnson (and subsequently forwarded to Zoning Administrator John Hall)
 - G Excerpt of Sheet P14 of Illinois American Water Distribution System Map Champaign District dated March 2010 (Redacted to omit unnecessary information)
 - H Document to be Filed With Recorder of Deeds as a Miscellaneous Document
 - I Revised 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 764-V-13 held on November 14, 2013, and December 12, 2013, the Zoning Board of Appeals of Champaign County finds that:

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

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

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

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

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

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

7. *{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}*

FINAL DETERMINATION

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

The Variance requested in Case 764-V-13 is hereby *{GRANTED / GRANTED WITH CONDITIONS/ DENIED}* to the petitioner **Lars Johnson & Shawn Bickers (agent)** to authorize the following in the **R-4 Multiple Family Residence Zoning District**:

Part A. Authorize the following variance for an existing townhouse:

- (1) lot coverage of 44% in lieu of the maximum allowed 40%; and
- (2) a front setback of 40 feet from the centerline of Briar Hill Drive in lieu of the minimum required 55 feet; and
- (3) a front yard of 20 feet in lieu of the minimum required 25 feet.

Part B. Authorize the following variance for an addition to an existing townhouse:

- (1) authorize construction of a building addition in a recorded utility easement in lieu of the requirement that no construction shall take place in a recorded utility easement; and
- (2) a side yard of 1 foot in lieu of the minimum required 5 feet.

{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



DISCLAIMER
 This map was prepared by the Champaign County GIS Consortium (CCGIS) using the best available data. This map and its underlying data is intended to be used as a general index to land related information and is not intended for detailed, site-specific analysis. CCGISC does not warrant or guarantee the accuracy of this information for any purpose.

For questions regarding availability of geo-data or the CCGISC, or to report a mapping error, please contact CCGISC at: 217-819-3555.



1 inch = 100 feet
 1 inch = 0.02 miles



Map Data Provided By
 Champaign County GIS Consortium

CASE NO. 765-V-13

PRELIMINARY MEMORANDUM

December 4, 2013

Petitioners: **Ashley Schum and
John Copple (contract
purchasers) and
Mick Harshbarger
(owner)**

Site Area: **approx. 1.0 acre**

Time Schedule for Development:
sale is pending

Prepared by: **John Hall**
Zoning Administrator

**Request: Authorize the following in the
CR District for the occupancy and use
of an existing detached accessory
structure that was previously denied
in Case 677-V-10:**

**Part A. A setback of 47 feet and 6
inches from CR 2545E in lieu
of the minimum required
setback of 55 feet.**

**Part B. A front yard of 17 feet and 6
inches from the front property
line in lieu of the minimum
required front yard of 25 feet.**

**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.**

BACKGROUND

Co-petitioner Mick Harshbarger was denied a variance for the existing detached accessory structure (garage) on May 26, 2011, in Case 677-V-10. The approved minutes from May 26, 2011, for Case 677-V-10 and a copy of the As-Approved and Signed Final Determination for Case 677-V-10 are included as Attachments.

The Denial of Case 677-V-10 meant that at least 7 feet 6 inches of the garage would have to be torn down to be in compliance with the Zoning Ordinance. However, the Zoning Administrator never followed up on requiring removal of that portion of the garage. At the time of the Final Determination the Department was short staffed (without an Associate Planner) and the public hearing for the wind farm special use permit was scheduled to open at the ZBA in August of 2011 and following up on the Final Determination never happened.

The Department was contacted on October 22, 2013, regarding a proposed sale of the subject property and the caller was made aware of the situation regarding the garage.

Co-petitioners Schum and Copple have entered into a contract to purchase the property from co-petitioner Harshbarger but the garage is still in violation.

EXISTING LAND USE AND ZONING

Table 1 summarizes the land use and zoning on the subject property and adjacent to it.

**Table 1. Land Use and Zoning in the
Vicinity of the Subject Property**

Direction	Land Use	Zoning
Onsite	Single Family Dwelling w/ Neighborhood Home Occupation (proposed to terminate with sale of property)	†AG-1 Agriculture (North 165 feet) †CR Conservation-Recreation (South 35 feet)
North	Single Family Dwelling	AG-1 Agriculture
East	Single Family Dwelling	AG-1 Agriculture
West	Single Family Dwelling	AG-1 Agriculture
South	Single Family Dwelling	CR Conservation-Recreation
†The minimum required front yard and setback are the same in both zoning districts		

MUNICIPAL EXTRATERRITORIAL JURISDICTION

The subject property is not located within the mile and a half ETJ of a municipality with zoning.

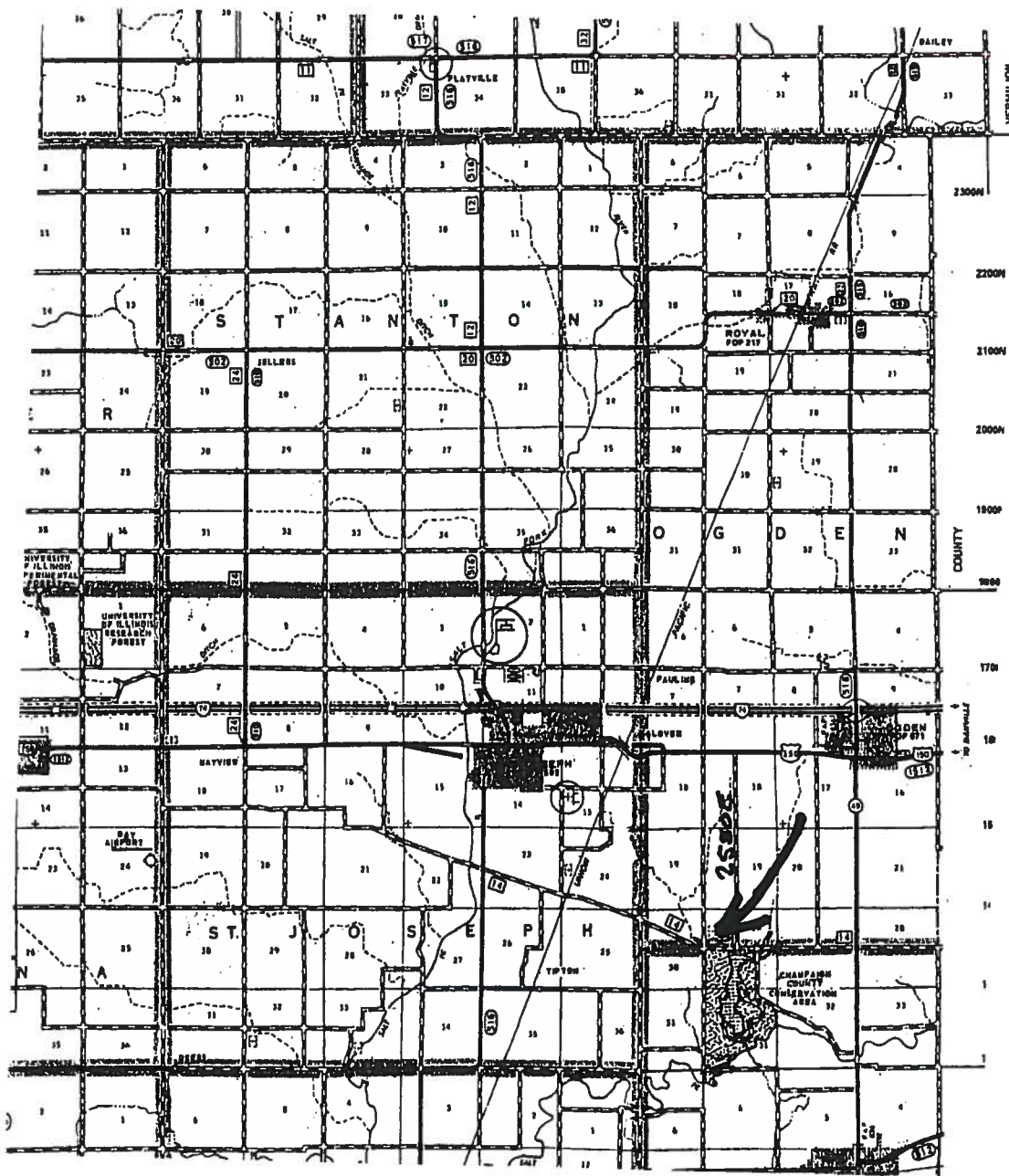
ATTACHMENTS

- A Case Maps from Case 637-V-08 (Location, Land Use, Zoning)
- B Site plan received November 5, 2013
- C 2008 Aerial photograph with parcel boundaries (with subject property indicated)
- D Permit 251-10-01 approved on September 20, 2010
- E Supplemental Memorandum for Case 677-V-10 dated April 28, 2011, with attachment:
 - A Cover letter dated April 1, 2011, to Greg Frerichs, Ogden Township Highway Commissioner, with Greg Frerichs signature and "OK" (included separately)
- F Approved minutes for May 26, 2011, public hearing for Case 677-V-10
- G As-Approved and Signed (Denied) Summary of Evidence, Documents of Record, Finding of Fact, and Final Determination for Case 677-V-10 (Signed)
- H Draft Summary of Evidence, Documents of Record and Finding of Fact (included separately on green paper)

