

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: December 17, 2009

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

TIME: 6:30 p.m.

Urbana, IL 61802

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

MEMBERS ABSENT : Doug Bluhm, Roger Miller

STAFF PRESENT : Connie Berry, J.R. Knight

OTHERS PRESENT : Larry Lambright, Scott Lambright, Diane Lambright, Judy Warmbier, Gerald Warmbier, Alan Kurtz

1. Call to Order

The meeting was called to order at 6:36 p.m.

Mr. Knight informed the Board that due to the absence of Doug Bluhm, Chairman, the Board must appoint an Interim Chair for tonight's meeting.

Mr. Palmgren moved, seconded by Mr. Schroeder to appoint Eric Thorsland as Interim-Chair for the December 17, 2009, meeting. The motion carried by voice vote.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

3. Correspondence

None

4. Approval of Minutes (November 12, 2009 and December 3, 2009)

Mr. Palmgren moved, seconded by Mr. Courson to approve the November 12, 2009 and December 3, 2009, minutes as submitted. The motion carried by voice vote.

5. Continued Public Hearing

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Case 655-S-09 Petitioner: **Judith K. and Gerald T. Warmbier** Request: **Authorize a Kennel as a Special Use Permit in the AG-1 Zoning District with a waiver of the standard conditions for: (1) a minimum separation of 200 feet between outdoor animal exercise areas and any adjacent residential use; and (2) a minimum side yard of 200 feet and a minimum rear yard of 200 feet.** Location: **A five acre tract in the East half of the Southeast Quarter of the Northwest Quarter of Section 17 of Hensley Township and commonly known as the house and outbuildings at 2173 CR 750E, Champaign.**

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

Mr. Knight distributed a new Supplemental Memorandum dated December 17, 2009, to the Board for review. He said that the new memorandum indicates a revision to the Supplemental Memorandum dated December 11, 2009, which includes a proposed condition 13.A. He read proposed condition 13.A. as follows:

A. The following condition is necessary to fully document that the special use permit has been approved and is necessary to ensure compliance with all other special conditions of approval:

The petitioner shall apply for a Change of Use Permit within 30 days of the approval of the special use permit, and shall also provide a complete site plan with the permit application to ensure compliance with the Zoning Ordinance within a reasonable time frame.

Mr. Knight continued to read the special conditions of approval included in the Supplemental Memorandum dated December 11, 2009, as follows:

B. The following condition recognizes there is a practical limit on the number of cats that can be rescued at this special use:

The cat population at the special use shall be limited to no more than 75 cats of any age to ensure the petitioner can achieve their mission of animal rescue while preserving the essential character of and not being injurious to the district.

C. Compliance with the Illinois Environmental Barriers Act and the Illinois Accessibility Code is required and the County cannot waive these requirements. Compliance requires the following:

If not already installed, the petitioner shall install an accessible entrance in conformance with the Illinois Accessibility code at both the kennel building and the studio building within one year of the approval of the special use permit, unless this requirement is waived by the Capitol Development Board to ensure the safety and welfare of the public and that the

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2 **special use is readily accessible to and usable by environmentally limited persons.**

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4 D. The neighbors state that the animals on the subject property do not present a problem or nuisance to them
5 because the dogs are placed inside every evening to prevent any problems with the neighboring property.
6 The following condition requires the owner of the kennel to ensure that this practice continues:

7 **The kennel shall be managed to ensure that the dogs do not have free access to the exterior**
8 **from dusk to dawn to ensure the kennel does not become injurious to the district.**

9
10 E. The existing septic system is being used for a purpose that was not originally intended but the actual
11 loading of the system may be within allowable limits. Any repair or replacement that will eventually be
12 required should receive any necessary approval and permitting from the property authority as required by the
13 following special condition:

14 **Any repair or replacement of the septic system shall be in conformance with and approved**
15 **by either the Champaign County Health Department or the Illinois Department of Agriculture**
16 **whichever agency has proper jurisdiction depending upon the type of repair that is required or**
17 **the type of replacement system that is installed to ensure protection of public health.**

18
19 Mr. Knight stated that the mailing included a new Summary of Evidence dated December 17, 2009, which
20 included information from the last meeting. He said that at the last meeting staff recommended that the
21 Board receive a detailed floor plan of the studio building and Mr. and Mrs. Warmbier submitted that detailed
22 floor plan at tonight’s meeting.

23
24 Mr. Thorsland asked the Board if there were any questions for Mr. Knight and there were none.

25
26 Mr. Thorsland indicated that anyone desiring to testify in this case should sign the witness register.

27
28 Mr. Thorsland called Ms. Judy Warmbier to testify.

29
30 Ms. Judy Warmbier, who resides at 2173 CR 750E, Champaign stated that she is surprised that the
31 installation of a gray water line requires permission or approval from the County.

32
33 Mr. Knight stated that he is not familiar with all of the regulations for the Champaign County Public Health
34 District but septic systems are regulated. He said that he would be happy to provide the appropriate contact
35 information if desired.

