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MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

**1776 E. Washington Street
Urbana, IL 61802**

DATE: December 12, 2013

**PLACE: Lyle Shields Meeting Room
1776 East Washington Street
Urbana, IL 61802**

TIME: 6:30 p.m.

MEMBERS PRESENT: Catherine Capel, Debra Griest, Marilyn Lee, Roger Miller, Brad Passalacqua, Jim Randol, Eric Thorsland,

MEMBERS ABSENT : None

STAFF PRESENT : Lori Busboom, Jamie Hitt

OTHERS PRESENT : Lars Johnson, Shawn Bickers, Michael Harshbarger, Ashley Schum, John Copple, Gregory Ryan, Pamela Wendt, Jim Harper, Leah Harshbarger, Reggie Taylor, Sharlyn Franzen

1. Call to Order

The meeting was called to order at 6:34 p.m.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

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

Mr. Thorsland welcomed two new members to the Board. He said that Debra Griest is a returning member and Marilyn Lee is a new member. He said that he is pleased to note that for the first time in two or three years we have a full ZBA Board.

3. Correspondence

None

4. Approval of Minutes (August 15, 2013 and November 14, 2013)

Mr. Thorsland entertained a motion to approve the August 15, 2013, and November 14, 2013, minutes.

Mr. Passalacqua moved, seconded by Mr. Randol to approve the August 15, 2013, and November 14,

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1 **2013, minutes.**

2

3 Mr. Thorsland asked the Board if there were any corrections or additions required for the minutes.

4

5 Ms. Capel indicated that page 23, Line 19 of the August 15, 2013, minutes should be corrected as follows:

6 Mr. Hall stated that if the Board thinks that the road agreement addresses road maintenance then it will help

7 prevent congestion. She said that page 38, Line 25 of the August 15, 2013, minutes should be corrected as

8 follows: He said that the bad soil data did not affect any of the best prime farmland soils but it affected soils

9 with an LE as high as 85 although it did not change any of their productivity indices or the relative LE and

10 only changed the LE for one soil and that was Muskego Silty Clay Loam which is the one true muck soil that

11 we have in the County and there is less than 50 acres in the whole County.

12

13 Mr. Thorsland asked the Board if there were any further corrections and there were none.

14

15 **The motion carried.**

16

17 **5. Continued Public Hearing**

18

19 **Case 685-AT-11 Petitioner: Champaign County Zoning Administrator. Request to amend the**

20 **Champaign County Zoning Ordinance by revising Section 6.1 by adding standard conditions required**

21 **for any County Board approved special use permit for a Rural Residential Development in the Rural**

22 **Residential Overlay district as follows: (1) require that each proposed residential lot shall have an**

23 **area equal to the minimum required lot area in the zoning district that is not in the Special Flood**

24 **Hazard Area; (2) require a new public street to serve the proposed lots in any proposed RRO with**

25 **more than two proposed lots that are each less than five acres in area or any RRO that does not**

26 **comply with the standard condition for minimum driveway separation; (3) require a minimum**

27 **driveway separation between driveways in the same development; (4) require minimum driveway**

28 **standards for any residential lot on which a dwelling may be more than 140 feet from a public street;**

29 **(5) require for any proposed residential lot not served by a public water supply system and that is**

30 **located in an area of limited groundwater availability or over a shallow sand and gravel aquifer other**

31 **than the Mahomet Aquifer, that the petitioner shall conduct groundwater investigations and contract**

32 **the services of the Illinois State Water Survey (ISWS) to conduct or provide a review of the results; (6)**

33 **require for any proposed RRO in a high probability area as defined in the Illinois State Historic**

34 **Preservation Agency (ISHPA) about the proposed RRO development undertaking and provide a copy**

35 **of the ISHPA response; (7) require that for any proposed RRO that the petitioner shall contact the**

36 **Endangered Species Program of the Illinois Department of Natural Resources and provide a copy of**

37 **the agency response.**

38

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1 Mr. Thorsland entertained a motion to continue Case 685-AT-11 to the February 13, 2014, meeting.

2
3 **Ms. Capel moved, seconded by Brad Passalacqua to continue Case 685-AT-11 to the February 13,**
4 **2014, meeting. The motion carried by voice vote.**

5
6 **Case 764-V-13 Petitioner: Lars Johnson with agent Shawn Bickers Request to authorize the following**
7 **in the R-4 Multiple Family Residence Zoning District: Part A. Authorize the following variance for**
8 **an existing townhouse: (1) lot coverage of 44% in lieu of the maximum allowed 40%; and (2) a front**
9 **setback of 40 feet from the centerline of Briar Hill Drive in lieu of the minimum required 55 feet; and**
10 **(3) a front yard of 20 feet in lieu of the minimum required 25 feet. Part B. Authorize the following**
11 **variance for an addition to an existing townhouse: (1) authorize construction of a building addition in**
12 **a recorded utility easement in lieu of the requirement that no construction shall take place in a**
13 **recorded utility easement; and (2) a side yard of 1 foot in lieu of the minimum required 5 feet.**
14 **Location: Lot 1 of Wisegarver's Subdivision in the Southeast Quarter of Section 21 of Champaign**
15 **Township and commonly known as the townhome at 2120 Briar Hill Drive, Champaign.**

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

25
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. He reminded the audience that when they sign the
28 witness register they are signing an oath.

29
30 Mr. Passalacqua stated that he has a few construction projects out for bid in which Mr. Shawn Bickers,
31 co-petitioner, will be a sub-contractor for those projects, therefore due to this conflict he must remove
32 himself from this case.

33
34 Mr. Thorsland asked the petitioners if they desired to make a statement outlining the nature of their request.

35
36 Mr. Lars Johnson, who resides at 1956 West Berwyn, Chicago, stated that Part A of this case includes
37 existing conditions from almost 30 years ago. He said that he has taken care of the concerns for Part B (1)
38 with the new evidence that was submitted although Part B (2) is still required. He said that on the south side

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1 of the townhome will be an office and golf cart bay which will include doors which will be faced to the west
2 and not the south as originally indicated.