ATTACHMENT A. LOCATION MAP

Case 637-V-08

APRIL 24, 2009

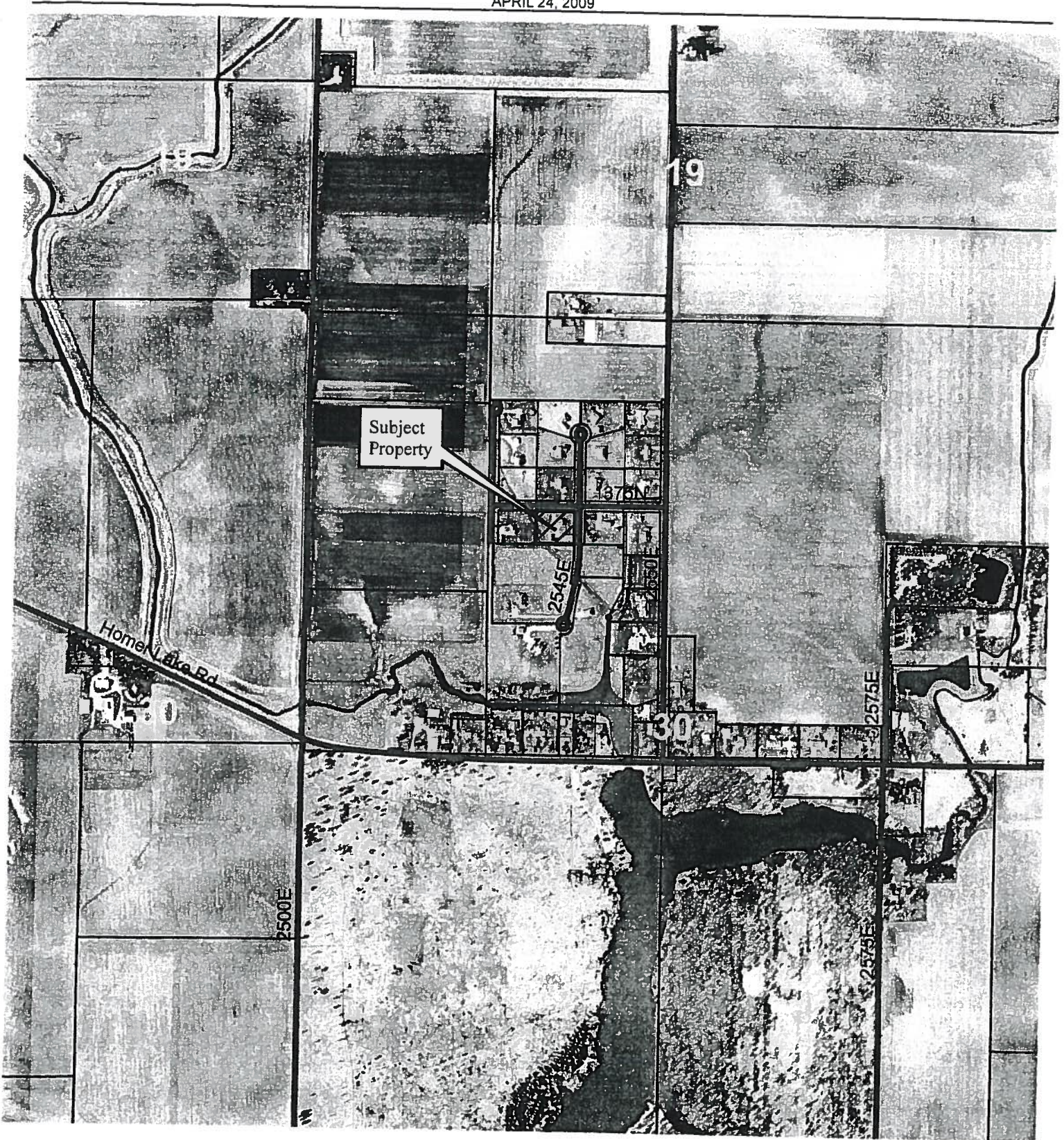


Champaign
County
Department of
**PLANNING &
ZONING**

ATTACHMENT A. LAND USE MAP

Case 637-V-08

APRIL 24, 2009



Area of Concern



Single Family



Farmstead



NORTH

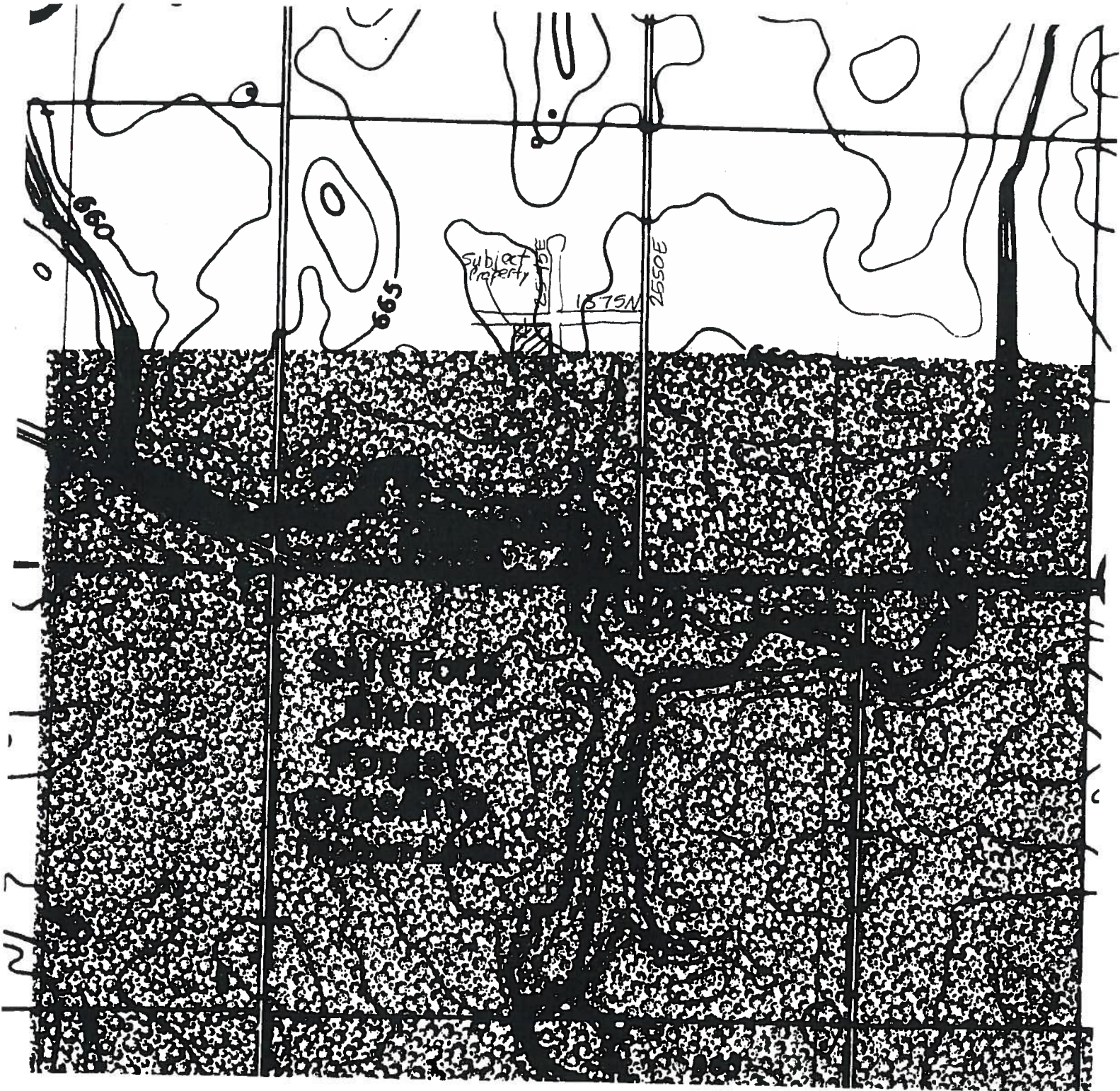
1 inch = 800 feet

Champaign
County
Department of
**PLANNING &
ZONING**

ATTACHMENT A. ZONING MAP

Case 637-V-08

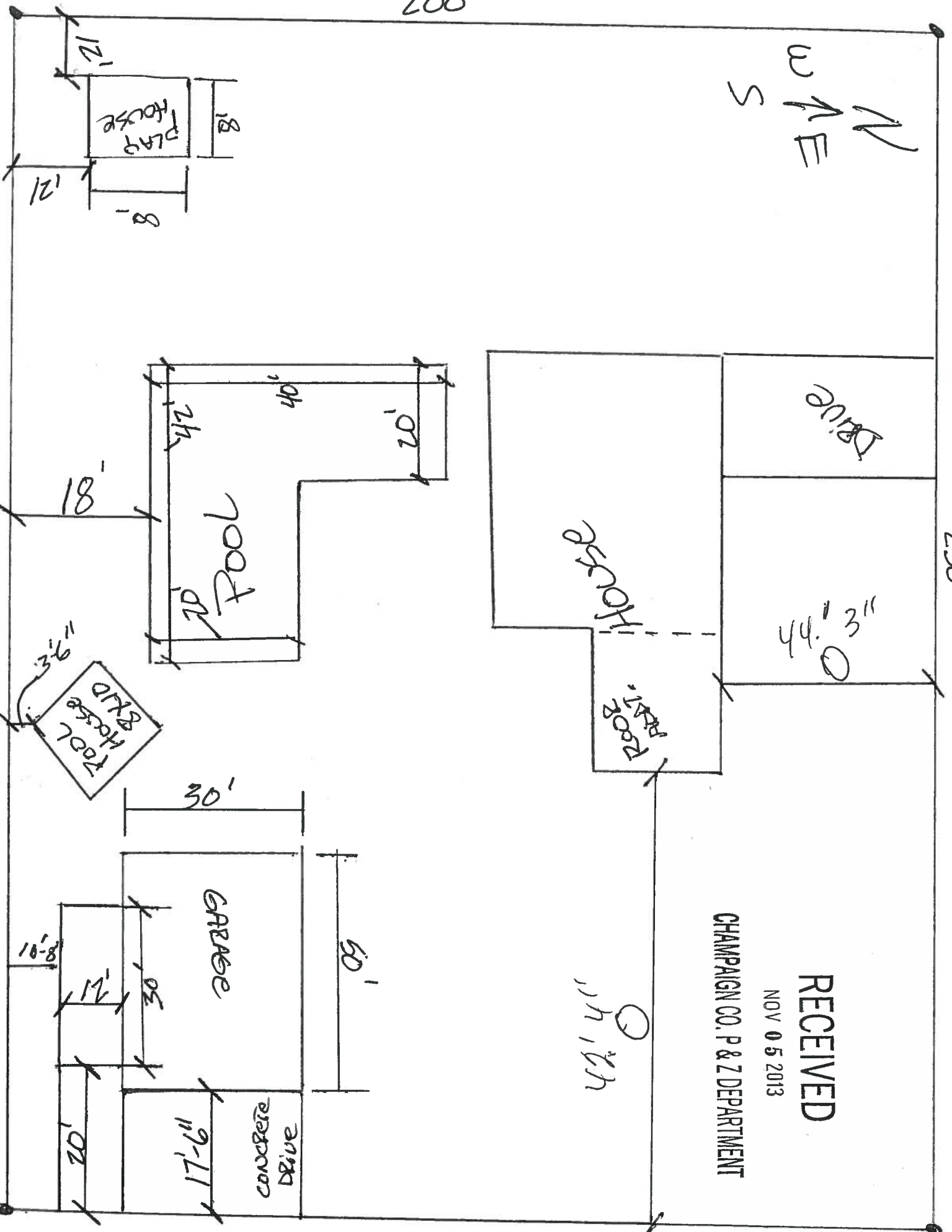
APRIL 24, 2009



AG-1 Agriculture	R-1 Single Family Residence	R-4 Multiple Family Res.	B-2 Neighborhood Business	B-5 Central Business	 NORTH Campaign 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	

200'

