

1 **MINUTES OF REGULAR MEETING**

2 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

3 1776 E. Washington Street
4 Urbana, IL 61802

5 **DATE:** October 29, 2015

6 **PLACE:** Lyle Shield's Meeting Room
7 1776 East Washington Street

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

9 Urbana, IL 61802

10 **MEMBERS PRESENT:** Catherine Capel, Debra Griest, Marilyn Lee, Brad Passalacqua, Jim
11 Randol, Eric Thorsland

12 **MEMBERS ABSENT :** None

13 **STAFF PRESENT :** Connie Berry, John Hall, Susan Chavarria

14 **OTHERS PRESENT :** Lloyd Allen, Roger Huddleston, Keith Padgett, Steve Koester, Mark
15 Kesler

16 **1. Call to Order**

17 The meeting was called to order at 7:00 p.m.

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

19 The roll was called and a quorum declared present with six members present and one vacant seat.

20 **3. Correspondence**

21 None

22 **4. Approval of Minutes (September 10, 2015)**

23 Mr. Thorsland entertained a motion to approve the September 10, 2015, minutes as amended.

24 **Ms. Lee moved, seconded by Mr. Passalacqua to approve the September 10, 2015, minutes as
25 amended. The motion carried by voice vote.**

26 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
27 sign the witness register for that public hearing.

28 **5. Continued Public Hearing**

29 **Case 792-V-14 (REACTIVATED) Petitioner: Robert Frazier Request to authorize the following
30 Variance from the Champaign County Zoning Ordinance in the I-1 Light Industry Zoning
31 District: Part A. Variance for 48 on-site parking spaces in lieu of the minimum required 67
32 parking spaces as required by Section 7.4 of the Zoning Ordinance; and Part B. Variance for a**

1 setback of 50 feet and a front yard of 20 feet between the principal building and Tiffany Court in
2 lieu of the minimum required setback of 55 feet and the minimum required front yard of 25 feet as
3 required by Section 5.3 of the Zoning Ordinance; and Part C. Variance for parking 0 feet from
4 the front property line in lieu of the minimum required 10 feet from the front property line as
5 required by Section 7.4.1 of the Zoning Ordinance; and Part D. Variance for allowing at least 19
6 off-street parking spaces on an adjacent lot in lieu of requiring all off-street parking spaces to be
7 located on the same lot or tract of land as the use served, as required by Section 7.4.1 of the
8 Zoning Ordinance. Location: Lot 4 of the Stahly Subdivision in the Southeast Quarter of Section
9 8 of Champaign Township and commonly known as the former LEX building located at 310
10 Tiffany Court, Champaign.

11
12 Mr. Thorsland informed the audience that Cases 806-S-15 and 807-V-15 are Administrative Cases and
13 as such the County allows anyone the opportunity to cross examine any witness. He said that at the
14 proper time he will ask for a show of hands for those who would like to cross examine and each person
15 will be called upon. He requested that anyone called to cross examine go to the cross examination
16 microphone to ask any questions. He said that those who desire to cross examine are not required to
17 sign the witness register but are requested to clearly state their name before asking any questions. He
18 noted that no new testimony is to be given during the cross examination. He said that attorneys who
19 have complied with Article 7.6 of the ZBA By-Laws are exempt from cross examination.
20

21 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
22 sign the witness register for that public hearing. He reminded the audience that when they sign the
23 witness register they are signing an oath.
24

25 Mr. Thorsland stated that, for the record, the Petitioner is not at the meeting. He said that staff has not
26 received any new information, including the complete site plan which was requested by the Board at the
27 last public hearing. He said that staff has recommended that the Board move this case to the second
28 meeting in January in deference to the absent Petitioner. He informed the Board that we have four people
29 who have come for this case and asked the Board how they would like to proceed with witness
30 testimony.
31

32 Mr. Passalaqua asked staff if they had received any information by the close of business today from Mr.
33 Frazier indicating that he would not be able to attend.
34

35 Mr. Hall responded none that he knew of.
36

37 Mr. Passalaqua stated that since we have a history of the Petitioner's absence and the fact that we also
38 have had no response from the Petitioner prior to this meeting, he would move that the case be
39 dismissed.
40

1 Mr. Thorsland stated that the Board dismissed the case once and the case was reactivated. He asked Mr.
2 Hall what happens when a case is reactivated, does one have to pay again.

3
4 Mr. Hall stated that the petitioner must pay a \$100 re-advertisement, a very minor cost. He said that he
5 anticipates that the case would be re-advertised if it were dismissed tonight.

6
7 Mr. Thorsland stated that as far as we know, no indication was made to the Petitioner that he had to
8 attend the meeting tonight and the mailing suggested that we were going to move it anyway. He stated
9 that the only reason he wouldn't just want to kick it entirely is because the Petitioner may have
10 misinterpreted the suggestion by staff, which was to move the case to January. He said that for this
11 reason Mr. Frazier may have thought that the meeting did not require his attendance and that the Board
12 would just take care of the issue. He stated that if the Board wants to take a motion to that effect, we can
13 vote on it.

14
15 Mr. Passalacqua asked for verification that the Board had been waiting for a response from the letter
16 since October 20th.

17
18 Mr. Thorsland confirmed that was correct.

19
20 **Mr. Passalacqua moved to dismiss Case 792-V-14.**

21
22 Mr. Randol asked Mr. Hall if the Board were to dismiss the case, where would that leave us with the
23 violations that exist.

24
25 Mr. Hall stated the minute we received a reactivation, we would have to bring that case back before the
26 Board because there is no time limit. He added that the ZBA Bylaws do not allow the ZBA to at any
27 time reject an application.

28
29 Ms. Lee asked where staff's recommendation to continue the case to January is located within the
30 Supplemental Memorandum.

31
32 Mr. Thorsland stated that the text is indicated on page 2 of the October 22, 2015, Supplemental
33 Memorandum.

34
35 Mr. Hall stated that with that language staff was trying to send a message to the 4 or 5 neighbors and the
36 Highway Commissioner that took time out to come tonight. He said that staff did not expect any
37 practical discussion tonight because there really wasn't enough time for the Petitioner to get everything
38 done. He said he will speak on behalf of the Petitioner that when this Board continued the case, Ms.
39 Chavarria spoke up and indicated that she was concerned about timing of the next meeting for this case
40 but it was decided that if nothing else this meeting could be a status update. He stated that the Zoning

1 Department has worked a ridiculous amount time on this case and even at that, we didn't get to a point
2 where if we were the Petitioner, there would be a building plan drawn by an architect and a plat prepared
3 by an engineer because there was not that much time allowed.
4

5 Mr. Passalaqua stated that he sees no evidence of any diligence and that it is his understanding that the
6 Petitioner has not even made contact with a firm to do the work.
7

8 Mr. Hall clarified that the Petitioner has made contact with an engineer for the preparation of the plat.
9 He said that that engineering firm is Hartke Engineering & Surveying.
10

11 Mr. Thorsland stated that from what he read, the Petitioner thought that since he was being annexed to
12 the City of Champaign that he no longer needed a site plan for the County.
13

14 Mr. Passalaqua responded that the assumption was already corrected with the Petitioner and that he still
15 needs to be in compliance.
16

17 Ms. Lee asked if the Petitioner had made any attempt to contact an architect.
18

19 Mr. Hall stated that the last word staff had was that Mr. Frazier had not made contact with an architect,
20 only an engineer.
21

22 Ms. Lee asked Mr. Hall if the Board could take any testimony from the gentlemen who are here for this
23 case before doing any action.
24

25 Mr. Hall stated yes.
26

27 Mr. Thorsland stated that the problem he has with accepting testimony tonight is that the Petitioner is
28 not here and since this is an Administrative Case the Petitioner has the right to cross-examine any
29 witness. Mr. Thorsland stated that he really appreciates the fact that the witnesses for this case attended
30 tonight and he understands their frustration. Mr. Thorsland stated that this Petitioner has frustrated this
31 Board as well. Mr. Thorsland stated that he is very frustrated by the Petitioner's cavalier attitude and the
32 waste of time spent by a lot of other people, but this is a quasi-judicial hearing and if the Petitioner is not
33 here, and the case is Administrative, then they are allowed to cross-examine witnesses. He stated that is
34 something that cannot happen if we only convey to them what happened in the minutes. He opened the
35 floor for Board members to comment.
36

37 Mrs. Capel asked Mr. Thorsland if something needed to be done about the motion on the floor.
38

39 Mr. Thorsland confirmed that there is a motion without a second. He said that Board can suspend the
40 motion or if the motion receives a second the Board can vote on it.