36
37 Ms. Warmbier asked if the number of cats allowed on the property at one time would be regulated by the
38 Department of Agriculture since the facility is registered with them as a licensed shelter/kennel. She said
39 that she finds it ironic that the County would be able to place a limitation on the number of cats allowed at
40 one time when the facility is already licensed by the State of Illinois.

41
42 Mr. Knight stated it is understood that the facility is licensed by the State of Illinois but the limit on the
43 number of cats, from the Zoning Board’s perspective, is more about the impact of the cat population on the

1 neighborhood. He said that the request is a special use under the Zoning Ordinance therefore the Zoning
2 Board of Appeals is authorized to place reasonable limitations on what can be done as part of the specific
3 use.

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5 Mr. Thorsland asked the Board if there were any questions for Ms. Warmbier and there were none.

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7 Mr. Thorsland asked if staff had any questions for Ms. Warmbier and there were none.

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9 Mr. Knight stated that the limitation of 75 cats was based on Ms. Warmbier's testimony at the October 12,
10 2009, public hearing.

11
12 Ms. Warmbier stated yes, but since the last meeting she has thought more about that limitation and decided
13 that since she is going through the State of Illinois to license the shelter then perhaps they should place the
14 limitation on the number of cats that are allowed at one time and not the County. She asked if the County
15 regulated how many animals could be kept at the Champaign County Humane Society.

16
17 Mr. Knight stated that the Champaign County Humane Society is not a private entity and the facility is
18 located within the jurisdiction of the City of Urbana.

19
20 Ms. Warmbier stated that during kitten season the limitation of 75 cats at one time may prove to be difficult.

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22
23 Mr. Knight asked Ms. Warmbier if she would like to reconsider her statement that 75 cats would be an
24 adequate limitation.

25
26 Ms. Warmbier stated that 75 cats are enough for anyone to take care of but she finds it ironic that that the
27 County would regulate the number of cats rather than the State of Illinois Department of Agriculture. She
28 said that she will stay with the limitation of no more than 75 cats of any age at one time on the property.

29
30 Mr. Thorsland stated that the bulk of the burden is on Ms. Warmbier but the Board did review this issue with
31 the petitioner at the October 12th meeting and it was decided that 75 cats was an adequate limitation.

32
33 Ms. Warmbier stated that at the time she was trying to take in all of the information that was being discussed
34 at the meeting and agreed to the limit but during kitten season it would be easy to go over that limit. She
35 said that she could take in few mother cats with four to eight kittens therefore it wouldn't take long to reach
36 that limit.

37
38 Mr. Thorsland informed Ms. Warmbier that if she is reconsidering the limitation of 75 cats then now would
39 be the time to discuss this issue with the Board.

40
41 Ms. Warmbier stated that the limitation of 75 cats is fine.

42
43 Mr. Palmgren asked if the Board could indicate that the limitation of 75 cats of any age as a reasonable target

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AS APPROVED FEBRUARY 11, 2010

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1 and allow for those extra times when someone drops off a mother cat with six kittens therefore placing the
2 facility over the 75 cat limitation. He said that Ms. Warmbier will know when there are too many cats at the
3 facility and she has already indicated that 75 would be a comfortable number therefore perhaps no specific
4 number needs to be locked in but targeted.
5

6 Ms. Warmbier stated that it isn't an easy situation when someone drops off an animal and the desire is to do
7 the right thing by them but at times the only recourse is euthanasia.
8

9 Mr. Palmgren stated that it appears that Ms. Warmbier knows her limitations and it is not probable that she
10 will bring in 250 cats because she doesn't have the room and she doesn't want that many cats on the property
11 at one time. He said that he does understand that there may be times when the facility will house more than
12 75 cats.
13

14 Ms. Capel asked Ms. Warmbier if the State of Illinois Department of Agriculture has indicated a limit on the
15 number of cats allowed at one time.
16

17 Ms. Warmbier stated that they have not. She said that during their inspections they go through all of the
18 records and inspect the entire facility and she has never been in violation of any of their regulations. She
19 said that there is a limit for everyone but there are times when all of the shelters are full of mother cats and
20 kittens. She said that she tries to do everything she can to find homes for the cats but there are times when
21 euthanasia is the only option.
22

23 Mr. Palmgren asked Ms. Warmbier if the State of Illinois has a specific regulation regarding the area
24 required per animal.
25

26 Ms. Warmbier stated that she is not aware of such a regulation but she would assume that if there is they
27 would indicate such to her during their inspections. She said that the inspectors are intelligent enough to
28 witness the animals' health and the condition of the facility. She said that she does not intend to go over the
29 75 limit but there may be times when she might.
30

31 Mr. Palmgren stated that it appears that there may be some overlapping regulations but if the State of Illinois
32 Department of Agriculture completes an inspection and notices that the facility is over populated then he
33 would assume that they would inform Ms. Warmbier of such.
34

35 Ms. Warmbier stated that if the limitation of 75 cats is what is required in order to have her request approved
36 then that is what she will stick with and if she goes over that limit then she will have to practice more
37 euthanasia.
38

39 Mr. Thorsland asked Ms. Warmbier to indicate the largest number of cats that she has had at the facility at
40 one time.
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42 Ms. Warmbier stated that there are times when she has taken on too many cats and she would guess that
43 there have been a few times where she has had more than 75 cats at one time.