N
W ↗ E
S



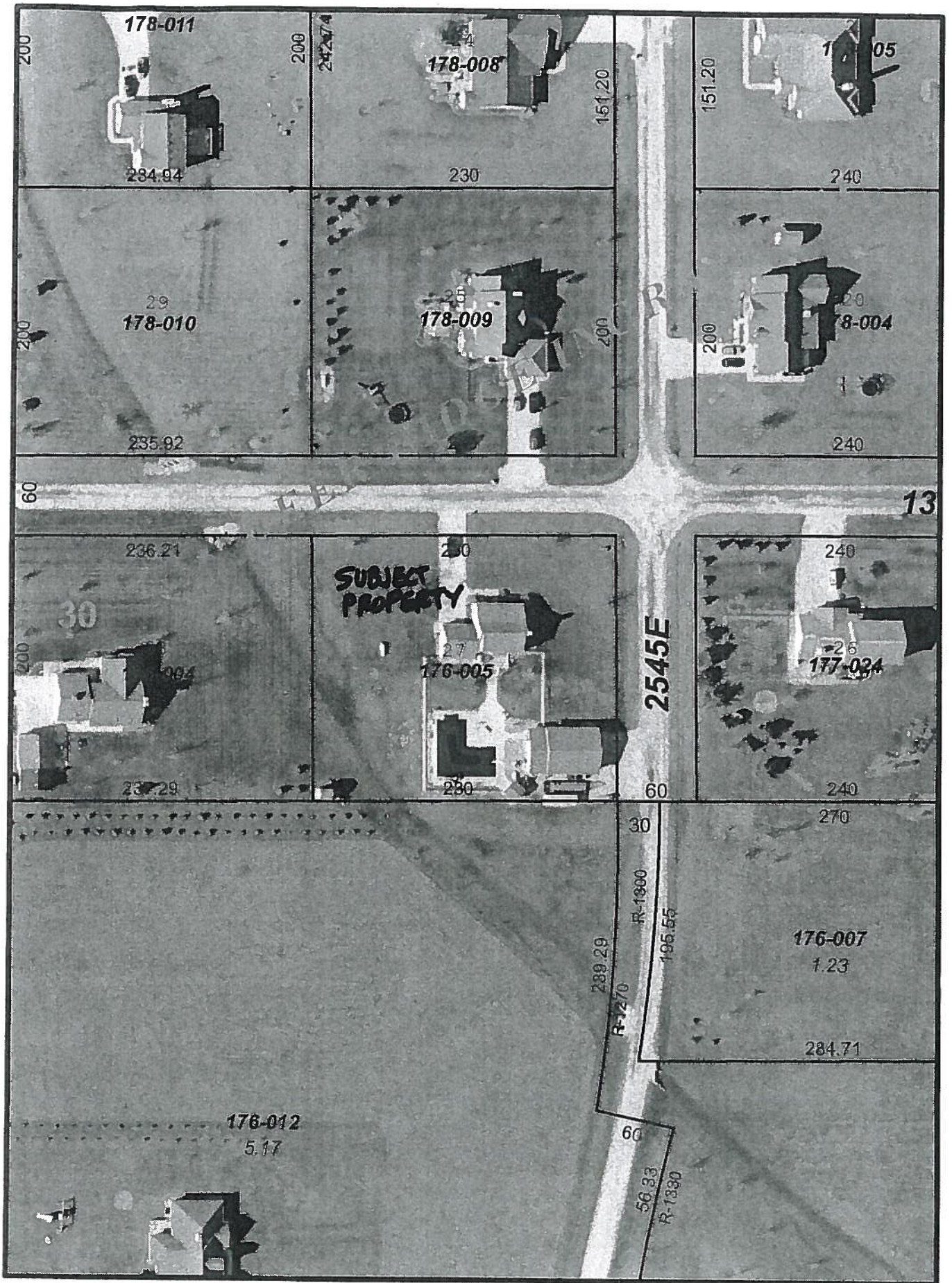
CHAMPAIGN CO. P & Z DEPARTMENT

NOV 05 2013

RECEIVED

11' 11"

100'



1 inch equals 100 feet

ZONING USE PERMIT

No.: 251-10-01

Application Date: 09/08/10

Township: Ogden Section: 30 Receipt #: 4030
P.I.N.: 17-24-30-176-005 Fee: \$161.00
Location (Address, directions, etc.): 2545 CR 1375N, Ogden, Illinois
Owner/s: Mick Harshbarger
Issued to: Owner: X Agent: Zoning District: CR Lot Area: 1.05 acres

Legal Description: Lot 27, Deer Run Subdivision

Project Is To: construct an addition to an existing single family home

Use Is: Accessory: Principal: X Conforming: X Non-Conforming:

By: Appeal #: Special Use #: Variance #: 637-V-08

Special Conditions: Issuance of this permit is based on the applicant agreeing to abide by any reasonable request made by the Champaign County Zoning Board of Appeals in Variance Case 617-V-10 for the existing detached garage.

Standard Conditions

1. This permit is issued with the understanding that all construction, use and occupancy will be in compliance with the application as filed with the Planning and Zoning Department, and with all provisions of the Champaign County Zoning Ordinance.

3. As evidenced in the Zoning Use Permit Application, the owner has expressly granted permission for representatives of the Champaign County Department of Planning & Zoning to enter the premises at reasonable times for the purpose of inspection to ensure compliance with the Champaign County Zoning Ordinance.

2. This Zoning Use Permit expires if the work described in the application has not begun within 180 consecutive days from issuance or if the work is not substantially completed within 365 consecutive days from issuance.

4. A Zoning Compliance Certificate must be obtained from the Department of Planning and Zoning, in writing, prior to occupancy or use of the work or structures covered by this permit (Section 9.1.3).

Date: 9/20/10

Signed By: [Signature]
Zoning Administrator
Authorized Agent

CASE NO. 677-V-10

SUPPLEMENTAL MEMORANDUM

April 28, 2011

Champaign

County

Department of

**PLANNING &
ZONING**

Petitioners: **Mick & Leah Harshbarger**

Site Area: **approx. 1.0 acre**

Time Schedule for Development: **N/A**

Brookens

Prepared by:

John Hall

Zoning Administrator

Administrative Center

1776 E. Washington Street

Urbana, Illinois 61802

(217) 384-3708

Request: Authorize the occupancy and use of an existing detached accessory structure with a setback of 47 feet and 6 inches from CR2545, a minor street, in lieu of the minimum required setback of 55 feet and a front yard of 17 feet and 6 inches from the front property line in lieu of the minimum required front yard of 25 feet 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.

STATUS

Comments regarding the proposed special conditions have been received from the Odgen Township Highway Commissioner and are included separately.

The State's Attorney could not be present at the meeting but did discuss the case with the Zoning Administrator and new evidence is proposed.

PROPOSED NEW EVIDENCE

After reviewing the comments of the Board at the March 24, 2011, public hearing I discussed this case at some length with the State's Attorney. The State's Attorney could not be present tonight but the following is my summary of that discussion:

1. The Board's duty is to ensure compliance with the Ordinance.
2. Approval of a variance requires a positive finding for all required criteria.
3. Denial of a variance should only occur when denial is the only determination consistent with the evidence and the required Findings (criteria); and 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 neighbourhood or other detriment to the public health, safety, and welfare.
4. If the Board makes a denial based on a good faith evaluation of the evidence it should not be concerned about any penalties arising to the County in any subsequent Court action.

After reflecting on the discussion with the State's Attorney I drafted the following evidence for the Board's consideration:

New evidence relevant to item #7 (Finding #1):

- E. The site plan for permit 266-08-09 indicated an adequate front yard but the subject building was not built in conformance with the site plan due to an error by the builder.

New evidence relevant item #9 (Finding #3):

- D. The petitioner was familiar with all of the peculiarities of the subject property and still indicated an adequate front yard on the site plan for 266-08-09.

New evidence for item #10 (Finding #4):

- H. Equipment for the Home Occupation is in the subject building and parking related to the Home Occupation is likely to occur at the subject building even though there is inadequate space between the subject building and the street right of way. Special conditions have been proposed to mitigate parking encroachment into the right of way but those conditions rely too much on enforcement by the Department of Planning and Zoning and place an unusual and unreasonable burden on the Department.

New evidence for item #11 (Finding #5):

Same as proposed for #10 above

No new evidence is proposed for Finding #6.

ATTACHMENTS

- A Cover letter dated April 1, 2011, to Greg Frerichs, Ogden Township Highway Commissioner, with Greg Frerichs signature and "OK" (included separately)

FILE COPY

RECEIVED

APR 26 2011

Champaign
County
Department of

**PLANNING &
ZONING**

April 1, 2011

Greg Frerichs
Ogden Township Highway Commissioner
2506 CR2300N
Ogden IL 61859

CHAMPAIGN CO. P & Z DEPARTMENT

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

(217) 384-3708

RE: Proposed special conditions of approval in Zoning Case 677-V-10

Dear Greg:

At the March 24, 2011, public hearing Case 677-V-10 was continued to the ZBA meeting on April 28, 2011, to provide ample time for review of proposed special conditions. Draft special conditions for Zoning Case 677-V-10 are attached for your review and comment.

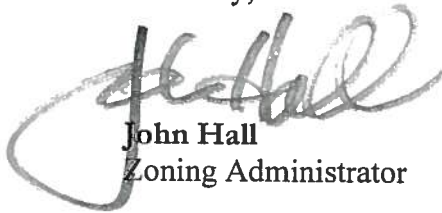
These proposed conditions have also been referred for review to the petitioners and the Champaign County State's Attorney.

Please let me know as soon as possible but not later than April 11, 2011, if you have concerns or suggestions for the special conditions because any changes to the conditions will also have to be reviewed by the petitioners and the State's Attorney.

The agenda and attachments for the April 28, 2011, ZBA meeting will be mailed on or about Wednesday, April 21, 2011, and I will update the ZBA on the proposed conditions in that mailing.

At the March 24, 2011, public hearing the ZBA stated that they would appreciate some form of written comment from you regarding the proposed conditions. Depending upon any changes you might suggest, the comment need be nothing more than your comments and signature on a copy of the proposed conditions. A stamped and addressed envelope for mailing comments back to this Department has been included for your use.

Sincerely,



John Hall
Zoning Administrator

ATTACHMENTS

OK Greg Frerichs

AS APPROVED MAY 26, 2011

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: April 28, 2011

PLACE: Lyle Shields Meeting Room
1776 East Washington Street

TIME: 7:00 p.m.

Urbana, IL 61802

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

MEMBERS ABSENT : None

STAFF PRESENT : Lori Busboom, John Hall, Susan Monte

OTHERS PRESENT : Mick Harshbarger. Sherry Schildt, Herb Schildt

1. Call to Order

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

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

3. Correspondence

There was none.