1
2 Ms. Lee stated that the Board could turn the case over to the State's Attorney.
3

4 Mr. Thorsland stated that he is not sure how the Board could compel the State's Attorney. He stated that
5 right now we have a motion without a second. He asked the Board again if someone would like to
6 second Mr. Passalacqua's motion to dismiss the case.
7

8 Mr. Passalacqua stated that he is willing to withdraw the motion but he is not willing to hear new
9 testimony because he believes that the Board is spinning its wheels and it is a waste of everyone's time.
10

11 **Mr. Randol seconded the motion to dismiss the case.**
12

13 Mr. Thorsland requested a roll call vote.
14

15 The roll call vote was called as follows:
16

Lee-yes	Passalacqua-yes	Randol-yes
Capel-no	Griest-no	Thorsland-no

17
18
19
20 Mr. Thorsland stated that the motion failed due to a tie vote by the Board therefore the case is not
21 dismissed. Mr. Thorsland apologized again to the audience, and did so, on behalf of the Board. He
22 thanked the audience for taking the time to come out for this Petitioner but, as difficult as it is, the Board
23 is going to continue this case to the second meeting in January, date is tentatively January 28th.
24

25 Ms. Griest asked Mr. Hall if there was a court case that required the Board to go ahead and take
26 testimony. Ms. Griest asked if perhaps there was a regulation that required people to go ahead and
27 submit testimony when the Petitioner gave up his right to cross-examine by failing to appear.
28

29 Mr. Hall stated that he agrees with the last statement, but he is not aware of anything that would compel
30 the Board to take any testimony. He stated that if the Board takes any testimony, they need to take all
31 testimony. He added that the Board's normal rules about redundant testimony and preference for
32 agreeing with things already said would apply, but the Board has to give everybody a chance to testify.
33

34 Mr. Thorsland asked the Board if there were any more questions for staff and there were none.
35

36 Mr. Thorsland entertained a motion to continue this case to the second meeting in January, tentatively
37 scheduled for January 28th.
38

39 Ms. Lee requested clarification on whether the Board would take testimony on this case tonight from the
40 three gentlemen who are here.

1
2 Mr. Thorsland stated that the Board would not take testimony tonight.

3
4 Mr. Lloyd Allen, a member of the audience, stated that the Board should check their By-laws and
5 indicated his disagreement with the Board's decision.

6
7 Mr. Thorsland apologized. He entertained a motion to continue Case 792-V-14 to the second meeting in
8 January, tentatively scheduled for January 28, 2016.

9
10 **Ms. Capel moved to continue Case 792-V-14 to the second meeting in January, tentatively**
11 **scheduled for January 28, 2016, seconded by Mr. Randol. Motion carried by voice vote with one**
12 **member opposed.**

13
14 **6. New Public Hearings**

15
16 **Case 814-V-15 Petitioner: Mark and Adam Kesler Request to Authorize the following Variance for**
17 **a new building under construction in the B-4 General Business Zoning District: Part A. Authorize**
18 **a side yard of 6.5 feet in lieu of the required minimum 10 feet as per Section 5.3 of the Zoning**
19 **Ordinance and Part B. Authorize a rear yard of 13 feet in lieu of the required minimum 20 feet as**
20 **per Section 5.3 of the Zoning Ordinance. Location: A 0.377 acre tract on Lot 2 of Casey's**
21 **Subdivision, a replat of Lot 1 of Warren Subdivision in Mahomet Township in the East Half of the**
22 **Northwest Quarter of Section 13, Township 20 North, Range 7 East of the Third Principal**
23 **Meridian and commonly known as 2107 East Tin Cup Road, Mahomet.**

24
25 Mr. Thorsland informed the audience that Case 814-V-15 is an Administrative Cases and as such the
26 County allows anyone the opportunity to cross examine any witness. He said that at the proper time he
27 will ask for a show of hands for those who would like to cross examine and each person will be called
28 upon. He requested that anyone called to cross examine go to the cross examination microphone to ask
29 any questions. He said that those who desire to cross examine are not required to sign the witness
30 register but are requested to clearly state their name before asking any questions. He noted that no new
31 testimony is to be given during the cross examination. He said that attorneys who have complied with
32 Article 7.6 of the ZBA By-Laws are exempt from cross examination.

33
34 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
35 sign the witness register for that public hearing. He reminded the audience that when they sign the
36 witness register they are signing an oath. He asked the audience if anyone desired to sign the witness
37 register at this time.

38
39 Mr. Thorsland asked the petitioners if they would like to make a brief statement regarding their request.

1
2 Mark Kesler, 2328 CR 600 East, Dewey, thanked everyone for their time. He stated that his son's
3 business, No Limit Fitness, is currently located in the old D&D grocery store just right around the corner
4 from where their new building will be. He stated that on or about September 23rd of this year, his
5 contractor was getting ready to pour the concrete on the parking lot and the concrete company
6 discovered that the building was 6.5 feet away from the property line on the west side of the building,
7 leaving 13.5 feet to the east of the property line and the requirements are for 10 feet on each side of the
8 building. He stated that Noah Kaufman, co-owner of Graber Buildings, the contractor, happened to be
9 on site that day and admitted their mistake on marking the foundation, and unfortunately Graber had
10 already dug the foundation, which is a special foundation as per IBC regulations, pouring 252 feet of 18
11 inch by 36 inch foundation with 2 inches of insulation. He said that they had installed the entire
12 infrastructure for the plumbing and Graber had already poured nearly 4,000 square feet of 5-inch thick
13 concrete pad. He said that after realizing what the situation was, he immediately contacted the architect,
14 Brett Stillwell from Champaign and their attorney to discuss the matter, then immediately filed a
15 variance to hopefully remedy the situation. He said that the 6.5 feet to the west of the building is next to
16 an empty lot, approximately 51 feet wide, which is owned by Midland Corporation for access to their
17 main property located on Prairieview Road. He stated that he honestly did not think that this mistake of
18 3.5 feet would cause any damages to the adjacent lot and damage the potential use of that access to
19 Midland's main property. He added that the access has not been used for quite some time and the empty
20 lot sits approximately 3 feet lower than the main Midland property that is currently for sale. Mr. Kesler
21 stated that he did not identify any cracks in the access drive to indicate its recent use. He stated that not
22 until he received a letter from Mr. Huddleston's attorney a week ago did he believe there was a concern
23 for our requested variance. Mr. Kesler said that the letter stated the objection to the variance was due to
24 the fact that the variance may affect the value of Midland's property, which is currently for sale.
25 Mr. Kesler stated that he agrees wholeheartedly with this statement – it will enhance the property value,
26 not hinder it, and will provide a greater opportunity for Midland to sell it now that there is a \$300,000
27 building with a thriving business to open soon, compared to an empty lot just two months ago. Mr.
28 Kesler stated that he is asking for a variance for the 3.5 feet on the west side of their building, and that it
29 will not cause lower property values or problems in regard to the sale of the Midlands property or access
30 to their main property. He concluded by saying the only mistake he made in this entire matter was not
31 contacting the owners to inform them that he would need to place foundation dirt on their property until
32 he could get their concrete parking lot poured. He added that he did not know who originally owned the
33 lot; unfortunately due to job constraints and recent weather, some dirt still remains on the property. He
34 has asked his contractor to remove the dirt and grade the lot as soon as possible. He stated that he has
35 contacted Jean Huddleston several times to apologize and to tell her they will remove the dirt, will grade
36 it so that it is no longer a vacant lot but a true access to Midland's main property. He added that his
37 concrete contractor had mentioned before they poured the parking lot that the Midlands culvert along
38 Tin Cup Road was in bad shape and would need replaced; at the time that was the only entry to his lot as
39 his entry way had not been built. He asked the Village of Mahomet to replace the culvert, which they
40 did, and he graded the entryway to serve as an access lane. He stated that this repair was necessary to

1 eliminate rainwater and puddling and creating an even flow through P&P Heating, No Limit Fitness,
2 Midland and Casey's property, all along Tin Cup Road. Mr. Kesler stated that he would like to purchase
3 the lot to the west in the future as No Limit continues to grow, but he has discussed this with Jean
4 Huddleston and her Realtor and they both indicated that Midland should remain owners until the main
5 property sells, and he respects their decision.