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Mr. Knight stated that if Ms. Warmbier is not satisfied with the limitation of no more than 75 cats of any age staff could investigate what the State of Illinois regulations may be in regards to a limitation of the number of cats that can be on the facility at one time. He said that once staff had this information they could work with Ms. Warmbier in creating a condition regarding the limitation of the number of cats allowed at any one time that everyone can be comfortable with.

Mr. Thorsland stated that the previously requested site plan also needs to be completed and submitted.

Mr. Gerald Warmbier, who resides at 2173 CR 750E, Champaign stated that he does not have a better site plan to offer.

Mr. Knight explained that the site plan needs to include the layout of the entire property indicating each structure with dimensions, the outdoor runs, setback measurements, etc. He said that the aerials that were submitted are not sufficient and cannot be used as the submitted site plan.

Mr. Thorsland stated that the special use request includes a waiver of the standard conditions for (1) a minimum separation of 200 feet between outdoor animal exercise areas and any adjacent residential use and (2) a minimum side yard of 200 feet and a minimum rear yard of 200 feet. He said that a complete site plan will assist the Board in their determination.

Ms. Warmbier asked if an engineer had to provide this sketch.

Mr. Knight stated no, and he would be happy to assist them as to what information needs to be on the site plan.

Mr. Thorsland stated that, since this is not a case that needs to be rushed through, if there is any hesitation regarding the number of cats allowed on the property at any one time then perhaps the case should be continued to a later date. He said that the Board does not want to put an unqualified limit on the facility versus what the State of Illinois would allow normally. He said that the reason why the Board desires to place a limit on the number of cats allowed at any one time is because the special use permit will run with the property and it is possible that at some point someone else may own the property and they may desire to run a very different operation than what the Warmbiers desire.

Ms. Warmbier stated that the limitation of 75 cats is acceptable.

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

Mr. Thorsland asked if staff had any questions for Mr. or Mrs. Warmbier and there were none.

Mr. Thorsland asked Mr. and Mrs. Warmbier if they had any questions regarding the special conditions.

Mrs. Warmbier stated no.

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Mr. Thorsland asked the audience if anyone desired to cross examine the petitioners and there was no one.

Ms. Capel moved, seconded by Mr. Courson to approve the special conditions. The motion carried by voice vote.

Mr. Thorsland asked the audience if anyone desired to present testimony regarding Case 655-S-09, and there was no one.

Mr. Thorsland closed the witness register for Case 655-S-09.

Mr. Knight stated that a new Item #6 should be added to the Documents of Record indicating the following:
6. Detailed Studio Floor Plan received December 17, 2009.

Ms. Warmbier asked if she should indicate where she may place a future sign on the property on the site plan.

Mr. Knight stated that he can indicate what type of sign would be allowed and any future signs should be indicated on the site plan. He said that the Board could provide a list of items that need to be indicated on the site plan.

Mr. Thorsland stated that the petitioner has 30 days to submit the site plan therefore it must be determined what is taking place currently and what may be proposed in the future. He said that if there is any chance that a sign will be placed on the property then it needs to be indicated on the site plan as to where its placement will be located.

Mr. Knight stated that staff will work with the petitioners to make sure that all of the required information is indicated on the site plan.

Finding of Fact for Case 655-S-09:

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 655-S-09 held on October 29, 2009, and December 17, 2009, the Zoning Board of Appeals of Champaign County finds that:

- 1. The requested Special Use Permit, subject to the Special Conditions imposed herein, IS necessary for the public convenience at this location.**

Mr. Palmgren stated that the requested Special Use Permit, subject to the Special Conditions imposed herein, is necessary for the public convenience at this location because it is an established use in the country which is doing good work.

Ms. Capel stated that there is a need for shelters to take care of stray dogs and cats.

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Mr. Thorsland stated that the facility is located in an ideal location because it is outside a densely populated area.

2. The requested Special Use Permit, subject to the Special Conditions imposed herein, is so designed, located, and proposed to be operated so that it WILL NOT be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety, and welfare.

a. The street has ADEQUATE traffic capacity and the entrance location has ADEQUATE visibility.

Ms. Capel stated that the street has adequate traffic capacity and the entrance location has adequate visibility.

b. Emergency services availability is ADEQUATE.

Ms. Capel stated that emergency services availability is adequate because it is 5-1/2 miles from the Cornbelt Fire Protection District.

c. The Special Use will be designed to CONFORM to all relevant County ordinances and codes.

Ms. Capel stated that the Special Use will be designed to conform to all relevant County ordinances and codes.

d. The Special Use WILL be compatible with adjacent uses.