4. Approval of Minutes (March 24, 2011)

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

5. Continued Public Hearing

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

1 **Section 30 of Ogden Township and commonly known as the house at 2545 CR 1375N, Ogden.**
2

3 Mr. Thorsland informed those present that this is an Administrative Case and as such the County allows
4 anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a
5 show of hands for those who would like to cross examine and each person will be called upon. He
6 requested that anyone called to cross examine go to the cross examination microphone to ask any
7 questions. He said that those who desire to cross examine are not required to sign the witness register
8 but are requested to clearly state their name before asking any questions. He noted that no new
9 testimony is to be given during the cross examination. He said that attorneys who have complied with
10 Article 6.5 of the ZBA By-Laws are exempt from cross examination.
11

12 Mr. Hall stated that a new memorandum had been distributed. He said that attached to that
13 memorandum is a letter from staff to the Ogden Township Highway Road Commissioner. Mr. Hall
14 stated that he had a meeting with the Ogden Township Highway Commissioner who stated that he was
15 comfortable with the proposed special conditions which also means he is comfortable with the garage
16 staying where it is. Mr. Hall noted that the Ogden Township Highway Commissioner had written 'OK'
17 and signed his name at the bottom of the letter.
18

19 Mr. Hall said that he had an opportunity to discuss the proposed special conditions prior to the public
20 hearing with Mr. Harshbarger. He noted that Mr. Harshbarger indicated to him that he had not received
21 a copy of the letter to the Ogden Township Road Commission outlining the proposed conditions prior to
22 the public hearing.
23

24 Mr. Hall stated that the proposed conditions are not substantially different from what had been discussed
25 at the previous hearing.
26

27 Mr. Hall said that he had asked the Assistant State's Attorney to be in attendance at the public hearing,
28 however, she was not able to attend. Mr. Hall said that he asked her several questions that the Board
29 may have had if she had been in attendance. That discussion has been summarized in the new
30 memorandum, starting off with the duty of the Zoning Board of Appeals is to assure compliance with the
31 Champaign County Zoning Ordinance. He said that the Board can only approve a variance if a positive
32 finding can be made on all required criteria. If a positive finding is made on all but one of the criteria,
33 the variance cannot be approved. He noted that approval of a variance takes four affirmative votes. As
34 Board members move to adopt the Findings of Fact, if the Findings are affirmative and the Board
35 members as individuals, then you, as individual Board members, should not vote to approve the Findings
36 if you cannot support approval of the variance. This will ensure the Final Determination is consistent
37 with the Findings.
38

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

AS APPROVED MAY 26, 2011

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

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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. Harshbarger 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.**

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

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

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

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

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

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

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

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

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

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

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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.

1
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

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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 CONDCTIONS IS" because that variance is what is

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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 Courson – yes Miller – yes
25 Palmgren – yes Schroeder – yes 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

AS APPROVED (DENIED) APRIL 28, 2011

677-V-10

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

Final Determination: **DENIED**

Date: **April 28, 2011**

Petitioner: **Mick and Leah Harshbarger**

Request: **Authorize the occupancy and use of an existing detached accessory structure with a setback of 47 feet and 6 inches from CR2545, a minor street, in lieu of the minimum required setback of 55 feet and a front yard of 17 feet and 6 inches from the front property line in lieu of the minimum required front yard of 25 feet and located in the AG-1 District.**

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 24 and April 28, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioners, Mick and Leah Harshbarger, own the subject property.
2. The subject property is 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.
3. The subject property is not located within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning.

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. A Neighborhood Home Occupation is an accessory use on the subject property.
 - B. Land south of the subject property is zoned CR Conservation-Recreation and is in use as single family dwellings.

ITEM 4. (CONTINUED)

- C. Land to the north, east, and west of the subject property is zoned AG-1 Agriculture and is in use as single family dwellings.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Generally regarding the proposed site plan:

- A. The original house was constructed in 1997 under ZUPA 164-97-05 and received a Zoning Compliance Certificate on June 18, 1998. The house includes an attached garage on the north side that is accessed from CR1375N.
- B. The detached garage, swimming pool, pool house, and play house were originally constructed by the petitioner without permits and the pool house and play house were the subjects of variance Case 637-V-08 that was determined on June 25, 2009, as follows:

- (1) The play house was the detached accessory structure in Part A of the previous variance case 637-V-08 and was originally constructed in the southwest corner of the subject property only four feet, two inches from the west lot line and only four feet from the south lot line instead of the required 10 feet in both instances. It is eight feet by eight feet and is four feet, six inches off the ground on treated posts.

Part A of Case 637-V-08 was denied and the play house was relocated as indicated on the approved site plan for case 637-V-08. That same site plan was submitted for the previously unauthorized structures in zoning use permit application 266-08-09 on July 9, 2009.

The relocation was verified in a compliance inspection on September 17, 2010. The compliance inspection revealed that the garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the play house.

- (2) A swimming pool was constructed south of the house and conforms to all Zoning Ordinance requirements. The pool was included with other previously unauthorized structures in zoning use permit application 266-08-01 on July 9, 2009. The compliance inspection revealed that the garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the pool.
- (3) The pool pump house was the detached accessory building in Part B of the previous variance case 637-V-08 and is only three feet, six inches from the south lot line instead of the required 10 feet.

ITEM 5.B. (3) (CONTINUED)

Part B of Case 637-V-08 was approved subject to the following special condition:

If the pump house is damaged or destroyed it should be relocated and reconstructed in compliance with the Zoning Ordinance.

The pool pump house was included with other previously unauthorized structures in zoning use permit application 266-08-01 on July 9, 2009. The side yard of the pool pump house was verified in a compliance inspection on September 17, 2010. The compliance inspection revealed that the garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the pool pump house.

- (3) The detached garage was included with other previously unauthorized structures in zoning use permit application 266-08-01 on September 22, 2008. An addition to the garage was applied for in zoning use permit application 310-09-03 on November 6, 2009. Permit 310-09-03 was approved on November 9, 2009, because the site plan indicated that the addition would exceed the minimum required setback and front yard and the petitioner had testified in Case 637-V-08 that the existing garage complied with those requirements.

The subsequent compliance inspection for permit 266-08-09 on September 17, 2010, revealed that the garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the garage or the garage addition.

- C. The petitioner submitted zoning use permit application 251-10-01 for an addition to the house on September 8, 2010. Permit 251-10-01 was authorized on September 20, 2010, with the following condition:

Issuance of this permit is based on the applicant agreeing to abide by any reasonable request made by the Champaign County Zoning Board of Appeals in Variance Case 677-V-10 for the existing detached garage.

- D. The petitioner operates an office for his Neighborhood Home Occupation (NHO) out of his home. The petitioner's NHO is described on the application for a permit and in a written statement submitted with the site plan, and was approved on September 22, 2008, (and included as an attachment to the Preliminary Memorandum) as follows:

- (1) The business is named Pickle Construction. It is a construction business, apparently focusing on carpentry. As part of the NHO, the petitioner also does snow removal.

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

ITEM 5.D. (CONTINUED)

- (2) The business is operated from an office in the single family dwelling and the large storage garage.
- (3) The petitioner keeps one truck for use in the construction business and one truck for snow removal. An extra truck appears to be stored in the large storage garage, but is not used regularly. A trailer may be parked with the work truck outside the garage on the south side.
- (4) The petitioner does not indicate any activities other than storage that take place on the subject property and indicates that no employees meet at the subject property for work.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
 - A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variance (capitalized words are defined in the Ordinance):
 - (1) "ACCESSORY BUILDING" is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE or the main or principal USE, either detached from or attached to the MAIN OR PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN OR PRINCIPAL STRUCTURE, or the main or principal USE.
 - (2) "ACCESSORY STRUCTURE" is a STRUCTURE on the same LOT with the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either DETACHED from or ATTACHED to the MAIN or PRINCIPAL STRUCTURE, subordinate to and USED for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
 - (3) "BUILDING, MAIN or PRINCIPAL" is the BUILDING in which is conducted the main or principal USE of the LOT on which it is located.
 - (4) "BUILDING RESTRICTION LINE" is a line usually parallel to the FRONT, side, or REAR LOT LINE set so as to provide the required YARDS for a BUILDING or STRUCTURE.
 - (5) "LOT" is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (6) "LOT, CORNER" is a LOT located:
 - (a) At the junction of and abutting two or more intersecting STREETS; or
 - (b) At the junction of and abutting a STREET and the nearest shoreline or high water line of a storm or floodwater runoff channel or basin; or
 - (c) At and abutting the point of abrupt change of a single STREET where the interior angle is less than 135 degrees and the radius of the STREET is less than 100 feet.

ITEM 6.A. CONTINUED

- (7) "LOT LINES" are the lines bounding a LOT.
- (8) "LOT LINE, FRONT" is a line dividing a LOT from a STREET or easement of ACCESS. On a CORNER LOT or a LOT otherwise abutting more than one STREET or easement of ACCESS only one such LOT LINE shall be deemed the FRONT LOT LINE.
- (9) "LOT LINE, REAR" is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE or to a tangent to the midpoint of the FRONT LOT LINE. In the case of a triangular or gore shaped LOT or where the LOT comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at the maximum distance from the FRONT LOT LINE or said tangent.
- (10) "STORAGE" is the presence of equipment, or raw materials or finished goods (packaged or bulk) including goods to be salvaged and items awaiting maintenance or repair and excluding the parking of operable vehicles.
- (11) "VARIANCE" is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning Board of Appeals are permitted to grant.
- (12) "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.
- (13) "YARD, REAR" is a YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
- (14) "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. Regarding Zoning Ordinance requirements for corner lots:

- (1) Subsection 4.3.2 illustrates a corner lot as having a setback along each adjacent street.
- (2) Paragraph 4.3.3 E. specifies that the minimum SIDE YARD on the STREET SIDE of a CORNER LOT shall be equal to the minimum FRONT YARD otherwise required in the DISTRICT.

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

ITEM 6. CONTINUED

- C. 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.
- 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.
- G. Paragraph 9.1.9.E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
- A. The Petitioner has testified on the application that, **“They will never make the road wider no more house will be built.”**

ITEM 7. CONTINUED

- B. At the April 30, 2009, public hearing for Case 637-V-08, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified to the following:
- (1) On the application that, **“Pool Pump House.”**
 - (2) At the public hearing he testified as follows:
 - (a) He was not aware that he needed a building permit for a detached garage or a play house.
 - (b) He has built these types of structures for many people in Champaign without obtaining a permit.
- C. Regarding the history of the garage:
- (1) The subject detached garage, swimming pool, pool house, and play house were originally constructed without permits and the pool house and play house were the subjects of permit 266-08-01 and variance Case 637-V-08.
 - (2) During the public hearing for Case 637-V-08 the petitioner was questioned specifically about the setback for the garage at the April 30, 2009, and the petitioner testified that the garage met the required front yard. At the time there had been no zoning compliance certificate inspection for permit 266-08-01 since the variance case had been approved only four months earlier.
 - (3) Part B of Case 637-V-08 was approved on June 25, 2009.
 - (4) The petitioner applied for zoning use permit 310-09-03 on November 6, 2009, to build an addition to the garage. The permit was approved based on the site plan indication that the addition would exceed the minimum required front yard and the petitioner’s earlier assertions about the existing garage. At the time there had been no zoning compliance certificate inspection for permit 266-08-01 since the variance case had been approved only four months earlier.
 - (5) The petitioner next applied for zoning use permit 251-10-01 on September 8, 2010, to build an addition to the dwelling. The Zoning Officer conducted a zoning compliance inspection on September 17, 2010, so as to verify that all construction was compliant and found that the garage (and the garage addition) was not compliant. The garage was found to have a front yard and setback less than required. Permit 251-10-01 was approved on that same day with a condition that the applicant abide by any reasonable decision of the Zoning Board of Appeals.