3
4 Mr. Thorsland asked the Board if there were any questions for Mr. Johnson and there were none.

5
6 Mr. Thorsland asked if staff had any questions for Mr. Johnson and there were none.

7
8 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Johnson and there was no one.

9
10 Mr. Thorsland stated that staff distributed a new Supplemental Memorandum dated December 12, 2013, to
11 the Board for review. He said that the new memorandum reviews new evidence including the following
12 submittals and attachments: A Revised Site Plan has been received with the golf cart door facing the street
13 and not the adjacent property line and new evidence is proposed; and the Petitioner called JULIE to mark
14 existing underground utilities and has submitted the attached photos; and a revised Miscellaneous Document
15 is also included in case the Board feels that the special conditions are warranted.

16
17 Mr. Thorsland stated that upon the Board's request, Mr. Johnson had JULIE visit the subject property and it
18 was determined that the location of the sanitary sewer line is close but it is not underneath the block
19 construction. He said that the Urbana-Champaign Sanitary District has not indicated that they are vacating
20 the utility easement because the easement appears to be further away from the construction that it was
21 originally thought. He said that the door concern was addressed by Mr. Johnson by relocating the door to the
22 west in lieu of having it located on the south side of the construction. He said that having the door on the
23 west would eliminate the need for crossing the neighbor's property. He said that Mr. Johnson apparently has
24 a good relationship with the neighbors and a shared agreement between the two is in place for mowing the
25 area between the two buildings therefore there is history of cooperation between the two owners. He said
26 that the Board's concern was that if there is a new owner for the property to the south any previous
27 agreements may not be valid. Mr. Thorsland stated that new item 5.E. indicates the following: The Revised
28 Site Plan and Section received 12/11/13 indicates the following change: (1) The door opening to the golf cart
29 bay faces west rather than south.

30
31 Mr. Thorsland stated that new evidence is proposed for item 7.B. as follows: (6) On or about December 4,
32 2013, the subject property was marked by JULIE (Joint Utility Locator Information for Excavators) to verify
33 the locations of underground utilities in the vicinity of the unauthorized construction and the Petitioner
34 submitted photographs of the JULIE 12/10/13 marking that show the following: (a) Green markings that
35 indicate the sewer line approximately 4 feet from the unauthorized construction; (b) Red markings that
36 indicate an underground electrical line south of the sewer line and even further away from the unauthorized
37 construction; and (c) Blue markings that indicate the water lines towards the front of the building and far
38 away from the unauthorized construction; and (d) Yellow markings that indicate the underground gas line;

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1 and (e) Comcast markings and City of Champaign markings that indicate “OK”. He said that new item
2 #7.B(7) indicates the following: The excavation subcontractor hired by Mr. Bickers began construction of
3 the addition without a permit and that was a violation of the Zoning Ordinance but that is not the kind of
4 special condition or circumstance that should be taken into account in determining whether the variance
5 should be approved.
6

7 Mr. Thorsland stated that the following new evidence is proposed to be added as item #7.H.: Regarding
8 what affect the location may have on the likelihood that new utilities will ever be installed in the existing
9 utility easement: (1) The subject property is a one lot subdivision that is unlikely to ever be expanded; and
10 (2) The subject property is at the end of Briar Hill Drive and is bordered by the Lincolnshire Fields Golf
11 Course on the east and north and Interstate 57 is on the opposite side of the street so it unlikely that future
12 development will occur in the vicinity or that new utilities will be needed in the existing utility easement.
13

14 Mr. Thorsland stated that the following new evidence is proposed as new item 9.E.: Regarding Part B of the
15 Variance: (1) Wisegarver’s Lot 1 Subdivision was approved by the City of Champaign in July 1976 and
16 neither the Petitioner nor his Agent were involved in that subdivision approval; and (2) Neither the Petitioner
17 nor his Agent were involved in the original construction of the town home; and (3) The excavation
18 subcontractor hired by Mr. Bickers began construction of the addition without a permit but that has nothing
19 to do with why the addition was planned on the south side of the building and has nothing to do with the
20 circumstance of this lot having so much less buildable width than the other lots on Briar Hill Drive.
21

22 Mr. Thorsland stated that the following new evidence is proposed for new item #10.C.(3): Regarding Part B
23 of the Variance: (a) The subject property is a one lot subdivision that is unlikely to ever be expanded; and
24 (b) The subject property is at the end of Briar Hill Drive and is bordered by the Lincolnshire Fields Golf
25 Course on the east and north and Interstate 57 is on the opposite side of the street so it is unlikely that future
26 development will occur in the vicinity or that new utilities will be needed in the existing utility easement.
27

28 Mr. Thorsland stated that the revised Miscellaneous Document is attached to the Supplemental
29 Memorandum dated December 12th as Attachment D. He said that the legal description of the subject
30 property and the Permanent Index Number have been added. He said that the reference to the document in
31 item #13.B. of the Summary of Evidence should be updated. He read the revision in item #2 of the
32 Miscellaneous Document as follows: If the addition authorized by Case 764-V-13 is damaged or destroyed
33 to more than 50% of the replacement value the addition shall not be repaired and in fact shall be removed
34 completely including the footings, unless a Plat of Vacation of Utility Easement is duly approved and filed
35 with the Champaign County Recorder of Deeds for only that part of the easement occupied by the addition,
36 in which case the addition may be reconstructed in the same footprint and same location.
37