Ms. Capel stated that the Special Use will be compatible with adjacent uses because the location of the facility is located in a low density AG-1 zoning district and the neighbors have indicated that the facility will have a minimal impact on their property.

e. Surface and subsurface drainage will be ADEQUATE.

Mr. Courson stated that surface and subsurface drainage will be adequate because it is an existing use which has experienced no issues thus far.

f. Public safety will be ADEQUATE.

Mr. Palmgren stated that public safety will be adequate because the facility is located in a rural location which is ideal for such a use.

g. The location IS suitable for the proposed onsite wastewater system.

1 Ms. Capel stated that the location is suitable for the proposed onsite wastewater system because the soil is
2 moderately appropriate for septic use.

3
4 Mr. Thorsland stated that the current system was designed for a four bedroom house and the system is
5 currently being under utilized.

6
7 Mr. Thorsland stated that the requested Special Use Permit, subject to the special conditions imposed herein,
8 is so designed, located, and proposed to be operated so that it will not be injurious to the district in which it
9 shall be located or otherwise detrimental to the public health, safety, and welfare.

10
11 **3a. The requested Special Use Permit, subject to the special conditions imposed herein,
12 DOES conform to the applicable regulations and standards of the DISTRICT in
13 which it is located.**

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

17
18 **3b. The requested Special Use Permit, subject to the special conditions imposed
19 herein, DOES preserve the essential character of the DISTRICT in which it is
20 located because:**

21
22 **a. The Special Use will be designed to CONFORM to all relevant County
23 ordinances and codes.**

24
25 Mr. Courson stated that the Special Use will be designed to conform to all relevant County ordinances and
26 codes.

27
28 **b. The Special Use WILL be compatible with adjacent uses.**

29
30 Mr. Courson stated that the Special Use will be compatible with adjacent uses.

31
32 **c. Public safety will be ADEQUATE.**

33
34 Ms. Capel stated that public safety will be adequate.

35
36 Mr. Courson stated that the requested Special Use Permit, subject to the special conditions imposed herein
37 does preserve the essential character of the DISTRICT in which it is located.

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39 **4. The requested Special Use Permit, subject to the special conditions imposed
40 herein, IS in harmony with the general purpose and intent of the Ordinance because:**

41
42 **a. The Special Use is authorized in the District.**

43

- b. **The requested Special Use Permit IS necessary for the public convenience at this location.**

Ms. Capel stated that the requested Special Use Permit is necessary for the public convenience at this location.

- c. **The requested Special Use Permit, subject to the special conditions imposed herein, is so designed, located, and proposed to be operated so that it WILL NOT be injurious to the district in which it shall be located, or otherwise detrimental to the public health, safety, and welfare.**

Mr. Courson stated that the requested Special Use Permit, subject to the special conditions imposed herein, is so designed, located, and proposed to be operated so that it will not be injurious to the district in which it shall be located, or otherwise detrimental to the public health, safety and welfare.

- d. **The requested Special Use Permit, subject to the special conditions imposed herein DOES preserve the essential character of the DISTRICT in which it is located.**

Mr. Courson stated that the requested Special Use Permit, subject to the special conditions imposed herein does preserve the essential character of the District in which it is located.

Mr. Thorsland stated that the Special Use Permit, subject to the special conditions imposed herein, is in harmony with the general purpose and intent of the Ordinance.

- 5. **The requested Special Use IS NOT an existing nonconforming use.**

Mr. Palmgren stated that the requested Special Use is not an existing nonconforming use.

- 6. **Regarding the requested waivers of standard conditions:**

- A. **The requested waiver of the standard condition in Section 6.1.3 for a minimum separation of 200 feet between any outdoor animal exercise area and any adjacent residential use, for an actual separation of approximately 100 feet is WARRANTED because of the following:**

- a. **The waiver IS in accordance with the general purpose and intent of the ordinance.**

Ms. Capel stated that the waiver is in accordance with the general purpose and intent of the ordinance because the dogs are inside at night and the neighbors have indicated that the facility will have little or no impact upon them and other surrounding property is in agricultural use.

b. The waiver WILL NOT be injurious to the neighborhood or to the public health, safety and welfare.

Mr. Courson stated that the waiver will not be injurious to the neighborhood or to the public health, safety and welfare because of the rural nature of the area and the dogs are kept inside from dusk to dawn. He said that the cats are kept inside therefore there is no impact to the neighborhood.

Ms. Capel stated that all solid waste is picked up daily and removed from the property by a public contract disposal service.

Mr. Thorsland stated that the requested waiver of the standard condition in Section 6.1.3 for a minimum separation of 200 feet between any outdoor animal exercise area and any adjacent residential use, for an actual separation of approximately 100 feet is warranted.

B. The requested waiver of the standard condition in Section 6.1.3 for a waiver Of the minimum 200 feet for required side and rear yards for an actual side yard of 165 feet for the side yard on the south side and only a 150 feet rear yard to the west is WARRANTED because of the following:

a. The waiver IS in accordance with the general purpose and intent of this ordinance.