6
7 Mr. Thorsland asked if staff could keep his paper copy of his introduction.

8
9 Mr. Kesler stated yes.

10
11 Mr. Thorsland asked the Board if there were any questions for Mr. Kesler.

12
13 Ms. Griest asked Mr. Kesler if she understood correctly that they are pouring concrete on the entire
14 width of the property.

15
16 Mr. Kesler stated that Ms. Griest is correct He said that they did not want any maintenance, and they
17 needed all the space for the 21 spaces required for the building.

18
19 Ms. Griest asked Mr. Hall about impervious area.

20
21 Mr. Hall stated that when Mr. Kesler first inquired about building on the property, they talked about
22 stormwater management. Mr. Hall said that when staff received the plan, staff assumed that they
23 understood the plan but he admits that the amount of impervious area was not clear. Mr. Hall stated that
24 even with the Site Plan that went out with the memo, if you look on the west side of the building, you'll
25 see a sidewalk indicated which to Mr. Hall indicates that the sidewalk side of that line must be concrete
26 and the other side must not be concrete and staff assumed it was grass. He said that the plan does not
27 really show where impervious area is and where it is not, and this is the first time he has seen a
28 landowner willing to pour concrete in areas where there is no discernible benefit to having concrete. He
29 stated that there is also 10 feet of concrete on the east side of the building even though he does not know
30 what purpose the 10 feet of concrete serves. He said that even though this project could be constructed
31 with less impervious area than what would require detention, because of this error in review, it is
32 actually over the threshold for detention and now needs detention. It is not far over the threshold, and for
33 such a small amount he does not know how stormwater detention could be constructed for as little as
34 1,000 square feet of paving; as far as he knows it cannot be done. Mr. Hall determined that it is a *de*
35 *minimis* exceedance of the Stormwater Management and Erosion Control Ordinance and he will not
36 require detention for this. He added that if the lot to the west were added to the subject lot, stormwater
37 detention would be required for the whole resulting property. He said that staff looked back on the
38 review of this plan and staff missed the impervious area and missed the jog in the rear lot line and staff
39 usually does a better job of reviewing that. He said that regarding the jog in the rear lot line, Mr. Hall
40 referred to Footnote 7 in Section 5.3 of the Zoning Ordinance that has to do with irregular yards on lots

1 that are not rectangular. He stated that this lot is an irregular lot, and in fact the rear yard that is provided
2 exceeds what is required in Footnote 7 in Section 5.3, so the variance for the rear yard is not required.
3 He said that it is only the west yard that requires the variance. He said that one could argue that a
4 variance from the Stormwater Management and Erosion Control Ordinance is required, but the amount
5 of detention is so small that it is insignificant; even if concrete were removed, there still would not be
6 enough room to construct detention on the property.

7
8 Mr. Passalaqua stated that the front of the property has ditches.

9
10 Mr. Kesler stated that from the front of the building to the ditch, there is a natural 12 inch flow to the
11 ditch. He said that if he ran a hose outside of the building the water would run to the ditch.

12
13 Mr. Passalaqua added that it is a positive for him that it is water going into that ditch rather than eroded
14 dirt or gravel.

15
16 Mr. Hall stated that even with the twelve inches of ditch it is still difficult to do a detention basin there.
17 He said that he is not proud of the way staff reviewed this project but it is what it is.

18
19 Ms. Lee asked about the difference between the 3,944 square feet building shown in the Site Plan and
20 the 104 feet by 40 feet typed next to the drawing.

21
22 Mr. Hall clarified that this is the second site plan submitted for the building and the original site plan did
23 indicate a 104 feet by 40 feet building. He said that the 3,944 square feet is correct and for some reason
24 the architect simply missed updating the text to the side of the drawing.

25
26 Ms. Griest asked Mr. Kesler if his concrete is contoured toward the center of the property and then
27 toward the ditch, as opposed to running off onto the adjacent parcels.

28
29 Mr. Kesler responded that the contour goes from south to north, directly to the ditch.

30
31 Ms. Griest clarified that it goes to the ditch except where it goes off the sides. She said that her point
32 being he is allowing water to runoff to his neighbors by not providing any sort of space around the
33 impervious area.

34
35 Mr. Thorsland stated that the adjacent properties are the vacant lot to the west and P&P to the east. He
36 commented that we recently had a decent rain, and asked Mr. Kesler if he noted how the stormwater
37 flowed off the property.

38
39 Mr. Kesler stated that he observed the stormwater after the rain and noted that it ran off the concrete into
40 the ditch like it was supposed to and if there was any spill, it was not significant.

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Ms. Lee asked Mr. Kesler if he was referring to the road ditch.

Mr. Kesler confirmed he was referring to the road ditch.

Mr. Thorsland asked Mr. Kesler where the P&P driveway was in reference to the subject property.

Mr. Kesler responded that he thinks the P&P driveway is about 100 feet off his property line. He stated that the separation between their buildings was around 50 feet.

Ms. Lee asked Mr. Kesler to explain the lay of the properties. She asked Mr. Kesler if the vacant lot to the west was lower than Mr. Kesler's property and if the property to the east is higher, or are they all pretty much equal.

Mr. Kesler responded that the properties are all pretty much equal. He added that Midland's main property is about 3 feet higher than his property; there is a definite elevation there. He said that as far as east and west they are about the same elevation.

Ms. Lee asked Mr. Hall how much did the impervious area miss in requiring stormwater detention.

Mr. Thorsland said that Mr. Hall had mentioned a 1,000 square foot stormwater detention area would be difficult to come up with.

Mr. Hall stated that if detention had been required, it would have been required for much less than 1,000 square feet as we are only talking about a few hundred square feet.

Mr. Kesler said that had detention been required, they would have done it, but since it was not required, they didn't.

Mr. Hall stated that the point was that Mr. Kesler constructed more concrete than he was supposed to, and again, that is the first time he has seen someone willing to do that, and he will need to be more careful reviewing in the future but staff did not know that this was going to happen.

Mr. Thorsland referred to the pictures on page 2 in the images packet, noting the upright brackets that are the building and how they abut the edge of the concrete on the south side of the building. Mr. Thorsland requested clarification from Mr. Kesler on whether the building goes pin to pin, or the concrete.

Mr. Kesler responded that the building ends and then to the west there is 6.5 feet until the property line.

Mr. Thorsland stated that on the back, Mr. Kesler talked about a regular line with 20 feet, but Mr. Kesler

1 said that the concrete went all the way to the end of the property.

2
3 Mr. Kesler stated no.

4
5 Mr. Thorsland confirmed that there is 20 feet of dirt in the back.

6
7 Mr. Kesler stated that there is no concrete behind the building.

8
9 Mr. Passalaqua asked if that means there is 20 feet by 88 feet of grass behind the building and if so does
10 that alleviate the drainage concern.

11
12 Mr. Hall stated that even with the grass area behind the building, the impervious area still exceeded the
13 threshold for requiring stormwater management. He stated that under the Stormwater Management and
14 Erosion Control Ordinance, with the amount of concrete on the site right now, there should be some
15 detention. He said that the drainage ditch in the front is 180 feet away from the grassed area in the back
16 of the building; he does not know how one would design stormwater management in that situation. It is
17 a real engineering issue to design stormwater management for less than 1,000 square feet.

18
19 Ms. Lee asked Mr. Kesler if they had encountered any agricultural drainage tile when they did the
20 construction.