38 Mr. Thorsland asked the Board if there were any questions regarding the Supplemental Memorandum dated

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- 1 December 12th and there were none.
2
3 Mr. Thorsland asked the Board if there were any questions for Mr. Johnson and there were none.
4
5 Mr. Thorsland called Mr. Johnson to testify.
6
7 Mr. Lars Johnson stated that regarding the vacation of the easement, Mark Radi, UCSD Director of
8 Engineering Services, indicated that they cannot vacate an easement because they do not have an easement
9 there. Mr. Johnson stated that the easement is actually to the south of his property line and is located on the
10 other property. He said that Mr. Radi indicated that the Urbana-Champaign Sanitary District has an
11 easement for the north 10 feet of Briar Hill Second Addition and the District does not object to construction
12 as long as the construction is not in an easement occupied by the UCSD. Mr. Johnson stated that Mr. Radi
13 indicated that his original map was incorrect and when he reviewed it again he indicated that he cannot tell
14 Mr. Johnson to not build within an easement that they do not have on Mr. Johnson's property.
15
16 Mr. Thorsland stated that the re-advertisement indicates Part B. item #2 as the following: a side yard of 1
17 foot in lieu of the minimum required 5 feet.
18
19 Mr. Johnson stated that the re-advertisement is still accurate.
20
21 Mr. Thorsland stated that the UCSD sewer line is approximately 5 feet from the side yard. He asked Mr.
22 Johnson if Mr. Radi specifically indicated that the UCSD will not vacate the easement.
23
24 Mr. Johnson stated that Mr. Radi indicated that the UCSD cannot vacate an easement located on Mr.
25 Johnson's property because no such easement exists on his property.
26
27 Ms. Griest stated that she concurs with Mr. Johnson in that the UCSD indicated that they had no right within
28 the existing easement on the property to the south. She said that she did not find any information regarding
29 ownership of the easement. She asked if the easement belonged to Comcast, Illinois American Water,
30 Ameren, etc.
31
32 Mr. Johnson stated that from what Mr. Radi indicated he does not believe that there is an actual easement on
33 his property.
34
35 Ms. Griest stated that Mr. Radi is only indicating that there is not a sanitary district easement on Mr.
36 Johnson's property.
37
38 Mr. Johnson stated that when Ameren came out to mark the easement the representatives were not sure

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- 1 whether there was an actual easement for Ameren out there either which is why Ameren previously indicated
2 that they had no issue with the proposed construction because their lines were not near it.
3
- 4 Ms. Griest stated that the annotated site plan indicates an easement.
5
- 6 Mr. Johnson stated that the annotated site plan is indicating what they originally thought from the County.
7
- 8 Ms. Griest asked staff if the original plat had been reviewed and presented to this Board.
9
- 10 Ms. Lori Busboom, Planning and Zoning Technician, stated yes.
11
- 12 Ms. Griest asked Ms. Busboom what the original plat indicates regarding the easement.
13
- 14 Ms. Busboom stated that the original plat which was recorded in 1976 does indicate an easement however
15 Briar Hill 2nd Addition does not indicate an easement on Mr. Johnson's property.
16
- 17 Mr. Thorsland stated that the redacted site plan indicates the Illinois American Water line along Briar Hill
18 Drive but does not indicate any other easements.
19
- 20 Ms. Griest stated that she is more interested in the recorded plat. She asked whether the Board is actually
21 working with an easement or not.
22
- 23 Mr. Thorsland stated that the easements are shown on the Briar Hill 2nd Addition Plat, which was recorded
24 August 20, 1974, for Lot 5. He said that a 22.89' utility easement is indicated for Lot 5 but it isn't clear what
25 utilities the easement is for.
26
- 27 Mr. Johnson stated that if he isn't mistaken the only thing that is located in the easement at all is the sanitary
28 district.
29
- 30 Mr. Thorsland stated that one of the photographs indicates "ok" from Comcast.
31
- 32 Mr. Johnson stated that the Ameren line to the street pole is further south of the Comcast line and is outside
33 of the easement.
34
- 35 Mr. Thorsland stated that the original 1974 Plat for Briar Hill 2nd Addition indicates a 10 foot easement on
36 the north side of Lot 5, the adjacent lot to the subject property, and continues behind Lots 1-4. He said that
37 the Board could assume that the same 10 foot easement ran behind Lot 1 of Wisegarver's Subdivision
38 therefore at some point someone wanted the utility easement. He said that the Board's question is whether

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1 or not there is a 10 foot easement on Mr. Johnson's property or whether the entire easement exists on the
2 property to the south.

3
4 Ms. Griest stated that if the plat for Wisegarver's Lot 1 Subdivision indicates a 10 foot easement then the
5 plat documents should indicate information regarding the easement. She said that whether there are utilities
6 currently within that easement or not does not negate the fact that the easement has already been given to the
7 utilities and that the utility companies have rights to that easement. She said that she understands the
8 petitioner's claim that there are no utilities running through the easement but if the easement has been
9 dedicated for the utilities, then whether they are there or not, the utilities have rights.

10
11 Mr. Johnson stated that this was the purpose for going to Ameren and the UCSD. He said that Ameren
12 indicated that they had no issues with the construction and the UCSD stated that they did not have an
13 easement on his lot.

14
15 Mr. Thorsland stated that there is an easement and as far as we can tell the easement is not located on the
16 property in question and is subject to interpretation but we do know that the unauthorized construction is one
17 foot away from the property line and if the easement starts at the property line the unauthorized construction
18 is very close to that easement. He noted that the purpose of the variance is the one foot side yard.

19
20 Ms. Griest stated that Part B. is requesting a variance to construct within a recorded utility easement. She
21 said that she is not concerned about the sanitary district indicating that they do not have an easement on the
22 subject property and that the 10 foot easement on the adjacent property contains their services therefore they
23 have no objection to the proposed construction on the subject property. She said that since the sanitary
24 district has indicated that they are not concerned with the construction that is fine but there are other utilities
25 that remain involved in the recorded easement. She said that if the Board is considering authorizing a
26 variance within a recorded easement then the Board needs to make sure where the recorded easement is
27 located.