Mr. Courson stated that the waiver is in accordance with the general purpose and intent of this ordinance because neighbors have indicated that the facility will have little or no impact upon them.

b. The waiver WILL NOT be injurious to the neighborhood or to the public health, safety and welfare.

Ms. Capel stated that the waiver will not be injurious to the neighborhood or to the public health, safety and welfare because solid waste is picked up daily and the dogs are kept in at night.

Mr. Thorsland stated that the requested waiver of the standard condition in Section 6.1.3 for a waiver of the minimum 200 feet for required side and rear yards for an actual side yard of 165 feet for the side yard on the south side and only a 150 feet rear yard to the west is warranted.

7. 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. The petitioner shall apply for a Change of Use Permit within 30 days of the approval of the special use permit, and shall also provide a complete site plan with the permit application to ensure compliance with the Zoning Ordinance within a reasonable time frame.

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- B. The cat population at the special use shall be limited to no more than 75 cats of any age to ensure the petitioner can achieve their mission of animal rescue while preserving the essential character of and not being injurious to the district.**
- C. If not already installed, the petitioner shall install an accessible entrance in conformance with the Illinois Accessibility code at both the kennel building and the studio building within one year of the approval of the special use permit, unless this requirement is waived by the Capitol Development Board to ensure the safety and welfare of the public and that the special use is readily accessible to and usable by environmentally limited persons.**
- D. The kennel shall be managed to ensure that the dogs do not have free access to the exterior from dusk to dawn to ensure the kennel does not become injurious to the district.**
- E. Any repair or replacement of the septic system shall be in conformance with and approved by either the Champaign County Health Department or the Illinois Department of Agriculture whichever agency has proper jurisdiction depending upon the type of repair that is required or the type of replacement system that is installed to ensure protection of public health.**

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

Ms. Capel moved, seconded by Mr. Palmgren to close the public hearing for Case 655-S-09. The motion carried by voice vote.

Mr. Thorsland informed Mr. and Mrs. Warmbier that two Board members are absent from tonight’s meeting therefore it is at their discretion to either continue Case 655-S-09 until a full Board is present or request that the present Board move forward to the Final Determination. He informed them that they will need four affirmative votes for approval.

Mr. and Mrs. Warmbier requested that the present Board continue to the final determination.

Final Determination for Case 655-S-09:

Mr. Courson moved, seconded by Ms. Capel that 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 9.1.11B. HAVE been met, and pursuant to the authority granted by Section 9.1.6B of the Champaign County Zoning Ordinance, determines that the Special Use requested in Case 655-S-09 is hereby GRANTED WITH SPECIAL CONDITIONS to the petitioners Judith and Gerald Warmbier to authorize a kennel as a Special Use Permit in the AG-1 Zoning District with the

1 following waivers of standard conditions:

- 2
- 3 **A. Waiver of the standard condition in Section 6.1.3 for a minimum separation of**
- 4 **200 feet between any outdoor animal exercise area and any adjacent residential**
- 5 **Use, for an actual separation of approximately 100 feet; and**
- 6
- 7 **B. Waiver of the standard condition in Section 6.1.3 for a waiver of the minimum 200**
- 8 **feet for required side and rear yards for an actual side yard of 165 feet for the side**
- 9 **yard on the south side and only a 150 feet rear yard to the west.**

10
11 Subject to the following special condition of approval:

- 12
- 13 **A. The petitioner shall apply for a Change of Use Permit within 30 days of the approval**
- 14 **of the special use permit, and shall also provide a complete site plan with the permit**
- 15 **application to ensure compliance with the Zoning Ordinance within a reasonable time**
- 16 **frame.**
- 17
- 18 **B. The cat population at the special use shall be limited to no more than 75 cats of any age**
- 19 **to ensure the petitioner can achieve their mission of animal rescue while preserving the**
- 20 **essential character of and not being injurious to the district.**
- 21
- 22 **C. If not already installed, the petitioner shall install an accessible entrance in conformance**
- 23 **with the Illinois Accessibility code at both the kennel building and the studio building**
- 24 **within one year of the approval of the special use permit, unless this requirement is**
- 25 **waived by the Capitol Development Board to ensure the safety and welfare of the public**
- 26 **and that the special use is readily accessible to and usable by environmentally limited**
- 27 **persons.**
- 28
- 29 **D. The kennel shall be managed to ensure that the dogs do not have free access to the**
- 30 **exterior from dusk to dawn to ensure the kennel does not become injurious to the**
- 31 **district.**
- 32
- 33 **E. Any repair or replacement of the septic system shall be in conformance with and**
- 34 **approved by either the Champaign County Health Department or the Illinois**
- 35 **Department of Agriculture whichever agency has proper jurisdiction depending upon**
- 36 **the type of repair that is required or the type of replacement system that is installed to**
- 37 **ensure protection of public health.**

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39 The roll was called:

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41	Capel-yes	Courson-yes	Miller-absent
42	Palmgren-yes	Schroeder-yes	Bluhm-absent
43	Thorsland-yes		

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Mr. Knight informed Mr. and Mrs. Warmbier that they have received approval for their request and staff will contact them as to what additional information is needed to complete the file.