21
22 Mr. Kesler responded none that he was aware of, and their concentration was the gravity flow into the
23 ditch along Tin Cup Road and he also is not aware of P&P having anything either next to them on the
24 east. He stated that he has been out to the site for quite some time now and has yet to see a problem.

25
26 Mr. Thorsland pointed out that we haven't really had rain until this week.

27
28 Ms. Griest added that it wasn't really that much rain. She asked Mr. Kesler about one-way directional
29 traffic arrows on the engineering plans. She noted the arrows pointing toward the back of the building,
30 where there is no concrete. She asked if she was correct in assuming that no vehicles would drive along
31 the west side and directly behind the building.

32
33 Mr. Kesler confirmed that is correct. He stated that originally they had 10 feet of concrete on each side,
34 but ended up with 6.5 feet on one side and 13.5 on the other. He said that as the owner, he must take
35 some responsibility for that, but this is why he hired a contractor to do it and the contractor actually had
36 the flags out where it was supposed to go but the contractor was not there, nor was Mr. Kesler, the day
37 they dug the foundation. He added that only when they went to start pouring concrete did he note that it
38 was off-center at 13.5 feet and 6.5 feet and if it had been centered he wouldn't be here tonight

39
40 Mr. Passalaqua asked Mr. Kesler if he had put in any downspouts, or if the building's runoff was going

1 to discharge to ground.

2

3 Mr. Kesler said he was not sure but he believes that there are downspouts for that.

4

5 Mr. Thorsland referred to a note on the plan that states the contractor is responsible for all building and
6 site drainage.

7

8 Mr. Kesler said that since the building is not up, he has not seen how the drainage will be done, but he
9 assumes that it will run to ground.

10

11 Mr. Thorsland asked if there were further questions for Mr. Kesler and there were none.

12

13 Mr. Thorsland noted that there are no new memos tonight. He referred to the witness register and called
14 Roger Huddleston to the witness microphone.

15

16 Mr. Roger Huddleston, 170 Union Street, Mahomet, asked Mr. Hall if a variance is needed for the south
17 border, or if it is in compliance.

18

19 Mr. Hall stated that it is in compliance, staff just determined that today.

20

21 Mr. Huddleston asked Mr. Hall how it is in compliance.

22

23 Mr. Hall stated that the Ordinance provides for a lesser rear yard when a lot is not rectangular and this
24 lot is not rectangular and the rear yard does meet the requirement for those kinds of lots.

25

26 Mr. Huddleston asked Mr. Hall to indicate the requirement for when the lot is less than rectangular.

27

28 Mr. Hall read Footnote 6 in Section 5.3 of the Zoning Ordinance as follows: Required REAR YARD
29 where LOTS are of irregular shape: In the case of an irregularly shaped LOT (not rectangular) the
30 required minimum depth of a REAR YARD shall not be less than the required minimum SIDE YARD,
31 as required by this Section 5.3; and in the aggregate, the square footage of the REAR YARD must equal
32 that required for a rectangular LOT of minimum zoning DISTRICT dimensions. Mr. Hall added that the
33 rear yard is 13 feet deep; the required yard in this DISTRICT is 10 feet, so the 13 feet depth exceeds the
34 minimum. The square footage of this rear yard is 1,413.43 square feet and the minimum area is 1,300
35 square feet, so the 1,413 square feet exceeds the minimum. So the alternative minimums established in
36 Footnote 6 are exceeded.

37

38 Mr. Ms. Lee asked Mr. Hall if that means that Part B of this case is not necessary.

39

40 Mr. Hall replied that is correct.

1
2 Mr. Huddleston asked Mr. Hall what area is not being counted as impervious area.
3
4 Mr. Hall stated that in the development as built, it is his understanding that everything from the building
5 line to the south would be grass which is considered pervious and anything from the south line of the
6 building to the north is impervious. He reiterated that when he approved the permit, he thought there
7 were going to be pervious areas on the east side of the building and also on the west side outside of the
8 sidewalk. He stated that is where he erred; it is not what the plan showed.
9
10 Mr. Thorsland stated there is a grass area by the road ditches that is also part of the pervious area
11 calculation.
12
13 Mr. Hall agreed.
14
15 Mr. Huddleston stated that the plan shows 20 feet setback on the rear of the property, which is not true.
16
17 Mr. Hall said that is correct.
18
19 Mr. Huddleston asked how much is the rear yard at its minimum and at its maximum.
20
21 Mr. Hall responded that at its minimum it is 13.6 feet and at its maximum it is 20 feet.
22
23 Mr. Huddleston stated that he assumes that the concrete parking area on the north was made larger.
24
25 Mr. Hall clarified that the concrete was extended on the sides, not to the north. He added that there is as
26 much concrete to the north as he expected there would be.
27
28 Mr. Thorsland stated that he thinks the building is, north to south, where it was planned, but east to west,
29 it went west.
30
31 Mr. Huddleston stated that if in fact the drainage was designed to go south to north as Mr. Kesler said,
32 why would the 20 feet to the rear of the property be counted as pervious ground.
33
34 Mr. Passalacqua stated that it is not counted as impervious because it does not contribute to runoff, it
35 takes water.
36
37 Mr. Hall stated that you would not have to provide detention for a grassed area and ideally where you
38 would want the grass would maybe be on the north. He stated that no ordinance specifies how a site
39 must be developed because we would be dictating everything to do with your property if it was like that,
40 and people just would not tolerate it because there is no way we should be getting to that level of detail.

1
2 Mr. Huddleston asked who issues the building permit in Champaign County.
3
4 Mr. Hall replied that he does.
5
6 Mr. Huddleston asked if Mr. Hall had issued a building permit based on this site plan.
7
8 Mr. Hall replied yes.
9
10 Mr. Huddleston asked when that permit was issued.
11
12 Ms. Chavarria replied that it was issued July 8, 2015.
13
14 Mr. Huddleston asked if the permit was issued prior to or after approval of the site plan.
15
16 Mr. Hall stated that it was issued prior to the current site plan. He said that the building permit was
17 issued based on the building being 104 feet by 40 feet and shortly after that approval Mr. Kesler
18 submitted a revised Site Plan, which is the Site Plan the Board has before them. He stated that this Site
19 Plan shows somewhat less building area and is a different shaped building, but it still complied with our
20 ordinance.
21
22 Mr. Huddleston asked if Mr. Hall had to issue another building permit.
23
24 Mr. Hall stated that we just amended it by showing that the current site plan was the one that was
25 approved.
26
27 Ms. Chavarria stated that the revised Site Plan was approved on August 10, 2015.
28
29 Ms. Lee mentioned her previous question about how the site plan showed one building measurement but
30 indicated another in its text, and noted that the Board is working with the revised site plan with the
31 smaller building size. She said that the Board received the second site plan in the mailing packet.
32
33 Mr. Huddleston stated that his concern is not with Mr. Kesler because they have known each other a
34 long time and he thinks they will make excellent neighbors. He said his objection is some technical stuff
35 and just the concern of one error, then another error, then another and the fact that we were never
36 contacted. Mr. Huddleston stated that the error was discovered, then the building foundation was poured
37 before the variance was granted; the building should not be finished before the variance is completed.
38
39 Mr. Thorsland asked Mr. Huddleston to repeat what he said.
40

1 Mr. Huddleston stated that all the errors were known right after the concrete was poured, but before the
2 building was even initiated. He said that at this date, the building is complete, and that seems
3 presumptuous to him. He added that it seems they are always brought in as late comers, and that his
4 sister was particularly outraged that they used their property as a staging area for dirt and equipment
5 although it didn't bother him. He does not have an issue with that at all because he knows Mr. Kesler
6 will take care of that and restore it all. Mr. Huddleston said that his issue is that he believes Mr. Kesler's
7 building to the property line will affect the value of their property when they are trying to sell it. He
8 stated that he thinks that is a problem, but it is not a known problem – it is something his family did not
9 have a say in, it is something that was taken from them, and something he has a concern about. Mr.
10 Huddleston said that Mr. Kesler gained 3 feet of building without any consequence or consideration of
11 them.