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

ITEM 7. CONTINUED

- D. Regarding CR2545:
- (1) The dedicated right of way for CR 2545 currently ends at the south line of the subject property even though Ogden Township maintains the pavement all the way to and including the cul-de-sac turnaround to the south.
 - (2) If CR2545 the dedicated right of way for CR 2545 ended at some point north of the subject garage it would not be a public street in front of the garage and there would be no required front yard or setback but instead only a required side yard of 10 feet.
- E. A 50 feet wide drainage easement crosses the southwest corner of the subject property and limits the location of structures along the south lot line (from Case 637-V-08).
- F. The site plan for permit 266-08-09 indicated an adequate front yard but the subject building was not built in conformance with the site plan due to an error by the builder.

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, **“The cost would be a lot!”**
- B. In the public hearing for Case 637-V-08, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified to the following:
- (1) On the application that, **“Power, plumbing, heater, gas line.”**
 - (2) The petitioner asserted to staff that there is no land available for purchase from the neighbors to the south to mitigate the amount of variance (that was required for the side yard).
- C. If the variance is not granted at least 7 feet 6 inches of the garage will have to be torn down or relocated.
- D. The A 50 feet wide drainage easement that cuts across the south west corner of the subject property reduces the space for buildings along the south lot line (from Case 637-V-08).
- E. The petitioner testified at the March 24, 2011, public hearing that it would be difficult but he would still be able to store his vehicle in the garage if eight feet were removed from the garage. He said that he has a television, couch, refrigerator, golf cart, four-wheeler and a lawn mower in the garage therefore it would be tight with the truck but he could rearrange those items to accommodate the vehicles.

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

9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:
- A. The Petitioner has testified on the application that, **“I thought my setback was 10 feet on a side yard. Didn’t know I had 2 front yards!”**
 - B. In the public hearing for Case 637-V-08, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified on the application that, **“I built pool pump house and did not know there was a 10 foot setback.”**
 - C. The location of the drainage easement across the southwest corner of the subject property was determined when the subject property was platted as part of Ingram’s Third Subdivision (from Case 637-V-08).
 - D. The petitioner was familiar with all of the peculiarities of the subject property and still indicated an adequate front yard on the site plan for 266-08-09.

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, **“None”**
 - B. The Zoning Ordinance does not clearly state the considerations that underlay the setback and front yard requirements. In general, the setback is presumably intended to ensure the following:
 - (1) Right of way acquisition. CR2545 is a minor street that currently ends at the south line of the subject property although the Highway Commissioner maintains the road all the way to and including the cul-de-sac turnaround and receives motor fuel tax funds for that maintenance. CR2545 will probably never be widened at this location and it is very unlikely that any additional right of way will ever be needed.
 - (2) Off-street parking. Regarding off street parking:
 - (a) The Zoning Ordinance requires a minimum of two parking spaces for a dwelling and the Neighborhood Home Occupation (NHO) on the subject property is allowed to have only one commercial vehicle. The Zoning Ordinance also requires a parking space to be a minimum of 9 feet wide and 20 feet long.
- The existing 17 feet 6 inch front yard is not long enough to accommodate a required parking space without projecting into the right of way but it appears that all required parking is available inside the garage.

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

ITEM 10. B. CONTINUED

- (b) On a letter submitted with the application for the NHO the petitioner has indicated there are three vehicles in total kept in the garage and a work truck that is kept outside. At this time it is not clear if the work truck extends into the right of way.
 - (c) The street pavement is a minimum of 20 feet wide and is more or less centered in the 60 feet wide right of way. Thus, the street pavement is approximately 20 feet from the subject property and there is approximately 37 feet 6 inches between the subject garage and the edge of the street pavement.
 - (3) Aesthetics. Aesthetic benefit may be a consideration for any given front yard and setback but can be very subjective. In this instance, the subject property retains a great deal of open space.
 - (4) Adequate light and air. The structure in question is an accessory structure which does not noticeably affect the amount of light and air available on the large lots in this neighborhood.
- C. The subject property conforms to all other *Zoning Ordinance* requirements.
- D. The existing front yard of 17 feet 6 inches is 70.0% of the required 25 feet for a variance of 30% and the existing setback of 47 feet and 6 inches from CR2545, a minor street, is 86.4% in lieu of the minimum required setback of 55 feet.
- E. The requested variance is not prohibited by the *Zoning Ordinance*.
- F. The petitioner in this case is the owner and operator of a construction business and asserted in the public hearing for Case 637-V-08 that he has constructed buildings in the City of Champaign without obtaining permits, so he was unaware of the need for permits in the County.
- G. In Case 637-V-08 Staff requested Mr. Harshbarger measure the distance from the centerline of the road to the detached garage and that information was not submitted however on April 30, 2009, Mr. Harshbarger testified in Case 637-V-08 that he was positive that the garage was 25 feet from the front property line along CR2545E.
- H. Equipment for the Home Occupation is in the subject building and parking related to the Home Occupation is likely to occur at the subject building even though there is inadequate space between the subject building and the street right of way. Special conditions have been proposed to mitigate parking encroachment into the right of way but those conditions rely on enforcement by the Department of Planning and Zoning and place an unusual burden on the Department.

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, “**No danger!**”
 - B. The Fire Protection District has received notice of this variance, but no comments have been received.
 - C. The Township Highway Commissioner has also received notice of this variance. The Township Highway Commissioner reviewed the case and the proposed special conditions and indicated that he was OK with the proposed special conditions on the April 1, 2011, letter from the Zoning Administrator that was included as an attachment to the Supplemental Memorandum dated April 28, 2011.
 - D. The petitioner testified at the March 24, 2011, public hearing that the length of the truck and construction trailer is 35 feet but he does not park anything in front of the shop but does park it in front of his house. He said that in general he always parks his truck in front of the house. He said that he does have a truck inside of the garage/shop that is used for snow removal.
 - E. Equipment for the Home Occupation is in the subject building and parking related to the Home Occupation is likely to occur at the subject building even though there is inadequate space between the subject building and the street right of way. Special conditions have been proposed to mitigate parking encroachment into the right of way but those conditions rely on enforcement by the Department of Planning and Zoning and place an unusual burden on the Department.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

12. Regarding proposed special conditions of approval:
- A. **Encroachment of parked vehicles into the right of way shall be limited.** There is reduced parking space in front of the subject garage due to the non-compliant front yard (distance between the garage and property line/ right of way line) of only 17 feet and 6 inches in lieu of the of the minimum required front yard of 25 feet. There is approximately 19 feet of clearance between the property line/ right of way line and the edge of the gravel base of the pavement and therefore a total of approximately 36 feet 6 inches between the garage and the edge of the gravel base of the pavement in lieu of the minimum 44 feet that would otherwise be required. The reduced parking space may result in encroachment of parked vehicles into the right of way and there are related highway safety concerns depending upon the amount of encroachment. The Township Highway Commissioner is the final authority on whether or not any parking is allowed in the right of way. However, the Zoning Board of Appeals may be able to help the Highway Commissioner by including some explicit special conditions for parking that extends into the

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

ITEM 12.A. CONTINUED

right of way. Any special condition of the ZBA can be overridden by the Highway Commissioner at any time. The following special conditions are proposed to address highway safety concerns associated with the reduced parking space in front of the subject garage but are not intended to apply to the subject property in general:

- (1) **At no time shall a parked or standing vehicle (ie, parked while attended) located on the subject property extend onto the street pavement and past the line of the gravel base of the pavement on either side of the driveway.** (Note: This condition will allow a parked vehicle to extend as much as 18 feet into the right of way but not onto the pavement and should ensure that there are no unusual traffic safety issues arising due to the reduced parking space in front of the garage. This condition is intended to be subordinate to the Township Highway Commissioner's authority and the Township Highway Commissioner can enforce any required parking restrictions in the right of way.)
- (2) **Unless otherwise directed by the Township Highway Commissioner, no parked or standing vehicle (ie, parked while attended) located on the subject property shall extend past the line of the right of way during times of anticipated street maintenance (and it shall be the petitioner's responsibility to anticipate street maintenance) or at other times as requested by the Township Highway Commissioner.** (Note: This condition requires that no vehicle extend past the property line during times of anticipated street maintenance such as application of road oil or clearing of snow and should ensure there are no unusual property damage issues caused by necessary street maintenance due to the reduced parking space in front of the garage. This condition is intended to be subordinate to the Township Highway Commissioner's authority and the Township Highway Commissioner can enforce any required parking restrictions in the right of way.)
- (3) **Unless otherwise directed by the Township Highway Commissioner, at no time from dusk to dawn shall a parked vehicle located on the subject property extend past the centerline of the roadside ditch in front of the subject garage.** (Note: Even though there are no liability issues to be concerned about the Board may want to require this greater amount of separation between the edge of pavement and parked vehicles at nighttime. This condition should provide approximately 10 feet of separation between a parked vehicle and the edge of the pavement base. This condition is intended to be subordinate to the Township Highway Commissioner's authority and the Township Highway Commissioner can enforce any required parking restrictions in the right of way.)
- (4) **Three documented violations of the special conditions of approval regarding encroachment of parked vehicles into the street right of way between the garage and the street shall void this approval and a new variance shall be required.** (Note: This

ITEM 12.A. CONTINUED

condition provides a long term enforcement mechanism for the special conditions. Documentation of a violation generally requires dated photographic evidence. As proposed these three documented violations could occur years apart and under different owners. Voidance of the variance approval will be a violation of the Zoning Ordinance and the Zoning Administrator would presumably send a Notice of Violation to the owner.)

The special conditions stated above are required to ensure the following:

To help ensure public safety by minimizing highway safety concerns associated with the reduced parking space in front of the subject garage and any resulting encroachment of parked vehicles into the right of way.

- B. If the subject garage is damaged or destroyed to more than 50% of replacement value it shall be reconstructed in full compliance with the Champaign County Zoning Ordinance.** (Note: The replacement value shall assume replacement by a third party and not by the homeowner.)

The special condition stated above is required to ensure the following:

To ensure that if the garage must be rebuilt it will be rebuilt to the requirements of the Ordinance.

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

The special condition stated above is required to ensure the following:

To ensure that future purchasers of the subject property will be aware of the special conditions that apply to the subject garage.

- D. The Zoning Administrator shall not issue any additional Zoning Compliance Certificates authorizing the use of buildings on the subject property unless the petitioner submits a copy of the recorded document required by condition D. above.** (Note: Use of a building without a Compliance Certificate is a violation of the Ordinance and a Compliance Certificate is still required for all accessory buildings on the subject property and the recent addition to the dwelling.)

The special condition stated above is required to ensure the following:

To provide an immediate enforcement mechanism to ensure compliance with the approval of the variance.