Case 657-V-09 Petitioner: **Larry Lambright** Request: **Authorize the use of an existing two story detached accessory storage building with a second story deck with a side yard of three feet in lieu of the required ten feet side yard for accessory structures in the AG-2 Agriculture zoning district, and an average height of 16 feet in lieu of the maximum allowed 15 feet average height for residential accessory structures on lots less than one acre in area in the AG-2 Agriculture zoning district.**
Location: **Lot 1 of Cook’s Replat of Tract B of the K.D. Headlee Subdivision in Section 14 of Mahomet Township and commonly known as the house at 206B Lake of the Woods, Mahomet.**

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

Mr. Knight distributed a Supplemental Memorandum dated December 17, 2009, for the Board’s review and noted that this is the second meeting for this case. He said that Jamie Hitt, Zoning Officer inspected the subject property on December 1, 2009, and found that except for the matters in this variance all of the violations indentified in the Final Notice appear to have been resolved. He said that staff continues to receive complaints indicating that the petitioner is not fully complying with all of the requirements.

Mr. Knight stated that the Supplemental Memorandum dated December 17, 2009, includes a new proposed special condition of approval which will be included in the Summary of Evidence as Item #13.C. He read the special condition as follows:

- C. Unless the Board requires otherwise, any building authorized by variance can be rebuilt to the same dimensions. The deck on the storage shed is above a water well that the neighbors have an easement to use. The neighbors have expressed some concern regarding whether the deck could ever prevent necessary maintenance on the well. Whether or not the petitioner must remove the deck to provide maintenance access to the well is not an issue to be resolved by this variance. However, the following condition will clarify that the deck can be rebuilt if it is necessary to remove it for maintenance on the well:

The deck on the storage shed may be rebuilt (without requiring a permit) to Its existing dimensions if it needs to be removed to allow maintenance access to the well to ensure that all parties understand that approval of the variance authorizes reconstruction of the shed if necessary for any reason.

1
2 Mr. Knight stated that the above condition makes it very clear that if, for some reason, work was required on
3 the well and the deck had to be removed in order for that repair then the deck could be rebuilt, to the same
4 extent authorized in the variance, once the repair on the well was completed.
5

6 Mr. Knight stated that the Supplemental Memorandum dated December 17, 2009, includes the Zoning Use
7 Permit Application for the subject building, a letter of opposition from Stephanie Amabeli dated December
8 1, 2009, and two e-mails dated December 17, 2009, from the Helmicks. He said that staff added testimony
9 from the last public hearing to the Summary of Evidence and included additional information regarding the
10 special conditions that exist and whether or not the hardship is a result of the actions of the applicant. He
11 said that since the Board continued the case so that the petitioners could clear up their violations on the
12 property the original Item #13.A. is not necessary and has been stricken on the revised Summary of Evidence
13 dated December 17, 2009, and new Items #13.A. and 13.B. have been included. He noted that new Item
14 #13.B. on the revised Draft Summary of Evidence is the special condition that he previously reviewed with
15 the Board tonight as Item #13.C.
16

17 Mr. Knight distributed copies of photographs which were included with the e-mails from the Helmicks to
18 the Board for review. He said that staff is not totally sure what the neighbors were trying to establish with
19 submission of the photographs but in general staff believes there is an explanation for all of the things in the
20 photographs. He said that there has been some issue with the white pick-up truck that can be seen in the first
21 photograph but Jamie Hitt, Zoning Officer is working with the petitioner to resolve this issue. He said that
22 the second photograph indicates some waste in the garbage can that may be an issue but it is unknown at this
23 point and it may only be a minor problem if at all. He said that staff does not believe that there are any
24 issues with the third photograph which includes the paneled trailer parked beside the garage.
25

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

28 Mr. Thorsland called Mr. Larry Lambright to testify.
29

30 Mr. Larry Lambright, who resides at 2110 Pheasant Ridge Drive, Mahomet stated that many farms have well
31 heads in small sheds for protection. He said that the statement was made that the well head is right up
32 against the shed which is incorrect and submitted a photograph of the location of the well head as a
33 Document of Record. He said that he is not sure that the well actually works because when he purchased his
34 property he was told that the well was not working and he has never seen any evidence that proves
35 differently. He said that it was previously stated that he has applied for building permits before which is also
36 incorrect. He said that he has lived in Champaign County for 30 years and he has never requested a building
37 permit and apologizes for not following the correct procedure. He said that it was his understanding that the
38 shed could not be taller than the existing structure which is apparently incorrect.
39

40 Mr. Lambright stated that it was indicated that they have been in court regarding the ingress and egress
41 agreement with the Helmicks and that is correct. He said that they have been in court three times and the
42 judge has indicated that the Helmicks have the right to use the easement, which he has never had a problem
43 with, but they do not have the right to tell him how to use his property. He said that the posts, gate, sandbox,

1 play set will stay where they are currently located.