12
13 Mr. Thorsland clarified that Mr. Kesler did not gain more building; rather, he has the building in the
14 wrong place.

15
16 Mr. Huddleston stated that in essence Mr. Kesler did gain more building because he could not, by-right,
17 place the building on the right-of-way until the variance was approved therefore that placement has an
18 effect on any current or future sale of the Huddleston's property and it gives them a 3.5 foot
19 disadvantage. Mr. Huddleston stated that he does not believe that anything was done in malice but there
20 appears to have been a comedy of errors between zoning and Mr. Kesler's contractors and construction
21 should have come to a halt until everything was resolved. Mr. Huddleston asked if everything, as it
22 stands currently with Mr. Kesler's building is in compliance with Zoning.

23
24 Mr. Hall said that the side yard variance still needs to be approved.

25
26 Mr. Huddleston asked if that was all.

27
28 Mr. Hall stated that the side yard variance is the only thing that he is aware of.

29
30 Ms. Chavarria responded that staff would not do the compliance inspection until the building is
31 complete, so at this point, it is only the side yard variance.

32
33 Ms. Griest suggested that Mr. Hall talk about what is often discussed, which is the risk a petitioner takes
34 when they build something knowing they need a variance but have not gotten that approval yet; or that
35 they need a permit that they are seeking and we do not stop them from proceeding and what kind of risks
36 they are taking in the event it wouldn't be approved.

37
38 Mr. Hall said that he believes that he and Mr. Kesler had a discussion where he told Mr. Kesler if he
39 proceeded with construction it is at his own risk. He said that staff hardly ever tells someone they have
40 to stop what they are doing because it does not match what our ordinance says what has to be done. Mr.

1 Hall added that such an approach is generally not well accepted in Champaign County. He said that the
2 only time he does that is if there is a deliberate threat to public safety involved, and then he will bring
3 something to the attention of the Environment and Land Use Committee and get their direction. He said
4 that this has happened only a couple of times. He said that in this instance, Mr. Kesler has a problem, he
5 is trying to get his business into a new building, he needs a variance and he has to make a calculation on
6 whether or not to continue and if he continues, it may upset the ZBA and he may not get the variance,
7 but if he does not continue then he will lose money on a daily basis.
8

9 Mr. Huddleston asked Mr. Hall if there has ever been a time when the Board has gone ahead and
10 designated once a project has been completed that the variance was not issued.
11

12 Mr. Thorsland said yes, absolutely.
13

14 Mr. Huddleston asked what happened.
15

16 Mr. Thorsland stated that the petitioner had to make a building smaller.
17

18 Mr. Huddleston said they literally were required to make an existing building smaller.
19

20 Mr. Thorsland said yes.
21

22 Mr. Huddleston asked if the fact that this case could impact the value of his property have any weight
23 with the Board.
24

25 Mr. Thorsland stated that it depends on the Board and what they are looking at. He stated that Mr.
26 Huddleston has a piece of property that is 51 feet wide and in theory unbuildable without a variance.
27

28 Mr. Thorsland asked Mr. Hall if there is another zone this could be in, in the County, which would
29 reduce that side and rear yard. He said we've heard about the back yard, and how the jog in the back
30 allows a lower criterion. He asked what the zoning district would be that has a side yard of 5 feet.
31
32

33 Mr. Hall stated that there is no business district that has a side yard smaller than 10 feet. He said that he
34 needed to clarify that Mr. Huddleston's lot to the west is not a separate lot; it is technically part of the
35 property to the south. He said that if it were a separate lot, in our Zoning Ordinance it would have to be a
36 lot that is at least 65 feet wide.
37

38 Mr. Thorsland stated that his point is that the Board will look at the devaluation of this piece that is a
39 part of the larger lot, but it does not seem that the lot was ever meant to be anything but access to the
40 main property. Mr. Thorsland did not think that the access being diminished by 3.5 feet is in a

1 significant way that we could measure it as a Board. He added that the Board members are not
2 appraisers; our job is to grant variances and change zoning, not to put a cash value on a piece of property
3 or what happens next door to it. He stated that the reason variances are granted are because of things like
4 this and the reason we change a zoning map is for the things that are on it. He asked Mr. Huddleston if
5 he has a current appraisal for that strip of land.

6
7 Mr. Huddleston stated no, because it is not a separate piece.

8
9 Mr. Thorsland said it would be hard to determine what the 3.5 feet closer that the building is at now has
10 done to that because we don't know what we started with, or where we are now.

11
12 Mr. Huddleston asked the Board what questions he should have asked that he didn't.

13
14 Mr. Thorsland said that he doesn't think Mr. Huddleston failed to ask good questions of the Board. He
15 stated that one of the things he heard Mr. Huddleston ask that we didn't have a great answer for was
16 exactly when the original permit was applied for, but that can be looked up.

17
18 Mr. Huddleston said that he doesn't care when, as long as there is a current building permit that
19 considers everything there

20
21 Mr. Thorsland said there is a current permit.

22
23 Mr. Huddleston stated that as he understands it, there is yet to be a certificate of occupancy issued.

24
25 Mr. Thorsland said that is correct.

26
27 Mr. Passalaqua stated that from Mr. Kesler's testimony, Mr. Huddleston's 51 foot strip of land could
28 have value to him. He asked Mr. Huddleston if he was aware that Mr. Kesler would possibly be
29 interested in buying that land.

30
31 Mr. Huddleston responded that Mr. Kesler has made an offer on the front part of it, yes.

32
33 Mr. Passalaqua stated that in his mind, this project, albeit 3.5 feet closer, has at least increased the
34 demand for Mr. Huddleston's property.

35
36 Mr. Huddleston said that is the case if they want to sell it.

37
38 Mr. Passalaqua stated that if Mr. Huddleston did not want to sell it, he would want it to be worth less
39 anyway so he wouldn't have to pay so much in taxes.

40

- 1 Mr. Huddleston said he loves paying taxes. He said he wants to sell it as part of the property in total.
2
- 3 Mr. Passalacqua stated that as one Board member, he does not think that a 3.5 foot encroachment is going
4 to negatively affect that sale, but he could be wrong.
5
- 6 Mr. Huddleston said that it's unknown.
7
- 8 Mr. Thorsland concurred, stating that the Board would be remiss if it tried to set a value on the property
9 because it is unknown.
10
- 11 Mr. Passalacqua stated that we are only talking about the irregular 51 foot piece.
12
- 13 Mr. Huddleston stated that we are talking about the side yard and not the 51 foot piece.
14
- 15 Mr. Passalacqua stated that the 51 foot piece abuts the side yard that we are discussing.
16
- 17 Mr. Thorsland asked if he could summarize for Mr. Huddleston, that Mr. Huddleston finds what may be
18 a problem is that this building is 3.5 feet closer to his 51 foot wide piece of land that is part of his entire
19 lot and that Mr. Kesler's building has diminished the value or encroached upon Mr. Huddleston's
20 property by not allowing him the full 10 feet of the setback from the side.
21
- 22 Mr. Huddleston stated that it is not him who allowed it; he does not own that setback.
23
- 24 Mr. Thorsland asked Mr. Huddleston if he thinks that because the building is 3.5 feet closer that he has
25 lost something of use or value in the piece he has adjacent to it.
26
- 27 Mr. Huddleston stated that for sure, Mr. Kesler gained 3.5 feet of additional use of that property.
28
- 29 Mr. Thorsland stated that if Mr. Kesler had moved the other side of his building 3.5 feet out, then yes, he
30 would gain a larger building.
31
- 32 Mr. Huddleston stated that we could play what if all night, but at the end of it Mr. Kesler took 3.5 feet of
33 land that he was not supposed to take.
34
- 35 Ms. Griest stated that she challenges that statement in that Mr. Kesler owns that entire parcel so he is not
36 taking anything that he does not already own.
37
- 38 Mr. Huddleston disagreed; he stated that Mr. Kesler is taking use of that which is precluded by zoning
39 setbacks.
40