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

DOCUMENTS OF RECORD

1. Variance application from Mick and Leah Harshbarger, received on September 20, 2010, with attachments:
 - A Approved site plan for zoning use permit 310-09-03

2. Preliminary Memorandum with attachments:
 - A Case Maps from Case 637-V-08 (Location, Land Use, Zoning)
 - B Approved site plan for Case 637-V-08 received on June 29, 2009
 - C Approved site plan for Permit 310-09-03 (garage addition) received on November 6, 2009.
 - D Approved site plan for Permit 251-10-01 (house addition) received on September 8, 2010
 - E Excerpt of minutes of 4/30/09 public hearing for Case 637-V-08
 - F Final Plat of Ingram's Third (Deer Ridge) Subdivision (with subject property indicated)
 - G 2008 Aerial photograph with parcel boundaries (with subject property indicated)
 - H Neighborhood Home Occupation Permit Application for Pickle Construction
 - I Written statement regarding NHO operations received on February 3, 2009
 - J Permit 251-10-01 approved on September 20, 2010
 - K Draft Summary of Evidence

3. Handout of Draft conditions at the March 24, 2011, public hearing

4. Supplemental Memorandum dated April 21, 2011, with attachment:
 - A Revised Draft Summary of Evidence, Finding of Fact, and Final Determination

5. Cover letter dated April 1, 2011, from the Zoning Administrator to Greg Frerichs, Ogden Township Highway Commissioner, with Greg Frerichs signature and "OK"

6. Supplemental Memorandum dated April 28, 2011, with attachment:
 - A Cover letter dated April 1, 2011, to Greg Frerichs, Ogden Township Highway Commissioner, with Greg Frerichs signature and "OK" (included separately)

FINDINGS OF FACT

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

1. Special conditions and circumstances **DO** 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 this is a corner lot so you've got issues on two sides instead of one; and there is a possible traffic situation on the road going to the south on a road that is receiving tax money; and a 50 feet wide drainage easement in the southwest corner of the lot.
2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied **WILL NOT** prevent reasonable or otherwise permitted use of the land or structure or construction because the building in question was built by the applicant and he has testified that removing eight feet of the building to comply would be difficult but he could still do that and move the furniture around.
3. The special conditions, circumstances, hardships, or practical difficulties **DO** result from actions of the applicant because the applicant indicated in the evidence that it was his mistake that created this problem; and the site plan submitted by the applicant with the permit application indicated adequate space for the building to be built in compliance with the Zoning Ordinance and it was indicated as such on the site plan.
4. The requested variance **SUBJECT TO THE PROPOSED CONDITIONS IS** in harmony with the general purpose and intent of the *Ordinance* because it protects people with any potential traffic issues in front of the building and the road commissioner stated he had no problems with it in the letter that he signed; and if it were a side yard it would be adequate but it is a front yard.
5. The requested variance **SUBJECT TO THE PROPOSED CONDITIONS WILL NOT** be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the Fire Protection District had no response and the road commissioner responded and is comfortable with the special conditions.
6. The requested variance **SUBJECT TO THE PROPOSED CONDITIONS IS** the minimum variation that will make possible the reasonable use of the land/structure because that variance is what is required to bring the building into compliance with *Zoning Ordinance*.
7. ***THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE COMPLIANCE WITH THE CRITERIA FOR VARIANCE AND FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:***
 - A. **Encroachment of parked vehicles into the right of way shall be limited.**
 - (1) **At no time shall a parked or standing vehicle (ie, parked while attended) located on the subject property extend onto the street pavement and past the line of the gravel base of the pavement on either side of the driveway.**

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

- (2) Unless otherwise directed by the Township Highway Commissioner, no parked or standing vehicle (ie, parked while attended) located on the subject property shall extend past the line of the right of way during times of anticipated street maintenance (and it shall be the petitioner's responsibility to anticipate street maintenance) or at other times as requested by the Township Highway Commissioner.**
- (3) Unless otherwise directed by the Township Highway Commissioner, at no time from dusk to dawn shall a parked vehicle located on the subject property extend past the centerline of the roadside ditch in front of the subject garage.**
- (4) Three documented violations of the special conditions of approval regarding encroachment of parked vehicles into the street right of way between the garage and the street shall void this approval and a new variance shall be required.**

The special conditions stated above are required to ensure the following:

To help ensure public safety by minimizing highway safety concerns associated with the reduced parking space in front of the subject garage and any resulting encroachment of parked vehicles into the right of way.

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

The special condition stated above is required to ensure the following:

To ensure that if the garage must be rebuilt it will be rebuilt to the requirements of the Ordinance.

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

The special condition stated above is required to ensure the following:

To ensure that future purchasers of the subject property will be aware of the special conditions that apply to the subject garage.

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

The special condition stated above is required to ensure the following:

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

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To provide an immediate enforcement mechanism to ensure compliance with the approval of the variance.

AS-APPROVED (DENIED) SUMMARY OF EVIDENCE

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 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 677-V-10 is hereby **DENIED** to the petitioners, **Mick and Leah Harshbarger**, to authorize the occupancy and use of an existing detached accessory structure with a setback of 47 feet and 6 inches from CR2545, a minor street, in lieu of the minimum required setback of 55 feet and a front yard of 17 feet and 6 inches from the front property line in lieu of the minimum required front yard of 25 feet and located in the AG-1 District.

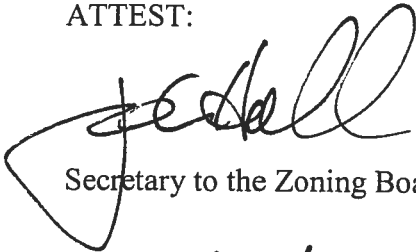
The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:



Eric Thorsland, Chair
Champaign County Zoning Board of Appeals

ATTEST:



Secretary to the Zoning Board of Appeals

Date 10/23/13

765-V-13

**PRELIMINARY DRAFT
SUMMARY OF EVIDENCE, FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: *{APPROVED/ DENIED}*

Date: **December 12, 2013**

Petitioners: **Contract purchasers Ashley Schum and John Copple and land owner Mick Harshbarger**

Request: **Authorize the following in the CR District for the occupancy and use of an existing detached accessory structure that was previously denied in Case 677-V-10:**

Part A. A setback of 47 feet and 6 inches from CR 2545E in lieu of the minimum required setback of 55 feet.

Part B. A front yard of 17 feet and 6 inches from the front property line in lieu of the minimum required front yard of 25 feet.

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SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 12, 2013**, the Zoning Board of Appeals of Champaign County finds that:

1. Regarding ownership of the subject property:
 - A. The co-petitioner Mick Harshbarger owns the subject property.
 - B. Co-petitioners Ashley Schum and John Copple have entered into a contract to purchase the subject property.
 - C. Attorney Gregory Ryan is representing the petitioners.
2. The subject property is 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.
3. The subject property is not located within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning.

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. Regarding the subject property:
 - (1) The North 165 feet of the subject property is zoned AG-1 Agriculture and the South 35 feet are zoned CR Conservation Recreation.
 - (2) The entire property is in use as a single family dwelling. Co-petitioner Mick Harshbarger conducts a Neighborhood Home Occupation (NHO) as an accessory use on the subject property and the NHO is proposed to terminate with the execution of the contract sale of the property to co-petitioners Ashley Schum and John Copple.
 - B. Land south of the subject property is zoned CR Conservation-Recreation and is in use as single family dwellings.
 - C. Land to the north, east, and west of the subject property is zoned AG-1 Agriculture and is in use as single family dwellings.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Generally regarding the proposed site plan:
 - A. The proposed site plan received on November 5, 2013, is the same as the site plan in Case 677-V-10 and indicates the subject garage as being located 17 feet 6 inches from the right of way of CR2545.

- B. Case 677-V-10 included the following evidence (asterisk indicates numbering from Case 677-V-10):
- *A. The original house was constructed in 1997 under ZUPA 164-97-05 and received a Zoning Compliance Certificate on June 18, 1998. The house includes an attached garage on the north side that is accessed from CR1375N.
 - *B. The detached garage, swimming pool, pool house, and play house were originally constructed by the petitioner without permits and the pool house and play house were the subjects of variance Case 637-V-08 that was determined on June 25, 2009, as follows:
 - *(1) The play house was the detached accessory structure in Part A of the previous variance case 637-V-08 and was originally constructed in the southwest corner of the subject property only four feet, two inches from the west lot line and only four feet from the south lot line instead of the required 10 feet in both instances. It is eight feet by eight feet and is four feet, six inches off the ground on treated posts.

Part A of Case 637-V-08 was denied and the play house was relocated as indicated on the approved site plan for case 637-V-08. That same site plan was submitted for the previously unauthorized structures in zoning use permit application 266-08-09 on July 9, 2009.

The relocation was verified in a compliance inspection on September 17, 2010. The compliance inspection revealed that the garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the play house.
 - *(2) A swimming pool was constructed south of the house and conforms to all Zoning Ordinance requirements. The pool was included with other previously unauthorized structures in zoning use permit application 266-08-01 on July 9, 2009. The compliance inspection revealed that the garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the pool.
 - *(3) The pool pump house was the detached accessory building in Part B of the previous variance case 637-V-08 and is only three feet, six inches from the south lot line instead of the required 10 feet. Part B of Case 637-V-08 was approved subject to the following special condition:

If the pump house is damaged or destroyed it should be relocated and reconstructed in compliance with the Zoning Ordinance.

The pool pump house was included with other previously unauthorized structures in zoning use permit application 266-08-01 on July 9, 2009. The side yard of the pool pump house was verified in a compliance inspection on September 17, 2010. The compliance inspection revealed that the

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garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the pool pump house.

- * (4) The detached garage was included with other previously unauthorized structures in zoning use permit application 266-08-01 on September 22, 2008. An addition to the garage was applied for in zoning use permit application 310-09-03 on November 6, 2009. Permit 310-09-03 was approved on November 9, 2009, because the site plan indicated that the addition would exceed the minimum required setback and front yard and the petitioner had testified in Case 637-V-08 that the existing garage complied with those requirements.

The subsequent compliance inspection for permit 266-08-09 on September 17, 2010, revealed that the garage was in violation of the Zoning Ordinance due to a non-compliant setback and front yard so no zoning compliance certificate was approved for the garage or the garage addition.