2
3 Mr. Lambright stated that it is his understanding that the Helmicks operate a daycare on their property
4 without the proper permits. He said that he may be in violation with the County but it is very possible that
5 his neighbors are also in violation. He said that it appears that his neighbors have an issue with the truck and
6 trailer being located on the property yet Mr. Helmick often has his employer's truck sitting on his property
7 because he is on call.

8
9 Mr. Thorsland informed Mr. Lambright that the Board can only discuss and review relevant evidence
10 regarding the variance for the shed.

11
12 Mr. Thorsland asked the Board if there were any questions for Mr. Lambright and there were none.

13
14 Mr. Lambright stated that the neighbors are driving them crazy in that he cannot leave the subject property
15 without someone taking a photograph or videotaping him. He said that his son installed a security camera on
16 his property and the neighbor called the Champaign County Sheriff's office.

17
18 Mr. Thorsland informed Mr. Lambright that the Board understands his frustration with the situation but he
19 must only give testimony regarding the shed and nothing else.

20
21 Mr. Courson asked Mr. Lambright if there is a foundation under the shed.

22
23 Mr. Lambright stated no.

24
25 Mr. Courson asked Mr. Lambright if the shed could be moved.

26
27 Mr. Lambright stated that the shed could be moved but it would be a major project. He said that it is true
28 that they built the shed without first obtaining a building permit but they are 18 feet from the nearest
29 neighbor's home.

30
31 Mr. Thorsland asked Mr. Lambright if he agreed to the special conditions.

32
33 Mr. Lambright stated yes. He asked if the deck would only need to be removed if the well's mechanicals
34 could not be pulled out for repair.

35
36 Mr. Knight stated yes.

37
38 **Mr. Courson moved, seconded by Ms. Capel to approve the following special conditions:**

39
40 **13.A. The space beneath the second story deck shall not be fully or partially enclosed**
41 **to ensure the nonconformity of the reduced side yard will not be increased**
42 **unless authorized by another variance.**

43

1 **13.B. The deck on the storage shed may be rebuilt (without requiring a permit) to**
 2 **its existing dimensions if it needs to be removed to allow maintenance access**
 3 **to the well to ensure all parties understand that approval of the variance**
 4 **authorizes reconstruction of the shed if necessary for any reason.**

5
6
7 **The motion carried by voice vote.**

8
9 Mr. Thorsland asked the audience if anyone desired to present testimony regarding this case and there was
10 no one.

11
12 Mr. Thorsland closed the witness register.

13
14 Mr. Knight stated that a new Item #7 should be added to the Documents of Record indicating the following:
15 Photographs indicating the location of the well head taken by Larry Lambright received on December 17,
16 2009.

17
18 **Finding of Fact for Case 657-V-09:**

19
20 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
21 657-V-09 held on November 12, 2009, and December 17, 2009, the Zoning Board of Appeals of Champaign
22 County finds that:

- 23
24 **1. Special conditions and circumstances DO exist which are peculiar to the land**
25 **or structure involved, which are not applicable to other similarly situated**
26 **land and structures elsewhere in the same district.**

27
28 Mr. Knight reminded the Board that the fact that the building already exists is not necessarily the correct
29 view to take. He said that the approach that staff takes is what were the special conditions that existed at that
30 time if the petitioner had come in for the first time and had submitted all of the appropriate documents and
31 everything had proceeded as normal.

32
33 Mr. Palmgren stated that special conditions and circumstances do exist which are peculiar to the land or
34 structure involved, which are not applicable to other similarly situated land and structures elsewhere in the
35 same district because the building is sited in its current location due to the location of the existing driveway.
36 He said that a portion of the building that is too close to the property line is only an open deck therefore it is
37 less of a fire hazard.

38
39 Mr. Thorsland stated that the building is located 18 feet from the nearest structure on the adjacent lot which
40 provides adequate access for fire fighters.

- 41
42 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
43 **regulations sought to be varied WILL prevent reasonable or otherwise permitted**

use of the land or structure or construction.

Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied will prevent reasonable or otherwise permitted use of the land or structure or construction because the petitioner requires the shed for storage for his business which is permitted in the zoning district and the other two sheds are used for personal storage.

3. The special conditions, circumstances, hardships, or practical difficulties DO result from actions of the applicant.

Mr. Courson stated that the special conditions, circumstances, hardships, or practical difficulties do result from actions of the applicant because the petitioner built the deck without originally obtaining a building permit and they not only constructed the shed above the height allowance but constructed a two-story structure rather than a one-story structure as indicated on the original permit.

Ms. Capel stated that the building is a two-story building rather than the permitted one-story building and the loading deck would not have been required if the structure had been built at its original specifications. She said that the way that the building is sited on the property allows no room to build the deck in conformance with the ordinance.