28
29 Mr. Thorsland stated that he would like to have a plat which indicates that the easement is not on the subject
30 property therefore that portion of the variance will not be needed.

31
32 Ms. Griest asked if staff has completed a document search at the Recorder's office.

33
34 Ms. Busboom stated yes, staff has all of the recorded documents which are pertinent to the subject property.
35 She said that she has not read through the documentation because Mr. Hall has been handling the case. She
36 said that she believes that there is no language regarding the easement in the recorded documents.

37
38 Ms. Griest stated that normally there is a document which is attached to the plat regarding the easement and

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1 it is very possible that it was not recorded with the plat.

2
3 Ms. Busboom stated that she does not know if such a document exists.

4
5 Ms. Griest asked if the Petitioner could contact the title company requesting that they provide a copy of the
6 easement for the subject property or request that they verify that there is no easement on the subject property.

7
8 Mr. Thorsland stated that page 2 of the Supplemental Memorandum dated December 5, 2013, indicates item
9 #2 as follows: UCSD staff has determined that the sewer line is on the adjacent property.

10
11 Ms. Griest stated that she does not have a problem with that statement.

12
13 Mr. Thorsland continued to read item #2 as follows: A November 15, 2013, email from UCSD Director of
14 Engineering Services Mark Radi indicates the sewer is approximately 4 feet south of the addition (see
15 attached) and a December 2, 2013, email from UCSD Director of Engineering Services Mark Radi to Lars
16 Johnson indicates that the sewer line is in the easement on the adjacent property and UCSD does not object
17 to construction as long as the construction is not in an easement occupied by the UCSD (see attached).

18
19 Ms. Griest stated that she does not have a problem with the rest of the statement's in item #2 either, or the
20 documents which support it.

21
22 Mr. Thorsland stated that item #3 indicates that the Petitioner has not provided a technical drawing
23 illustrating the location of the sewer line because he did not think it was warranted. UCSD staff will not go
24 on record regarding this issue. Mr. Thorsland stated that the Board has the photographs indicating JULIE's
25 findings for the sewer line which may give a better depiction where it is located. He said that page 3 of the
26 Supplemental Memorandum indicates the possible need for special conditions. He said that a more desirable
27 approach would have been for the Petitioner to go through the process of formally vacating the easement and
28 securing all necessary zoning approvals prior to construction. He said that if all relevant utilities had agreed
29 to vacate the easement then there could be no possibility of a future problem.

30
31 Ms. Griest stated that after her review of the documents it is her interpretation that the UCSD has rights that
32 they have not currently exercised and potentially may never exercise but in regards to this property the
33 UCSD does not have those rights on the subject property. She said that the other utilities do have rights on
34 the subject property. She said that the UCSD is the only utility that has indicated that they do not have an
35 easement on the subject property.

36
37 Mr. Thorsland asked Ms. Griest if she would like to have written documentation from Ameren, American
38 Water Company, and anyone else that may have some sort of rights to the easement.

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1
2 Ms. Busboom stated that the original plat for Wisegarver's Lot 1 Subdivision includes a paragraph
3 discussing the public utility easement. She said that the paragraph indicates that no building or outside
4 facility shall be supplied with utility service lines above the surface of the ground and all utilities and
5 connections may thereto shall be located beneath the surface of the ground except transformer installations.
6 Easements for installation and maintenance of underground utilities and drainage facilities are reserved as
7 noted on the recorded plat. She said that there is a 10 foot easement on the recorded plat for Wisegarver's
8 Lot 1 Subdivision. She continued to read the paragraph as follows: No structures, walls, fences, plantings,
9 or any materials shall be put, placed, planted or permitted to remain within the platted easements or public
10 ways which may damage or interfere with the installation, operation or maintenance of the utility. She said
11 that the Board has all of the JULIE markings indicating all of the utilities as well as the City of Champaign,
12 UCSD, and Ameren indicating that they are okay with the construction and that it will not interfere with any
13 of their lines.
14
15 Ms. Griest stated that she understands all of the documentation which proves that there are no underground
16 utilities under the easement but she still has a problem with allowing construction within a recorded
17 easement.
18
19 Mr. Thorsland stated that it has been proven that the construction is not within the easement.
20
21 Ms. Griest disagreed. She said that the construction is not within the UCSD's easement but it is still within
22 the easement for Ameren and Illinois American Water.
23
24 Mr. Thorsland stated that the 1974 plat indicates a utility easement which borders all of the lots but the new
25 plat indicates no easement.
26
27 Ms. Busboom stated that the new information that was indicated on the GIS map does not indicate an
28 easement but she cannot find that information in the file at this moment.
29
30 Mr. Thorsland stated that much to Mr. Johnson's dismay the Board would like to see the most current
31 information. He said that perhaps documentation could be received from Ameren and Illinois American
32 Water indicating that they have no objections to the construction within a possible easement on the subject
33 property.
34
35 Mr. Johnson stated that Ameren has already submitted documentation indicating that they have no issue with
36 the proposed construction.
37
38 Ms. Griest stated that Ameren did not vacate their easement.