- *C. The petitioner submitted zoning use permit application 251-10-01 for an addition to the house on September 8, 2010. Permit 251-10-01 was authorized on September 20, 2010, with the following condition:
 - Issuance of this permit is based on the applicant agreeing to abide by any reasonable request made by the Champaign County Zoning Board of Appeals in Variance Case 677-V-10 for the existing detached garage.
- *D. The petitioner operates an office for his Neighborhood Home Occupation (NHO) out of his home. The petitioner's NHO is described on the application for a permit and in a written statement submitted with the site plan, and was approved on September 22, 2008, (and included as an attachment to the Preliminary Memorandum) as follows:
 - * (1) The business is named Pickle Construction. It is a construction business, apparently focusing on carpentry. As part of the NHO, the petitioner also does snow removal.
 - * (2) The business is operated from an office in the single family dwelling and the large storage garage.
 - * (3) The petitioner keeps one truck for use in the construction business and one truck for snow removal. An extra truck appears to be stored in the large storage garage, but is not used regularly. A trailer may be parked with the work truck outside the garage on the south side.
 - * (4) The petitioner does not indicate any activities other than storage that take place on the subject property and indicates that no employees meet at the subject property for work.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variance (capitalized words are defined in the Ordinance):
- (1) “ACCESSORY BUILDING” is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE or the main or principal USE, either detached from or attached to the MAIN OR PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN OR PRINCIPAL STRUCTURE, or the main or principal USE.
 - (2) “ACCESSORY STRUCTURE” is a STRUCTURE on the same LOT with the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either DETACHED from or ATTACHED to the MAIN or PRINCIPAL STRUCTURE, subordinate to and USED for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
 - (3) “BUILDING, MAIN or PRINCIPAL” is the BUILDING in which is conducted the main or principal USE of the LOT on which it is located.
 - (4) “BUILDING RESTRICTION LINE” is a line usually parallel to the FRONT, side, or REAR LOT LINE set so as to provide the required YARDS for a BUILDING or STRUCTURE.
 - (5) “LOT” is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (6) “LOT, CORNER” is a LOT located:
 - (a) At the junction of and abutting two or more intersecting STREETS; or
 - (b) At the junction of and abutting a STREET and the nearest shoreline or high water line of a storm or floodwater runoff channel or basin; or
 - (c) At and abutting the point of abrupt change of a single STREET where the interior angle is less than 135 degrees and the radius of the STREET is less than 100 feet.
 - (7) “LOT LINES” are the lines bounding a LOT.
 - (8) “LOT LINE, FRONT” is a line dividing a LOT from a STREET or easement of ACCESS. On a CORNER LOT or a LOT otherwise abutting more than one STREET or easement of ACCESS only one such LOT LINE shall be deemed the FRONT LOT LINE.
 - (9) “LOT LINE, REAR” is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE or to a tangent to the midpoint of the FRONT LOT LINE.

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In the case of a triangular or gore shaped LOT or where the LOT comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at the maximum distance from the FRONT LOT LINE or said tangent.

- (10) "STORAGE" is the presence of equipment, or raw materials or finished goods (packaged or bulk) including goods to be salvaged and items awaiting maintenance or repair and excluding the parking of operable vehicles.
- (11) "VARIANCE" is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning Board of Appeals are permitted to grant.
- (12) "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.
- (13) "YARD, REAR" is a YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
- (14) "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. Regarding Zoning Ordinance requirements for corner lots:

- (1) Subsection 4.3.2 illustrates a corner lot as having a setback along each adjacent street.
- (2) Paragraph 4.3.3 E. specifies that the minimum SIDE YARD on the STREET SIDE of a CORNER LOT shall be equal to the minimum FRONT YARD otherwise required in the DISTRICT.

C. 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.

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.
- G. Paragraph 9.1.9.E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the *Zoning Ordinance* requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
 - A. The Petitioners have testified on the application as follows:

“The road will never be made wider. Also, no more houses will be built. Petitioners, Shum and Copple are the contract purchasers of the property in question who will allow the garage to remain in an “as is” condition.”
 - B. Case 677-V-10 included the following evidence (asterisk indicates numbering from Case 677-V-10):
 - *A. The Petitioner has testified on the application that, “They will never make the road wider no more house will be built.”
 - *B. At the April 30, 2009, public hearing for Case 637-V-08, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified to the following:

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- * (1) On the application that, "Pool Pump House."
- * (2) At the public hearing he testified as follows:
 - * (a) He was not aware that he needed a building permit for a detached garage or a play house.
 - * (b) He has built these types of structures for many people in Champaign without obtaining a permit.
- * C. Regarding the history of the garage:
 - * (1) The subject detached garage, swimming pool, pool house, and play house were originally constructed without permits and the pool house and play house were the subjects of permit 266-08-01 and variance Case 637-V-08.
 - * (2) During the public hearing for Case 637-V-08 the petitioner was questioned specifically about the setback for the garage at the April 30, 2009, meeting and the petitioner testified that the garage met the required front yard. At the time there had been no zoning compliance certificate inspection for permit 266-08-01 since the variance case had been approved only four months earlier.
 - * (3) Part B of Case 637-V-08 was approved on June 25, 2009.
 - * (4) The petitioner applied for zoning use permit 310-09-03 on November 6, 2009, to build an addition to the garage. The permit was approved based on the site plan indication that the addition would exceed the minimum required front yard and the petitioner's earlier assertions about the existing garage. At the time there had been no zoning compliance certificate inspection for permit 266-08-01 since the variance case had been approved only four months earlier.
 - * (5) The petitioner next applied for zoning use permit 251-10-01 on September 8, 2010, to build an addition to the dwelling. The Zoning Officer conducted a zoning compliance inspection on September 17, 2010, so as to verify that all construction was compliant and found that the garage (and the garage addition) was not compliant. The garage was found to have a front yard and setback less than required. Permit 251-10-01 was approved on that same day with a condition that the applicant abide by any reasonable decision of the Zoning Board of Appeals.
- * D. Regarding CR2545:
 - * (1) The dedicated right of way for CR 2545 currently ends at the south line of the subject property even though Ogden Township maintains the pavement all the way to and including the cul-de-sac turnaround to the south.
 - * (2) If the dedicated right of way for CR 2545 ended at some point north of the subject garage it would not be a public street in front of the garage and there

would be no required front yard or setback but instead only a required side yard of 10 feet.

- *E. A 50 feet wide drainage easement crosses the southwest corner of the subject property and limits the location of structures along the south lot line (from Case 637-V-08).
 - *F. The site plan for permit 266-08-09 indicated an adequate front yard but the subject building was not built in conformance with the site plan due to an error by the builder.
- C. In Case 677-V-10 the Zoning Board of Appeals made the following Finding:
Special conditions and circumstances **DO** 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 this is a corner lot so you've got issues on two sides instead of one; and there is a possible traffic situation on the road going to the south on a road that is receiving tax money; and a 50 feet wide drainage easement in the southwest corner of the lot.

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 Petitioners have testified on the application as follows:
“The costs to remedy the setback issue would be great as the contract purchasers are not construction contractors. Also, the contract purchasers were unaware of any setback problems when they entered into the contract to purchase said property with the contract seller.”
 - B. Case 677-V-10 included the following evidence (asterisk indicates numbering from Case 677-V-10):
 - *A. The Petitioner has testified on the application that, “The cost would be a lot!”
 - *B. In the public hearing for Case 637-V-08, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified to the following:
 - * (1) On the application that, “Power, plumbing, heater, gas line.”
 - * (2) The petitioner asserted to staff that there is no land available for purchase from the neighbors to the south to mitigate the amount of variance (that was required for the side yard).
 - *C. If the variance is not granted at least 7 feet 6 inches of the garage will have to be torn down or relocated.

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- *D. A 50 feet wide drainage easement that cuts across the south west corner of the subject property reduces the space for buildings along the south lot line (from Case 637-V-08).
 - *E. The petitioner testified at the March 24, 2011, public hearing that it would be difficult but he would still be able to store his vehicle in the garage if eight feet were removed from the garage. He said that he has a television, couch, refrigerator, golf cart, four-wheeler and a lawn mower in the garage therefore it would be tight with the truck but he could rearrange those items to accommodate the vehicles.
- C. In Case 677-V-10 the Zoning Board of Appeals made the following Finding:
Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied **WILL NOT** prevent reasonable or otherwise permitted use of the land or structure or construction because the building in question was built by the applicant and he has testified that removing eight feet of the building to comply would be difficult but he could still do that and move the furniture around.

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

9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:
- A. The Petitioners have testified on the application as follows:
“The petitioners/ contract purchasers did not cause the setback problem as it was the contract seller’s error in constructing the garage in the setback. The contract purchaser had nothing to do with the site plan or permit application involved in the garage construction.”
 - B. Case 677-V-10 included the following evidence (asterisk indicates numbering from Case 677-V-10):
 - *A. The Petitioner has testified on the application that, “I thought my setback was 10 feet on a side yard. Didn’t know I had 2 front yards!”
 - *B. In the public hearing for Case 637-V-08, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified on the application that, “I built pool pump house and did not know there was a 10 foot setback.”
 - *C. The location of the drainage easement across the southwest corner of the subject property was determined when the subject property was platted as part of Ingram’s Third Subdivision (from Case 637-V-08).
 - *D. The petitioner was familiar with all of the peculiarities of the subject property and still indicated an adequate front yard on the site plan for 266-08-09.

- C. In Case 677-V-10 the Zoning Board of Appeals made the following Finding:
The special conditions, circumstances, hardships, or practical difficulties **DO** result from actions of the applicant because the applicant indicated in the evidence that it was his mistake that created this problem; and the site plan submitted by the applicant with the permit application indicated adequate space for the building to be built in compliance with the Zoning Ordinance and it was indicated as such on the site plan.

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 Petitioners have testified on the application as follows:
“Based on the previous factual findings of the Board and the previous proposed special conditions, if adopted, will protect people with any traffic issues and the road commissioner previously indicated he had no problem with the previous proposed special conditions.”
- B. Case 677-V-10 included the following evidence (asterisk indicates numbering from Case 677-V-10):
- *A. The Petitioner has testified on the application that, “None”
 - *B. The Zoning Ordinance does not clearly state the considerations that underlay the setback and front yard requirements. In general, the setback is presumably intended to ensure the following:
 - *(1) Right of way acquisition. CR2545 is a minor street that currently ends at the south line of the subject property although the Highway Commissioner maintains the road all the way to and including the cul-de-sac turnaround and receives motor fuel tax funds for that maintenance. CR2545 will probably never be widened at this location and it is very unlikely that any additional right of way will ever be needed.
 - *(2) Off-street parking. Regarding off street parking:
 - *(a) The Zoning Ordinance requires a minimum of two parking spaces for a dwelling and the Neighborhood Home Occupation (NHO) on the subject property is allowed to have only one commercial vehicle. The Zoning Ordinance also requires a parking space to be a minimum of 9 feet wide and 20 feet long.
- The existing 17 feet 6 inch front yard is not long enough to accommodate a required parking space without projecting into the right of way but it appears that all required parking is available inside the garage.

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- *(b) On a letter submitted with the application for the NHO the petitioner has indicated there are three vehicles in total kept in the garage and a work truck that is kept outside. At this time it is not clear if the work truck extends into the right of way.
 - *(c) The street pavement is a minimum of 20 feet wide and is more or less centered in the 60 feet wide right of way. Thus, the street pavement is approximately 20 feet from the subject property and there is approximately 37 feet 6 inches between the subject garage and the edge of the street pavement.
- *(3) Aesthetics. Aesthetic benefit may be a consideration for any given front yard and setback but can be very subjective. In this instance, the subject property retains a great deal of open space.
- *(4) Adequate light and air. The structure in question is an accessory structure which does not noticeably affect the amount of light and air available on the large lots in this neighborhood.
- *C. The subject property conforms to all other *Zoning Ordinance* requirements.
- *D. The existing front yard of 17 feet 6 inches is 70.0% of the required 25 feet for a variance of 30% and the existing setback of 47 feet and 6 inches from CR2545, a minor street, is 86.4% in lieu of the minimum required setback of 55 feet.
- *E. The requested variance is not prohibited by the *Zoning Ordinance*.
- *F. The petitioner in this case is the owner and operator of a construction business and asserted in the public hearing for Case 637-V-08 that he has constructed buildings in the City of Champaign without obtaining permits, so he was unaware of the need for permits in the County.
- *G. In Case 637-V-08 Staff requested Mr. Harshbarger measure the distance from the centerline of the road to the detached garage and that information was not submitted, however on April 30, 2009, Mr. Harshbarger testified in Case 637-V-08 that he was positive that the garage was 25 feet from the front property line along CR2545E.
- *H. Equipment for the Home Occupation is in the subject building and parking related to the Home Occupation is likely to occur at the subject building even though there is inadequate space between the subject building and the street right of way. Special conditions have been proposed to mitigate parking encroachment into the right of way but those conditions rely on enforcement by the Department of Planning and Zoning and place an unusual burden on the Department.