1 Ms. Griest stated let's agree to disagree, and thanked Mr. Huddleston for his comments.
2

3 Mr. Thorsland stated that one piece of evidence that the Board has to find is if this is Mr. Kesler's or his
4 son's fault, and testimony indicates to him that the contractor put the building in the wrong place. He
5 stated that in the evidence we have before us, it is not just a piece of concrete with some vertical
6 brackets to support the building because there is infrastructure in that and there is probably a different
7 thickness to the base that is under the building versus what is next to it and there is probably wire,
8 plumbing, and all kinds of other things that are in the concrete that if you push the building back at the
9 point they discovered it, it would be in a very wrong place for the entirety of the building. Mr. Thorsland
10 said that he does not think it is a matter of pushing the wall back.
11

12 Mr. Huddleston asked Mr. Thorsland what his point was.
13

14 Mr. Thorsland stated that his point is that the issue is not something that can be simply rectified and it
15 was not an action of the applicant that caused this problem.
16

17 Mr. Huddleston stated that it was Mr. Kesler's agent that caused the problem.
18

19 Mr. Thorsland stated that Mr. Kesler's agent could be at fault, but we are not here to parse through that.
20 He stated that we are here to discuss this variance; we have eliminated the back yard variance, and he
21 hopes that answers to that the property is irregular and it meets the requirements of the ordinance. He
22 stated that for the side, we could argue it is a taking of use or an additional use of Mr. Kesler but right
23 now what is before us is this 3.5 feet.
24

25 Mr. Huddleston said thank you.
26

27 Mr. Thorsland thanked Mr. Huddleston. He asked if there were any additional questions for the Board or
28 staff and there were none.
29

30 Mr. Thorsland asked Mr. Kesler if he would like to cross examine Mr. Huddleston.
31

32 Mr. Kesler declined to cross examine.
33

34 Mr. Thorsland asked Mr. Huddleston if he would like to cross examine Mr. Kesler.
35

36 Mr. Huddleston declined to cross examine.
37

38 Mr. Thorsland noted that there were no other witnesses. He said that the only lingering piece of
39 information that he has in mind is the date of the permit, but Mr. Huddleston is the only person who
40 asked about that and he seems satisfied with the fact that the permit exists.

1
2 Ms. Lee stated that she thinks there is another point of discussion going on, and referred to page 5 of 11
3 where it states "Petitioner has testified on the application: we would need to start all over. We already
4 have \$50,000 invested and would require twice this amount to tear down and rebuild. We cannot afford
5 to do this." She stated that she thinks that is sort of relevant to what we are discussing.
6

7 Mr. Thorsland concurred, stating that is why it is mentioned under practical difficulties or hardships. He
8 stated there are no special conditions suggested for this, but Mr. Hall may have something to add.
9

10 Mr. Hall stated that as he was listening to Mr. Huddleston, a possible special condition occurred to him;
11 he does not know if the Board would be interested. He said he is not certain he can see a lot of logic in
12 it, but then again he can see some logic to it too. He offered the following possible special condition:
13 "The side yard on the east side of the building shall not be less than 13.5 feet, to ensure that the variance
14 does not benefit the Petitioner more than necessary." Mr. Hall added that it seems unlikely that it would
15 be cost effective to add 3.5 feet along the east side of the building.
16

17 Mr. Passalacqua stated that he did not feel the special condition is necessary, as the building does not
18 have footings for expansion and it is not practical for them to add on 3.5 feet of building.
19

20 Mr. Thorsland suggested that they could ask the Petitioner that if they have this additional room, would
21 they even think of expanding the building. He added that Mr. Passalacqua brings up a good point in that
22 there appears to be a different amount of concrete under the building than what is under the paved area.
23

24 Ms. Griest stated that the testimony Mr. Kesler gave is that the concrete is a different depth and
25 thickness and there is insulation in it under the building but not under the parking or walkways.
26

27 Mr. Thorsland stated that Mr. Huddleston commented on the comedy of errors made but the site plan is
28 neither the best nor the worst he has seen. He stated that there has been development continuing since
29 the problem was discovered, and he agrees with Mr. Passalacqua's point that when we discuss the
30 property next door, there does not seem to have been any harm done in the main section of the lot. Mr.
31 Thorsland said that there was no evidence to indicate that the Petitioner was directly responsible.
32

33 Mr. Passalacqua stated that it should not be construed that he thinks it is okay for someone to stockpile on
34 someone else's property, because he does not think that is okay but he does think that the testimony has
35 shown that the property will be put back together better than it was.
36

37 Ms. Griest stated that she finds the use of someone else's property for stockpiling to be offensive and
38 inappropriate and she addresses that comment to Mr. Kesler and that's his responsibility to keep his
39 contractors within his own property, whether Mr. Huddleston or his sister Jean objects or not. Ms. Griest
40 stated that it is wrong to be making those kinds of assumptions and she knows that staff will hold Mr.

1 Kesler to the responsibility of restoring it to its previous condition or better.

2
3 Mr. Kesler stated that he has known Mr. Huddleston through Bible study for many years, and he knows
4 what Mr. Kesler is going to do. He concurred that it was an oversight and error on his part and he has
5 contacted Jean Huddleston several times. Mr. Kesler stated that in Ms. Huddleston's last email, she said
6 thank you to Mr. Kesler for his prompt response, said to contact her if he needs anything, and that she
7 appreciates Mr. Kesler's willingness to work on the road between Casey's and his property. Mr. Kesler
8 stated that it is not something he has overlooked; he has tried to have the stockpile cleaned up before and
9 has told the contractors this has got to be done. Mr. Kesler stated that he thinks Mr. Huddleston knows,
10 but Mr. Kesler has already put in a new culvert, he has already graded that area, and the access lot will
11 now become an access lane that will benefit his adjoining property.

12
13 Mr. Thorsland asked if those communications were in an email he has, and asked if Mr. Kesler would
14 like to submit a copy as evidence.

15
16 Mr. Kesler said yes, but hesitated to do so in case Jean Huddleston does not want it shared.

17
18 Mr. Thorsland stated that it could wait to be submitted, and would wait to see if Jean wants to share the
19 email. He added that what Mr. Kesler has shared from the email is entered in the record and that may be
20 sufficient. He brought back the topic of Mr. Hall's suggested special condition regarding the east side
21 yard.

22
23 Mr. Passalaqua said in his opinion, he would rather not add any more to it.

24
25 Mr. Thorsland agreed with Mr. Passalaqua that it is not a necessary condition, especially since the
26 property is all concrete now. He added that it would not be cost effective for anyone.

27
28 Mr. Kesler noted that the construction looks really nice; Graber Construction and Imperial Concrete
29 have done a phenomenal job and his expectations have been exceeded.

30
31 Mr. Thorsland asked if there was anything else from the Board or staff and there were none.

32
33 Mr. Thorsland stated there are no conditions to approve therefore the Board will move to the findings of
34 fact.

35
36 Ms. Griest mentioned Mr. Kesler's original testimony document as a new Document of Record to add.

37
38 Mr. Thorsland added Mr. Kesler's written statement to the Documents of Record as new Item 6 on the
39 Documents of Record.

40

1 **Finding of Fact for Case 814-V-15:**

2
3 From the documents of record and the testimony and exhibits received at the public hearing for zoning
4 case 814-V-15 held on October 29, 2015, the Zoning Board of Appeals of Champaign County finds that:

5
6 **1. Special conditions and circumstances DO exist which are peculiar to the land or structure**
7 **involved, which are not applicable to other similarly situated land and structures elsewhere in the**
8 **same district because.**

9
10 Ms. Griest stated that special conditions and circumstances DO exist which are peculiar to the land or
11 structure involved, which are not applicable to other similarly situated land and structures elsewhere in
12 the same district because the lot is a 0.377 acre tract in the B-4 General Business District, which is
13 particularly small.

14
15 Ms. Capel stated that the property next door is only 51 feet wide, which precludes building on that
16 property.

17
18 Mr. Thorsland asked Ms. Capel if she wanted to add that the side yard variance will have little or no
19 impact on the adjacent 51 foot wide strip.

20
21 Ms. Capel said yes.