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1
2 Mr. Johnson stated no, Ameren did not vacate their easement but they have indicated that they have no issue
3 with the proposed construction.
4
5 Ms. Griest stated that there is a big difference between Ameren indicating that they have no issue with the
6 proposed construction and vacating their easement.
7
8 Mr. Thorsland stated that the Board has not requested that the Petitioner begin the process of having any
9 easements vacated. He said that the Petitioner's position is based upon the information that he has submitted
10 and the fact that the easement exists on the adjacent property.
11
12 Ms. Griest stated that the documentation from the UCSD does indicate that they do not have an easement on
13 the subject property but the Final Plat of Wisegarver's Lot 1 Subdivision indicates that there is a 10 foot
14 easement on the subject property. She said that there is no other documentation from any of the other
15 utilities indicating that they do not have a utility easement on the subject property.
16
17 Mr. Thorsland asked Ms. Griest if she would like to see a formal letter from the other utilities indicating that
18 they do not have a utility easement on the subject property.
19
20 Ms. Griest stated yes. She said that if there is no easement and that issue has been resolved then the request
21 to build within an easement is taken off the table, which would be in the Petitioner's best interest.
22
23 Mr. Thorsland stated that tonight's memorandum and Mr. Johnson's testimony indicates that Part B (1) may
24 or may not be a variance that needs to be granted. He said that it is Mr. Johnson's opinion that Part B (1) is
25 not needed because he is not constructing within an easement but Ms. Griest does not have enough evidence
26 to exclude Part B (1). He said that the Miscellaneous Document which will be recorded with the Recorder of
27 Deeds indicates the following: If the addition authorized by Case 764-V-13 is damaged or destroyed to more
28 than 50% of the replacement value the addition shall not be repaired and in fact shall be removed completely
29 including the footings, unless a Plat of Vacation of Utility Easement is duly approved and filed with the
30 Champaign county Recorder of Deeds for only that part of the easement occupied by the addition, in which
31 case the addition may be reconstructed in the same footprint and same location. Mr. Thorsland stated that if
32 an accident happens and part of the golf cart bay is destroyed by 50% and Mr. Johnson is forced to remove
33 the entire addition he may or may not be able to rebuild the addition at that location without a vacation of the
34 utility easement that may or may not exist.
35
36 Mr. Johnson stated that he and Mr. Hall discussed this issue and if more than 50% of the structure is
37 destroyed he would imagine that he will have bigger problems regarding the rest of the house.
38

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1 Mr. Thorsland stated that the Board is often tasked with an attempt to predict the future without actually
2 protecting the future. He said that one could argue that there is or is not an easement although the Board
3 only has documentation from two of the utility companies.
4

5 Ms. Griest stated that the Board must have a 100% consensus and a majority will not do it for her because if
6 the use of the land has been given away for the use of an easement then the right to build upon it has also
7 been given away. She said that until the property owner can officially reclaim that right she is not a
8 supporter of allowing construction within an easement just because the ZBA gives the landowner permission
9 to build something that they would not give the landowner permission to rebuild. She said that the logic in
10 the condition does not work for her either. She said that she respects that the contractor got a little
11 overzealous and that is unfortunate, but if the Board is going to impose a condition that the landowner
12 cannot rebuild if more than 50% of the structure is destroyed, then why would the Board authorize building
13 it in the first place when less than 50% of it is built now.
14

15 Mr. Thorsland stated that the Board did not grant that authorization.
16

17 Ms. Griest understood but the proposal for the condition is that the Board would authorize building it but the
18 Board would deny rebuilding it and that logic does not work for her.
19

20 Mr. Johnson stated that when he spoke to Mr. Hall he indicated that he did not care whether the variance was
21 passed with or without the conditions. Mr. Johnson stated that Mr. Hall indicated in the memorandum that
22 the addition will never be expanded and that is what is proposed.
23

24 Mr. Thorsland stated that what Mr. Hall was communicating to Mr. Johnson was that it is up to the Board to
25 decide whether or not the variance will have conditions applied to it.
26

27 Mr. Johnson stated that Mr. Hall indicated that he had no objection either way.
28

29 Ms. Griest stated that Mr. Hall and staff are always committed to making every attempt to be as helpful to
30 the petitioner as possible.
31

32 Ms. Capel stated that the Board needs to know if there is an easement on the subject property or not and it is
33 her recommendation that the case be continued so that staff and the Board can figure it out.
34

35 Mr. Thorsland agreed with Ms. Capel. He said that he understands Mr. Johnson's concern because there is a
36 timeline although there has been testimony and evidence that the structure can be protected from inclement
37 weather. He said that it is unfortunate that Mr. Hall cannot be present tonight because it is Mr. Hall who has
38 discussed this case with Mr. Johnson prior to this meeting. He said that the staff which are present tonight

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1 are doing their best to answer the questions that are posed although they too were not part the conversations
2 between Mr. Johnson and Mr. Hall. He said that Ms. Griest and Ms. Capel would like to see an actual
3 definitive plat that indicates that the subject property is out of the easement and that easement is regard to all
4 utilities. He said that Mr. Johnson should discuss the Board's concerns with Mr. Hall, when he returns to the
5 office, so that those concerns can be addressed and documented at the next available meeting.

6
7 Ms. Marilyn Lee stated that the title work should have indicated an easement on the subject property. She
8 said that perhaps Mr. Johnson should contact the title company for information as well.

9
10 Mr. Thorsland suggested that Mr. Johnson use all of the tools available to remedy the Board's concerns and
11 work with Mr. Hall so that the perhaps the variance regarding the easement will no longer be necessary. He
12 noted that the case does not need to be re-advertised if Part B.(1) is eliminated. He said that if there was a
13 recorded plat before this Board which indicated that there was no existing utility easement on the subject
14 property then he would be very satisfied.

15
16 Mr. Johnson stated that it was mentioned that staff viewed the GIS map and it did not indicate an easement.

17
18 Ms. Busboom stated that she cannot find the GIS map in the files at this time.

19
20 Ms. Griest asked if the GIS map is an official record.

21
22 Ms. Busboom stated that the recorded document is the official record however the GIS Department receives
23 their information from the Recorder's Department and plats that information onto their maps.

24
25 Ms. Griest stated that she had a recent experience in which the GIS staff indicated that they do not always
26 enter in all of the recorded easements.

27
28 Mr. Thorsland stated that the 1974 Plat indicates an annotated note from staff. He said that the lot that was
29 drawn in was done so by staff therefore it is not part of the recorded document. He asked if the page to the
30 north of Briar Hill 2nd Addition could be obtained for the Board's review.

31
32 Ms. Griest stated that the annotation on Briar Hill 2nd Addition's plat is not part of the recorded plat.