Mr. Thorsland informed the Board and the petitioner that each finding must be affirmative in order to grant the variance and currently with the finding for Item #3 the variance cannot be approved. He informed the petitioner that there is not a full Board present at tonight’s meeting therefore he could request that the case be continued to a later date when there is a full Board present.

Mr. Knight stated that the Board should finish the Finding of Fact and then offer the petitioner the option whether to continue to the final determination with the present Board or request a continuance until a full Board is present.

Mr. Lambright asked Mr. Thorsland to clarify the issue at hand.

Mr. Thorsland stated that the third finding indicates that the special conditions, circumstances, hardships, or practical difficulties do or do not result from actions of the applicant and the reason that the Board is here tonight and trying to fit the variance around it is because of where Mr. Lambright built the shed and how he built it and then attached the deck. He said that the Board has not found a good enough reason to not indicate that the need for the variance is not Mr. Lambright’s fault therefore when the Board finishes the Finding of Fact Mr. Lambright will have the opportunity to request that the present Board not continue to the final determination tonight and request that the case be continued to a later date when a full Board is present.

4. The requested variance, subject to the proposed condition, IS in harmony with the general purpose and intent of the ordinance.

Mr. Courson stated that the requested variance, subject to the proposed condition, is in harmony with the

1 general purpose and intent of the ordinance because the variance is allowed and it is a minimal variance in
2 regard to the height and the deck is an open deck which is too close to the property line.

- 3
- 4 **5. The requested variance, subject to the proposed condition, WILL NOT be**
- 5 **injurious to the neighborhood or otherwise detrimental to the public health,**
- 6 **safety, or welfare.**
- 7

8 Ms. Capel stated that the requested variance, subject to the proposed condition, will not be injurious to the
9 neighborhood or otherwise detrimental to the public health, safety, or welfare because the open deck which
10 will cause fewer problems for emergency services and air conflagration than if it were enclosed.

- 11
- 12 **6. The requested variance, subject to the proposed condition, IS the minimum**
- 13 **variation that will make possible the reasonable use of the land/structure.**
- 14

15 Mr. Courson stated that the requested variance, subject to the proposed condition, is the minimum variation
16 that will make possible the reasonable use of the land/structure because of the driveway, size of the building
17 and the way that it is situated on the property with an open deck.

- 18
- 19 **7. The special conditions imposed herein are required to ensure compliance with**
- 20 **the criteria for special use permits and for the particular purposes described**
- 21 **below:**
- 22

- 23 **13.A. The space beneath the second story deck shall not be fully or partially enclosed**
- 24 **to ensure the nonconformity of the reduced side yard will not be increased**
- 25 **unless authorized by another variance.**
- 26

- 27 **13.B. The deck on the storage shed may be rebuilt (without requiring a permit) to**
- 28 **its existing dimensions if it needs to be removed to allow maintenance access**
- 29 **to the well to ensure all parties understand that approval of the variance**
- 30 **authorizes reconstruction of the shed if necessary for any reason.**
- 31

32 **Mr. Courson moved, seconded by Mr. Palmgren to adopt the Summary of Evidence, Documents of**

33 **Record and Finding of Fact as amended. The motion carried by voice vote.**

34

35 **Ms. Capel moved, seconded by Mr. Courson to close the public hearing for Case 657-V-09. The**

36 **motion carried by voice vote.**

37

38 Mr. Thorsland informed the Lambrights that two Board members are absent from tonight's meeting therefore

39 it is at their discretion to either continue Case 655-S-09 until a full Board is present or request that the

40 present Board move forward to the Final Determination. He informed them that they will need four

41 affirmative votes for approval.

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43 Mr. Lambright asked Mr. Thorsland if they decided to move forward to the final determination tonight could

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the case be approved.

Mr. Thorsland stated no, because all of the findings must support the final determination and with one finding being negative the final determination would be to deny the request.

Mr. Knight stated that if the case is continued the Board could vote to amend the findings as they have been adopted thus far.

Ms. Capel stated that the petitioner could work with staff in order to determine a compromise.

Mr. Courson stated that the petitioner needs to prove that his actions did not cause the need for the variance.

Mr. Knight stated that he would like to receive additional guidance from John Hall, Zoning Administrator and the two absent Board members may also have recommendations.

Mr. Larry Lambright requested that the present Board not continue to the final determination and continue the case to a date when a full Board will be present.

Mr. Palmgren moved, seconded by Mr. Courson to continue Case 657-V-09 to February 11, 2010. The motion carried by voice vote.

6. New Public Hearings

None

7. Staff Report

None

8. Other Business

None

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

None

10. Adjournment

Mr. Palmgren moved, seconded by Mr. Courson to adjourn the December 17, 2009, public hearing at 8:11 p.m. The motion carried by voice vote.

The meeting adjourned at 8:11 p.m.

12-17-09

AS APPROVED FEBRUARY 11, 2010

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Respectfully submitted

Secretary of Zoning Board of Appeals

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DRAFT SUBJECT TO APPROVAL DRAFT

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