22
23 Mr. Hall pointed out that there can still be construction on the 51 foot wide strip and it would have to be
24 part of the larger lot, but they can still build on it. He said that what they can't do is build on it
25 separately from the rest of the property. He asked the Board if they wanted to change their finding.

26
27 Ms. Capel agreed that the finding should be changed. She asked to strike the portion that says they
28 cannot build on it.

29
30 Ms. Chavarria read the amended statement: the lot is a 0.377 acre tract in the B-4 General Business
31 District, which is particularly small; the property next door is only 51 feet wide so the side yard variance
32 would not impact the adjacent 51 foot wide strip significantly.

33
34 Mr. Thorsland asked if the changes were adequate for the Board.

35
36 There were no objections.

37
38 **2. Practical difficulties or hardships created by carrying out the strict letter of the regulations**
39 **sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure**
40 **or construction.**

1
2 Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the
3 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or
4 structure or construction because the expense of moving the building 3.5 feet to conform to the
5 ordinance is prohibitive.

6
7 Mr. Thorsland asked Ms. Chavarria to review the statement.

8
9 Ms. Chavarria stated that practical difficulties or hardships created by carrying out the strict letter of the
10 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or
11 structure or construction because the expense of moving the building 3.5 feet to conform to the
12 ordinance is cost prohibitive.

13
14 Mr. Thorsland asked if the changes were adequate for the Board.

15
16 There were no objections.

17
18 **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT**
19 **result from actions of the applicant.**

20
21 Mr. Passalacqua stated that the special conditions, circumstances, hardships, or practical difficulties DO
22 NOT result from actions of the applicant because there was an error in the field during construction.

23
24 **4. The requested variance IS in harmony with the general purpose and intent of the**
25 **Ordinance.**

26
27 Mr. Passalacqua stated that the requested variance IS in harmony with the general purpose and intent of
28 the Ordinance because it minimizes impact and allows the use of the building in the location it is being
29 constructed.

30
31 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
32 **detrimental to the public health, safety, or welfare.**

33
34 Mr. Randol stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise
35 detrimental to the public health, safety or welfare because there were no replies from the road district or
36 the fire department; had there been issues they would have responded.

37
38 Mr. Thorsland added that the Variance allows the use without additional hazards.

39
40 **6. The requested variance IS the minimum variation that will make possible the reasonable**

1 **use of the land/structure.**
2

3 Mr. Thorsland stated that the requested variance IS the minimum variation that will make possible the
4 reasonable use of the land/structure.
5

6 **7. No special conditions are hereby imposed.**
7

8 Mr. Hall asked that before the Board moves on to approve the findings of fact, that they consider finding
9 3 regarding the actions of the applicant. He stated that technically what your agent does is your action.
10 He said that he knows the Board discussed that previously, so he knows by his being in attendance at the
11 meeting what the background is on the decision. He stated that if a court in the future read finding 3,
12 there is no indication of this greater understanding that technically it was the result of the applicant, but
13 this Board does not expect a land owner to be checking every action done by the contractor.
14

15 Mr. Passalaqua asked if the Board should add that setbacks on the plan were correct, and the intent of
16 the applicant was to put the building in such a location that it was in compliance.
17

18 Mr. Hall stated that it is all good evidence, but he does not know that it needs to be part of the findings.
19

20 Mr. Passalaqua stated that he was just saying that the contractor is an agent of the applicant and there is
21 a timeline issue there. He asked if Mr. Hall wanted more detail in the finding.
22

23 Mr. Hall stated no, he just wanted to know if the Board would like to put more evidence in the Summary
24 of Evidence because the Summary of Evidence is silent about that.
25

26 Mr. Thorsland stated that what we are talking about goes back to page 6 and making an addition to
27 whether or not the practical difficulties and hardships result from the actions of the applicant. He noted
28 that in there, he thinks the Board could add what Mr. Passalaqua just talked about.
29

30 Mr. Passalaqua stated that as reflected in the submitted site plan, the intent of the applicant was to be in
31 compliance.
32

33 Mr. Thorsland added, only after significant construction had already taken place.
34

35 Ms. Lee referred to the part in the Summary of Evidence about the petitioner already having invested
36 \$50,000 in the construction.
37

38 Mr. Thorsland stated that the statement she refers to is already in a different part of the summary, and
39 that we are looking to strengthen up the evidence under section 9 about things that do not result from the
40 actions of the applicant.

1
2 Mr. Hall stated that his point was that from a legal sense, they do result from the actions of the applicant
3 because they were the actions of his agent, but to establish that the Board appreciates that a landowner
4 cannot supervise the actions of a contractor you are still responsible for what he does, but you are not his
5 supervisor.
6
7 Mr. Thorsland stated that Mr. Kesler took action; he is here for a variance. When he discovered the
8 error, he came in promptly for the variance. Mr. Kesler also applied for the building permit before they
9 started that indicated they had every intention of having the proper side yard.
10
11 Mr. Hall stated that this is the problem he has with findings like this because this absolutely resulted
12 from the actions of the applicant.
13
14 Ms. Griest clarified that they were actions of the applicant's agent. She said that she does not agree with
15 everything that Mr. Hall said about supervising a contractor.
16
17 Ms. Capel stated that it is not common practice to micromanage contractors.
18
19 Ms. Griest stated that if she built a building with Graber that large or larger in size, she would definitely
20 know where her building was.
21
22 Mr. Hall stated that even that which was just proposed for 9.D. does not make clear the thing he was
23 getting at; but maybe what he was getting at the Board is not comfortable with. He added that is fine, but
24 he has voiced his concern.
25
26 Mr. Huddleston asked if he could say something.
27
28 Mr. Thorsland allowed him to speak, but requested that he keep it brief.
29
30 Mr. Huddleston stated that he agrees with the Zoning Administrator. He stated that the agent is his
31 person, period.
32
33 Mr. Thorsland stated that the Board has hashed through that idea and now is developing more evidence
34 to support why this was not entirely created simply because Mr. Kesler pushed his building over. He
35 added that he agrees with Mr. Hall on some points, but this is not the first variance that is from this sort
36 of area. He said that this is what this Board is comfortable with doing and that we have frankly done
37 many times as a Board.
38
39 Mr. Huddleston stated that he hopes the Board is giving the variance in spite of and not absolving the
40 responsibility of the owner for the mistake.

1
2 Mr. Thorsland stated that all the evidence here is pretty clear about how this happened. He thanked Mr.
3 Huddleston for his comments.

4
5 Ms. Griest referred to Mr. Hall's prior discussion about Item 3; she asked if Mr. Hall was questioning
6 the do, or do not of the Item 3 finding.

7
8 Mr. Hall stated no; he is just trying to deal with facts in the evidence.

9
10 Ms. Griest said that if she takes the hard stance, where the owner is responsible for every action of the
11 contractor, she would have to say the conditions DO result from the actions of the applicant.

12
13 Mr. Thorsland stated that he believes every one of the variances that has come before the Board has had
14 something to do with the actions of the applicant. He added that the Board would grant zero variances if
15 we really went that black and white.

16
17 Ms. Griest asked Mr. Hall if he is hoping to add a sentence in the evidence that says although we
18 understand it is the full responsibility of the land owner for all actions of his contractor, we do not
19 expect the land owner to watch every move of that contractor.

20
21 Mr. Hall stated no; this is the first time that he has had to wrestle with this in the 13 years that he has
22 taken cases to the ZBA. He said that this was a vacant lot and if they had come to the Board ahead of
23 time and said that they wanted to justify moving it 3.5 feet further to the west, there is no reason to do
24 that.

25
26 Mr. Thorsland stated that he gets the impression from all the testimony the Board has heard that no one
27 had a clue they had put this building in the wrong spot until way after and he can imagine the words
28 uttered by many people about that.

29
30 Mr. Passalacqua stated that the Board justifies all these actions with words about hardship. He asked what
31 the Board is going to do, not worry about hardship in Item 3 but not in Item 2.

32
33 Ms. Lee stated that her understanding of the testimony was that the contractor put the flags up, but when
34 his employees did it, they got it 3.5 feet off.

35
36 Mr. Passalacqua stated that they are still an agent of the owner.