33
34 Mr. Randol stated that Illinois American Water's easement is going to be located at the front of the subject
35 property where the water main is located and will not be located along the side of the subject property and
36 dead ending.

37
38 Mr. Thorsland asked Mr. Randol if a clearer plat would be helpful.

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1
2 Mr. Randol stated that the conflict that he has is the way that the easement was indicated in 1974 versus the
3 updated plat. He said that if the utilities decide that they do not need the entire easement it is never
4 indicated. He said that if the original plat was only a designer's plat and not an as-built plat then the plat
5 means nothing because he sees preliminary maps all of the time that indicate things which are not accurate
6 when the as-built construction is completed.

7
8 Mr. Thorsland stated that the Board is not punishing Mr. Johnson in requiring all of the homework that he
9 has completed. He said that the one thing that has been pointed out by members of the Board is that there is
10 a plat indicating adjacent properties around the subject property and their easements but the only indication
11 of the subject property and its easement is a nebulous line drawn in by staff. He said that he is sure that an
12 updated plat exists and is available for the Board's review. He said that as Ms. Griest indicated previously
13 the GIS map may not be perfect but even that would be helpful. He said that if you look at the photograph
14 which came from GIS he would be in agreement with Mr. Johnson that they put in their blue lines and even
15 though every lot is not indicated it does show that particular piece and it appears that the line is very close to
16 the building. He said that GIS helps only in making the case that Mr. Johnson is close and he would say that
17 based on GIS, Mr. Johnson's building is outside of the lot line or very close to the lot line. He said that
18 rather than making a decision that may or may not put an onerous burden on Mr. Johnson in regards to
19 reconstruction, if he finds out that there is absolutely no utility easement present then there is no need for the
20 provision that prohibits reconstruction and requires that everything must be ripped out. Mr. Thorsland stated
21 that he understands that requiring more proof poses a further delay.

22
23 Mr. Johnson said that requiring more proof delays moving his family back home.

24
25 Mr. Thorsland asked Mr. Johnson if the house is livable otherwise.

26
27 Mr. Johnson stated no. He said that he purchased the home out of foreclosure and when he purchased it he
28 intended on moving his family and placing his child in school. He said that he needs to know exactly what
29 the Board needs to make a decision because he can't keep his family in limbo.

30
31 Mr. Thorsland stated that the Board requires a better plat or evidence that definitively indicates that all of the
32 utility easements are outside of the subject property.

33
34 Mr. Thorsland asked Ms. Griest if she would like to see a plat which is newer than 1974 of the subject
35 property and not the adjacent property.

36
37 Ms. Griest stated that if the claim is that the 1974 plat that the Board has currently which indicates the
38 recorded easements is not accurate then she would like to see the recorded plat that indicates that there are no

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1 easements on the subject property. She said that what would seal the deal with her is documentation from
2 the title company stating that there are easements or are no easements on the subject property. She said that
3 the title company could indicate such in writing on their letterhead and address it to Mr. Hall for submission
4 to the Board. She said that if there is an easement on the subject property then she still has a problem with
5 Mr. Johnson's request.

6
7 Mr. Johnson asked Ms. Griest if she still has a problem with Ameren even though they indicated that they
8 did not care.

9
10 Ms. Griest stated yes, despite the fact that the utility companies indicated that they do not care.

11
12 Mr. Thorsland noted that Mr. Johnson should keep in mind that he needs four affirmative votes for approval
13 and Ms. Griest is only one of the voting Board members.

14
15 Mr. Thorsland stated that Ms. Capel also indicated that the Board needs to know whether there is an
16 easement involved on the subject property or not.

17
18 Ms. Capel stated that Mr. Thorsland was correct. She said that the Board would not be acting responsibly if
19 they did not know whether they were actually dealing with an easement on the subject property or not.

20
21 Mr. Thorsland stated that staff has provided the Board with a copy of the 1974 plat which indicates what
22 staff is trying to point out and if this is the end of those lots and it doesn't show the lot in question then the
23 easement is located on the lot to the south.

24
25 Ms. Griest stated that Mr. Thorsland's statement is inaccurate.

26
27 Mr. Thorsland asked Ms. Griest to indicate her basis for believing that his statement is inaccurate.

28
29 Ms. Griest stated that the plat that Mr. Thorsland is discussing does not have any formal representation other
30 than staff's annotation of the other lots therefore that plat does not speak to it at all.

31
32 Mr. Thorsland stated that he is not arguing that the plat does not show the lot in question at all.

33
34 Ms. Griest stated that the plat absolutely shows an easement on the adjacent parcel but Mr. Thorsland points
35 towards the GIS as a reliable tool for those easements although they do not show the easements for the other
36 parcels.

37
38 Mr. Thorsland stated that he made no claim regarding the accuracy of GIS because they indicate his property

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1 line shooting through a building that he apparently owns three feet of on his neighbor's property.
2
3 Mr. Thorsland stated that the Board will continue this case to the next meeting in January and it will be the
4 first hearing of the meeting. He said that the reason why the Board will refer the January meeting as
5 tentative is because the Board has not approved the 2014 ZBA calendar yet.
6
7 Mr. Thorsland entertained a motion to continue Case 764-V-13 to the tentative January 14, 2014, meeting.
8
9 **Ms. Griest moved, seconded by Mr. Miller to continue Case 764-V-13 to the tentative January 14,**
10 **2014, meeting. The motion carried by voice vote.**
11
12 Mr. Johnson stated that the Board requires a document from the title company and a newer plat.
13
14 Mr. Thorsland stated yes, one or both or either.
15
16 Ms. Busboom stated that there will probably not be a newer plat.
17
18 Mr. Thorsland stated that a new plat may not be available but Mr. Johnson can try to obtain a document from
19 the title company indicating that there is no recorded utility easement on the subject property.
20
21 Ms. Capel stated that the title company can indicate whether there is or is not a recorded easement on the
22 subject property.
23
24 Mr. Johnson stated that with everyone reviewing the same documentation we cannot really figure it out but
25 won't the title company be looking at the same documentation.
26
27 Ms. Capel stated yes, but that is the title company's job.
28
29 Mr. Thorsland stated that Mr. Johnson is paying the title company to indicate whether or not an easement is
30 on the subject property and he is paying the title company to ensure their documentation in case they are
31 incorrect.
32
33 Ms. Lee stated that Mr. Johnson has the right to ask the title company to prove their position because title
34 companies can be incorrect. She said that if they are proven incorrect with other documentation they will
35 listen. She said that the Board needs to know whether there is a recorded easement on the subject property
36 or not.
37
38 Mr. Thorsland stated that it appears that the Board is being very picky but if the existence of the easement