- C. In Case 677-V-10 the Zoning Board of Appeals made the following Finding:
The requested variance **SUBJECT TO THE PROPOSED CONDITIONS IS** in harmony with the general purpose and intent of the *Ordinance* because it protects people with any potential traffic issues in front of the building and the road commissioner stated he had no problems with it in the letter that he signed; and if it were a side yard it would be adequate but it is a front yard.

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 Petitioners have testified on the application as follows:
“The variance requested is relatively minor and will not have a detrimental effect on the neighborhood in this rural area. Also, on the previous application the Fire Protection District had no response and the road commissioner indicated he was comfortable with the special conditions proposed.”
- B. Case 677-V-10 included the following evidence (asterisk indicates numbering from Case 677-V-10):
- *A. The Petitioner has testified on the application that, “No danger!”
 - *B. The Fire Protection District has received notice of this variance, but no comments have been received.
 - *C. The Township Highway Commissioner has also received notice of this variance. The Township Highway Commissioner reviewed the case and the proposed special conditions and indicated that he was OK with the proposed special conditions on the April 1, 2011, letter from the Zoning Administrator that was included as an attachment to the Supplemental Memorandum dated April 28, 2011.
 - *D. The petitioner testified at the March 24, 2011, public hearing that the length of the truck and construction trailer is 35 feet but he does not park anything in front of the shop but does park it in front of his house. He said that in general he always parks his truck in front of the house. He said that he does have a truck inside of the garage/shop that is used for snow removal.
 - *E. Equipment for the Home Occupation is in the subject building and parking related to the Home Occupation is likely to occur at the subject building even though there is inadequate space between the subject building and the street right of way. Special conditions have been proposed to mitigate parking encroachment into the

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right of way but those conditions rely on enforcement by the Department of Planning and Zoning and place an unusual burden on the Department.

- C. In Case 677-V-10 the Zoning Board of Appeals made the following Finding:
The requested variance **SUBJECT TO THE PROPOSED CONDITIONS WILL NOT** be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the Fire Protection District had no response and the road commissioner responded and is comfortable with the special conditions.
12. In Case 677-V-10 the Zoning Board of Appeals also made the following Finding:
The requested variance **SUBJECT TO THE PROPOSED CONDITIONS IS** the minimum variation that will make possible the reasonable use of the land/structure because that variance is what is required to bring the building into compliance with *Zoning Ordinance*.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

13. Generally regarding and other circumstances which justify the Variance:
A. The Petitioner has testified on the application:
“The petitioners/contract purchasers will utilize the garage for their own personal use and do not have a construction company or any other business containing multiple vehicles similar to the contract seller.”

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

14. Regarding proposed special conditions of approval:
A. Case 677-V-10 included the following special conditions of approval (asterisk indicates numbering from Case 677-V-10):
***A. Encroachment of parked vehicles into the right of way shall be limited.** There is reduced parking space in front of the subject garage due to the non-compliant front yard (distance between the garage and property line/ right of way line) of only 17 feet and 6 inches in lieu of the of the minimum required front yard of 25 feet. There is approximately 19 feet of clearance between the property line/ right of way line and the edge of the gravel base of the pavement and therefore a total of approximately 36 feet 6 inches between the garage and the edge of the gravel base of the pavement in lieu of the minimum 44 feet that would otherwise be required. The reduced parking space may result in encroachment of parked vehicles into the right of way and there are related highway safety concerns depending upon the amount of encroachment. The Township Highway Commissioner is the final authority on whether or not any parking is allowed in the right of way. However, the Zoning Board of Appeals may be able to help the Highway Commissioner by including some explicit special conditions for parking that extends into the right of way. Any special condition of the ZBA can be overridden by the Highway Commissioner at any time. The following special conditions are proposed to

address highway safety concerns associated with the reduced parking space in front of the subject garage but are not intended to apply to the subject property in general:

- * (1) At no time shall a parked or standing vehicle (ie, parked while attended) located on the subject property extend onto the street pavement and past the line of the gravel base of the pavement on either side of the driveway.** (Note: This condition will allow a parked vehicle to extend as much as 18 feet into the right of way but not onto the pavement and should ensure that there are no unusual traffic safety issues arising due to the reduced parking space in front of the garage. This condition is intended to be subordinate to the Township Highway Commissioner's authority and the Township Highway Commissioner can enforce any required parking restrictions in the right of way.)
- * (2) Unless otherwise directed by the Township Highway Commissioner, no parked or standing vehicle (ie, parked while attended) located on the subject property shall extend past the line of the right of way during times of anticipated street maintenance (and it shall be the petitioner's responsibility to anticipate street maintenance) or at other times as requested by the Township Highway Commissioner.** (Note: This condition requires that no vehicle extend past the property line during times of anticipated street maintenance such as application of road oil or clearing of snow and should ensure there are no unusual property damage issues caused by necessary street maintenance due to the reduced parking space in front of the garage. This condition is intended to be subordinate to the Township Highway Commissioner's authority and the Township Highway Commissioner can enforce any required parking restrictions in the right of way.)
- * (3) Unless otherwise directed by the Township Highway Commissioner, at no time from dusk to dawn shall a parked vehicle located on the subject property extend past the centerline of the roadside ditch in front of the subject garage.** (Note: Even though there are no liability issues to be concerned about the Board may want to require this greater amount of separation between the edge of pavement and parked vehicles at nighttime. This condition should provide approximately 10 feet of separation between a parked vehicle and the edge of the pavement base. This condition is intended to be subordinate to the Township Highway Commissioner's authority and the Township Highway Commissioner can enforce any required parking restrictions in the right of way.)

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- *(4) Three documented violations of the special conditions of approval regarding encroachment of parked vehicles into the street right of way between the garage and the street shall void this approval and a new variance shall be required.** (Note: This condition provides a long term enforcement mechanism for the special conditions. Documentation of a violation generally requires dated photographic evidence. As proposed these three documented violations could occur years apart and under different owners. Voidance of the variance approval will be a violation of the Zoning Ordinance and the Zoning Administrator would presumably send a Notice of Violation to the owner.)

The special conditions stated above are required to ensure the following:

To help ensure public safety by minimizing highway safety concerns associated with the reduced parking space in front of the subject garage and any resulting encroachment of parked vehicles into the right of way.

- *B. If the subject garage is damaged or destroyed to more than 50% of replacement value it shall be reconstructed in full compliance with the Champaign County Zoning Ordinance.** (Note: The replacement value shall assume replacement by a third party and not by the homeowner.)

The special condition stated above is required to ensure the following:

To ensure that if the garage must be rebuilt it will be rebuilt to the requirements of the Ordinance.

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

The special condition stated above is required to ensure the following:

To ensure that future purchasers of the subject property will be aware of the special conditions that apply to the subject garage.

- *D. The Zoning Administrator shall not issue any additional Zoning Compliance Certificates authorizing the use of buildings on the subject property unless the petitioner submits a copy of the recorded document required by condition D. above.** (Note: Use of a building without a Compliance Certificate is a violation of the Ordinance and a Compliance Certificate is still required for all accessory buildings on the subject property and the recent addition to the dwelling.)

The special condition stated above is required to ensure the following:

To provide an immediate enforcement mechanism to ensure compliance with the approval of the variance.

DOCUMENTS OF RECORD

1. Variance application from Mick Harshbarger, received on November 5, 2013, with attachment:
 - A Site plan

2. Preliminary Memorandum with attachments:
 - A Case Maps from Case 637-V-08 (Location, Land Use, Zoning)
 - B Site plan received November 5, 2013
 - C 2008 Aerial photograph with parcel boundaries (with subject property indicated)
 - D Permit 251-10-01 approved on September 20, 2010
 - E Supplemental Memorandum for Case 677-V-10 dated April 28, 2011, with attachment:
 - A Cover letter dated April 1, 2011, to Greg Frerichs, Ogden Township Highway Commissioner, with Greg Frerichs signature and "OK" (included separately)
 - F Approved minutes for May 26, 2011, public hearing for Case 677-V-10
 - G As-Approved and Signed (Denied) Summary of Evidence, Documents of Record, Finding of Fact, and Final Determination for Case 677-V-10 (Signed)
 - H Draft Summary of Evidence, Documents of Record and Finding of Fact (included separately on green paper)

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FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 765-V-13 held on **December 12, 2013**, , the Zoning Board of Appeals of Champaign County finds that:

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

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

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

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

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

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

7. *{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}*

FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements of Section 9.1.9.C 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 765-V-13 is hereby *{APPROVED/ DENIED}* to the petitioners **Ashley Schum and John Copple, contract purchasers, and land owner Mick Harshbarger** to authorize the following in the CR District for the occupancy and use of an existing detached accessory structure that was previously denied in Case 677-V-10:

Part A. A setback of 47 feet and 6 inches from CR 2545E in lieu of the minimum required setback of 55 feet.

Part B. A front yard of 17 feet and 6 inches from the front property line in lieu of the minimum required front yard of 25 feet.

{SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:}

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

2014 CHAMPAIGN COUNTY PLANNING & ZONING CALENDAR

Brookens Administrative Center
 1776 E. Washington Street
 Urbana, IL 61802
 Phone: (217) 384-3708
 FAX: (217) 819-4021

JANUARY						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
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JULY						
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27	28	29	30	31		

County Holiday
 (Office Closed)



Zoning Board of Appeals
 April – October: 7:00 p.m.
 November – March: 6:30 p.m.
 (Meeting times vary based on Daylight Savings Time. Check with the Department)



FEBRUARY						
S	M	T	W	Th	F	S
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31						

Environment and Land Use Committee 6:00 p.m.
Agenda Item Deadline:
 Check with the Zoning Dept.



MARCH						
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Champaign County Board
 7:00 p.m.
 All meetings are held in the
 Lyle Shields Meeting Room
 (formerly Meeting Room One) at the
 Brookens Administrative Center



APRIL						
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Note: No entrance to building from Washington Street parking lot after 4:30 p.m. Use Northeast parking lot via Lierman Av. and enter building through Northeast door.

MAY						
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MEETING DATES AND TIMES ARE SUBJECT TO CHANGE

DRAFT

JUNE						
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DECEMBER						
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