37
38 Ms. Griest stated that the testimony reflects that when a second contractor came in and went to pouring
39 the parking concrete pin-to-pin was when they discovered it because he had actually found the pins
40 before he poured his concrete. She said that it was not until a third set of eyes came onto the scene that

1 the error was discovered. She stated that in all reality, the property not owned by the Petitioner was in
2 fact used as ground storage, and even if the Petitioner knew they had done it, he probably did not think it
3 was a big deal.

4
5 Mr. Thorsland stated that the Board could spend a very long time deciding when the third contractor
6 came in to pour concrete and maybe thought that the 51 feet was actually part of the Petitioner's
7 property, or thought it was the drainage area or pervious area and thought it would be fine to put stuff
8 down there. He stated that it is not readily apparent what land is part of what property and might not
9 immediately suspect that the 51 foot strip is part of the Huddleston main property. He added that it
10 makes sense, looking at it now, that the Huddlestons had a second entrance at some point planned. He
11 said the Board had heard a lot of talk about cleaning up the access to the property, and that will all be
12 straightened out now.

13
14 Mr. Passalacqua stated that he agrees for almost every variance, but this could be the Achilles' heel
15 because you could read it in favor or against in almost every variance.

16
17 Mr. Thorsland stated that where he thought Mr. Hall was going with this is like how we regularly take
18 the end off Item 6 finding because it is the minimum variance, that's why we're doing it. He stated that
19 he would argue at some point that Item 3 needs to be completely rewritten by the County Board or
20 whoever does these things so that it is reflective of the fact that an error was made, that too much money
21 was put into the hole in the ground, it is hard to backtrack, it was not a malicious error, it was not a
22 taking, it was just that somebody messed up and we're granting a variance because it is the logical,
23 humane thing to do. He added that Mr. Hall attempted to make it even more humane by adding the
24 condition about expanding the building on the east side, but that he does not feel that is necessary.

25 Ms. Lee asked Mr. Hall what bothers him so much about this variance request that has not bothered him
26 with other variance requests.

27
28 Mr. Hall stated that there was no reason to justify this variance *a priori*, and that he has no quibbles with
29 the part about this resulting from the actions of the applicant, but he thinks the Board should make it
30 clear that the owner is responsible for the actions of his agent and that they are not going to hold him
31 responsible for this level of error. Our society doesn't do that because you would have to know more
32 than your contractor to supervise your contractor. He stated that is the problem with these findings and
33 that is why it is tough to do these things comprehensively and do them how they should be done every
34 time, but truly he has never seen anything like this case.

35
36 Mr. Passalacqua asked if the conditions in the summary and the minutes of this conversation adequately
37 support Mr. Hall's concerns.

38
39 Mr. Thorsland stated that we do not have to go with what the Zoning Administrator wants to do because
40 this is the Board deciding what to do here. Mr. Hall's comfort, while important to us, is not required. He

1 said that he understands Mr. Hall's point and Mr. Passalaqua's point, and he leans toward Mr.
2 Passalaqua's opinion. He stated that he often finds this part of the findings, along with the part about a
3 variance being necessary for the public convenience, to be two of the most difficult parts of the findings.
4 He said he still was curious about why this case stood out among others.
5

6 Mr. Passalaqua stated that he sees the concern being that this was an empty lot. The variance was not
7 being sought because of a drainage issue, or an historical preservation arrowhead and it is there because
8 of an accident. He said that this does not mean that we are varying it because it is an immovable object.
9 He stated that as a contractor he understands and agrees that the owner cannot go out and learn to be an
10 excavator and do it themselves because he is out earning money somewhere else to pay that contractor.
11 If it was creating a hazard or ruining the moral turpitude of the community, then he might see the 3.5
12 feet a little more harshly. He said that regarding impact, albeit it's not because it was not a fractured
13 archeological remnant that was there, he thinks the impact is low in this case.
14

15 Mr. Thorsland stated that personally, if the Board was giving this variance and the intent was to use the
16 narrower part to go as a drive around the building or doing something that would really affect safety or
17 quality of life or the fact that no car is really that small in this country, he would understand the
18 discomfort more.
19

20 Mr. Hall stated that his concerns have been adequately addressed by the minutes.
21

22 Ms. Lee stated that everybody makes mistakes; we're all human. She said that they had a plan that it
23 would be the right way. She said that even though the owner is responsible for his agents, it isn't
24 something that he would have likely foreseen because the drawings show it was to be 10 feet on each
25 side.
26

27 Mr. Thorsland added that there was some misunderstanding in the drawings about the permeable area.
28 He said that everyone had the best faith in the others and no one was trying to be duplicitous with the
29 others and it just got put in the wrong place. He asked if the Board was comfortable with moving on.
30

31 Ms. Lee asked if any changes were being made to Item 3.
32

33 Mr. Thorsland stated that they added to 9 in the Summary of Evidence, but not to Item 3 in the Findings
34 of Fact. He said that we also added the statements that the Board made, and that would become 9.D. on
35 page 6 of 11, where there are various pieces of evidence including buying the land and making this all
36 irrelevant through the agents of the adjacent land owner. He said that we also discussed the jog in the
37 back of the property in 9.C. He asked if the Board wanted to strike that, but he thinks it is fine to let it
38 stand to sort of build evidence that the whole lot was kind of confusing in the first place.
39

40 Mr. Hall stated that he anticipates that the Board would strike everything related to Part B of this

1 variance because the final determination is not going to address Part B because there is no Part B.

2
3 Mr. Thorsland entertained a motion to adopt the Summary of Evidence, Documents of Record and
4 Findings of Fact as amended.

5
6 **Ms. Griest moved, seconded by Mr. Passalacqua to adopt the Summary of Evidence, Documents of**
7 **Record and Findings of Fact as amended. The motion carried by voice vote.**

8
9 Mr. Thorsland entertained a motion to move to the Final Determination for Case 814-V-15.

10
11 **Ms. Griest moved, seconded by Mr. Randol to move to the Final Determination for Case 814-V-15.**
12 **The motion carried by voice vote.**

13
14 **Final Determination for Case 814-V-15:**

15
16 **Ms. Griest moved, seconded by Ms. Capel that the Champaign County Zoning Board of Appeals**
17 **finds that, based upon the application, testimony, and other evidence received in this case, that the**
18 **requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority**
19 **granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of**
20 **Appeals of Champaign County determines that:**

21
22 **The Variance requested in Case 814-V-15 is hereby GRANTED to the petitioners Mark and Adam**
23 **Kesler d.b.a. No Limit Fitness LLC, to authorize the following variance in the B-4 General**
24 **Business Zoning District:**

25
26 **Authorize a side yard of 6.5 feet in lieu of the required minimum 10 feet as per Section 5.3**
27 **of the Zoning Ordinance.**

28
29 Mr. Thorsland requested a roll call vote.

30
31 The roll was called as follows:

32
33 **Passalacqua – yes Randol – yes Capel – yes**
34 **Griest – yes Lee - yes Thorsland – yes**

35
36 Mr. Hall informed the petitioner that he has received an approval for his request. He said that staff will
37 send out the appropriate paperwork as soon as possible.

38
39 **7. Staff Report**

40

1 None

2

3 **8. Other Business**

4 A. Review of Docket

5

6 Mr. Hall stated that the docket has the new ZBA meeting on December 3rd, and the docket has a case
7 819-AT-15 that is tentatively based on next Thursday's ELUC meeting.

8 Mr. Thorsland stated that he will be absent for the December meetings.

9

10 Mr. Passalacqua stated that he will be absent for the first meeting in January.

11

12 Mr. Thorsland stated that the time changes on Sunday, therefore the meeting time changes to 6:30 p.m.

13

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

15

16 None

17

18 **10. Adjournment**

19

20 Mr. Thorsland entertained a motion to adjourn the meeting.

21

22 **Ms. Griest moved to adjourn the meeting, seconded by Ms. Capel. The motion carried by voice**
23 **vote.**

24

25 The meeting adjourned at 8:48 p.m.

26

27

28

29

30 Respectfully submitted

31

32

33

34 Secretary of Zoning Board of Appeals

35