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1 can be proven then one-half of this case can be taken off of the table and everything else becomes much
2 easier. He said that as soon as Mr. Hall is back Mr. Johnson should contact him.

3
4 Ms. Griest stated that if the Board can get this matter resolved for Mr. Johnson and he is permitted to
5 construct the addition without the restriction it will increase the value and marketability of his property in the
6 future as opposed to restricting it.

7
8 Mr. Thorsland called for a five minute recess.

9
10 **The Board recessed at 7:30 p.m.**

11 **The Board resumed at 7:35 p.m.**

12
13 **6. New Public Hearings**

14
15 **Case 765-V-13 Petitioner: Ashley M. Schum and John T. Copple and landowner Michael**
16 **Harshbarger Request to authorize the following in the CR District for the occupancy and use of an**
17 **existing detached accessory structure that was previously denied in Case 677-V-10: Part A. A setback**
18 **of 47 feet and 6 inches from CR 2545E in lieu of the minimum required setback of 55 feet; and Part B.**
19 **A front yard of 17 feet and 6 inches from the front property line in lieu of the minimum front yard of**
20 **25 feet. Location: Lot 27 of Deer Ridge/Ingram's Third Subdivision in Section 30 of Ogden Township**
21 **and commonly known as the house at 2545 CR 1375N, Ogden.**

22
23 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County allows
24 anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a show
25 of hands for those who would like to cross examine and each person will be called upon. He requested that
26 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
27 those who desire to cross examine are not required to sign the witness register but are requested to clearly
28 state their name before asking any questions. He noted that no new testimony is to be given during the cross
29 examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are exempt
30 from cross examination.

31
32 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
33 sign the witness register for that public hearing. He reminded the audience that when they sign the
34 witness register they are signing an oath.

35
36 Mr. Thorsland asked the petitioners if they desired to make a statement outlining the nature of their request.

37
38 Mr. Gregory Ryan, attorney for the petitioners, stated that his office is located at 123 W. Main, Urbana. He

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1 said that approximately two and one-half years ago Mr. Harshbarger, owner of the subject property,
2 requested the same variance that is being requested today and the Board found that a couple of the provisions
3 were not demonstrated and the request was denied. He said that the contract purchasers, Ashley Schum and
4 John Copple, are in love with the property and they are asking that the variance be allowed. He said that he
5 believes that with the testimony and evidence that will be presented tonight the Board will see a difference
6 between the contract purchaser's use and the contract sellers. He said that nothing much has changed from
7 the last hearing where the Board basically found that most of the provisions were complied with but the
8 Board was very concerned that the building was built illegally and the owner was a contractor who should
9 have known better. Mr. Ryan noted that Mr. Copple is a police officer and Ms. Schum works at Carle and
10 they are not contractors and would not have the contractor's equipment that was previously present on the
11 property and they do not intend to have a Neighborhood Home Occupation permit. Mr. Ryan stated that Mr.
12 Copple and Ms. Schum intend to comply with all of the requirements posed for the variance so that everyone
13 is adequately protected.

14
15 Mr. Ryan stated that he would like to review the photographs that were submitted to staff on December 11th.
16 He said that the first page illustrates the front of the home on the subject property as one is looking south.
17 He said that the second page illustrates the attached garage, the side yard to the west which has a playhouse
18 and other entities. He said page three and four illustrates the area and the garage in question and its
19 proximity to the road. He said that the subject property is a corner lot and for purposes of zoning there are
20 two front yards, one side and one rear rather than one front, one rear and two sides. He said that the street
21 adjacent to the subject garage is a cul-de-sac and the street in the front of the home is a full street. He said
22 that page five views the subject property to the west and illustrates the fenced back yard. He said that page
23 six illustrates a view of the subject garage and the fence line. He said that pages seven, eight and nine are
24 also views of the subject garage in relation to the cul-de-sac street. He said that he parked his car in front of
25 the garage to illustrate the proximity of any vehicles to the street. He said that he understands that the Board
26 has reviewed the information included in the mailing packet but if the Board has any questions regarding the
27 information he would be happy to address those questions.

28
29 Mr. Thorsland asked the Board if there were any questions for Mr. Ryan.

30
31 Ms. Lee asked Mr. Ryan to explain which point of the garage is too close to the road.

32
33 Mr. Ryan stated that the County records the measurement from the road to the wall of the garage and that
34 measurement is basically seven feet closer than what is allowed.

35
36 Ms. Lee asked if the entire garage is too close to the road.

37
38 Mr. Ryan stated yes.

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1
2 Mr. Thorsland stated that for the benefit of the Board members who were not present during the previous
3 Case 677-V-10, the township receives motor fuel tax funds for the cul-de-sac road therefore the road cannot
4 be vacated. He said that the original issue for the garage was that it was constructed without a Zoning Use
5 Permit and was constructed too close to the centerline of the road and it did not provide enough room for
6 parking a truck and trailer, which was included in the Neighborhood Home Occupation by the previous
7 owner, without extending into the road right-of-way. He said that there has been testimony that the road is
8 not heavily traveled because it is a cul-de-sac road and there is evidence that it won't be well traveled but the
9 Board tried to put a lot of conditions on the case. He said that of Case 677-V-10 was denied and the garage
10 would require modification although there was no follow-up by staff as to whether the modification had been
11 completed therefore the same request is before the Board today with the same issue but potential new owners
12 of the subject property. He said that the new owners would not have a home occupation which would
13 include trucks and trailers. He said that there was a lot of effort by the Board to try to make the request work
14 but in the end the request was denied due to actions of the applicant. He said that if the garage was
15 originally built to comply with the Zoning Ordinance's requirements the Board would not be reviewing this
16 case tonight.

17
18 Mr. Passalacqua stated that regardless of the presence of a home occupation or not the setback for the garage
19 would be the same.

20
21 Mr. Thorsland stated that Mr. Passalacqua was correct but there are circumstances which made it impossible
22 for the variance to work.

23
24 Mr. Passalacqua stated that he does not see a magic wand that makes this garage conform today. He said
25 that we are being faced with the same circumstances today other than the home occupation that the previous
26 Board was faced with for Case 677-V-10.

27
28 Mr. Thorsland stated that basically everything has basically been frozen in time from when Case 677-V-10
29 was denied.

30
31 Mr. Passalacqua stated that regardless that there was not an inspection after the variance case was completed
32 the ruling of the ZBA was that the garage has to be modified.

33
34 Mr. Thorsland stated that Mr. Passalacqua was correct.

35
36 Mr. Ryan stated that he was not involved in the previous request but the minutes indicate that two of the
37 criteria for the finding were not met. He said that Mr. Palmgren indicated that practical difficulties or
38 hardships created by carrying out the strict letter of the regulations sought to be varied WILL NOT prevent

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1 reasonable or otherwise permitted use of the land or structure or construction because the building in
2 question was built by the applicant and he has testified that removing eight feet of the building to comply
3 would be difficult but he could still do that and move the furniture around. Mr. Ryan stated that Mr.
4 Courson stated that the special conditions, circumstances, hardships, or practical difficulties DO result from
5 actions of the applicant because the applicant indicated in the evidence that it was his mistake that created
6 this problem; and the site plan submitted by the applicant with the permit application indicated adequate
7 space for the building to be built in compliance with the Zoning Ordinance and it was indicated as such on
8 the site plan. Mr. Ryan stated that the nub of his case is that his clients, the contract buyers, did not build the
9 structure in question and removing the portion of the garage would be very expensive and require the service
10 of contractors. He said that the contractor, not his clients, made the mistake regarding the construction of the
11 garage in question.

12
13 Mr. Passalacqua asked Mr. Ryan if when his clients entered into the sales contract were they aware of the
14 circumstances regarding the garage.

15
16 Mr. Ryan stated that his clients were not aware of the circumstances regarding the garage. He said that he
17 inserted this information in his petition for the variance.

18
19 Mr. Randol asked when the garage was constructed.

20
21 Mr. Thorsland stated that he will let Mr. Harshbarger, the current owner of the subject property, address Mr.
22 Randol's question.

23
24 Mr. Thorsland called Michael Harshbarger to testify.

25
26 Mr. Michael Harshbarger, who resides at 2102 Leah's Lane, Champaign, stated that the subject property is
27 currently vacant. He said that he did not hear anything from the Board or staff after the public hearing so he
28 was not sure what he was supposed to do with the garage.

29
30 Mr. Thorsland asked Mr. Harshbarger if he had a clear understanding after the public hearing for Case 677-
31 V-10 that the case was denied and a portion of the garage required removal.

32
33 Mr. Harshbarger stated that he did not have a clear understanding of such. He said that Mr. Hall informed
34 him that staff would be contacting him within a few weeks.

35
36 Mr. Thorsland stated that the memorandum indicates that there were some extenuating circumstances as to
37 why staff did not visit the subject property to determine if removal of the portion of the garage was removed
38 or not. He said that there was only one planner in the Department of Planning and Zoning at the time and

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1 there was a rather large wind farm hearing which occupied staff and the Board's time. He asked Mr.
2 Harshbarger if when he advertised the subject property for sale, if he mentioned the circumstances of the
3 garage.

4
5 Mr. Harshbarger stated that he did not. He said that he had forgotten about it because he hadn't heard
6 anything from staff or the Board. He said that tonight is the first time that he has met the potential buyers.

7
8 Mr. Thorsland asked Mr. Harshbarger if he hired the services of a realtor.

9
10 Mr. Harshbarger stated yes.

11
12 Mr. Thorsland asked Mr. Harshbarger if he mentioned the circumstances to the realtor.

13
14 Mr. Harshbarger stated no.

15
16 Mr. Thorsland stated the realtor or the potential buyers had an idea that there was an issue with the subject
17 garage.

18
19 Mr. Harshbarger stated that Mr. Thorsland was correct.

20
21 Ms. Griest asked Mr. Harshbarger if there is an existing sales contract for purchase by Ms. Schum and Mr.
22 Copple or is he selling the subject property on contract to Ms. Schum and Mr. Copple.

23
24 Mr. Harshbarger stated that there is an existing sales contract for purchase and it will be an outright sale.

25
26 Mr. Randol asked Mr. Harshbarger when he constructed the garage.

27
28 Mr. Harshbarger stated that the garage was built in 2006 which was approximately five years before the
29 variance request.

30
31 Mr. Thorsland stated that there was another variance case for the subject property which included other
32 structures on the property such as, the pool house, and the play house. He said that the Board allowed the
33 variance for the pool house due to its complexity and the fact that it was plumbed in with concrete. He said
34 that the play house was moved by the petitioner therefore the variance for it was removed from the request.
35 He said that the variance for the detached garage, the subject of this variance request, was denied by the
36 Board.

37
38 Ms. Capel stated that the issue of the garage was discovered when staff was conducting a compliance

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1 inspection on the subject property.
2
3 Ms. Busboom stated that she and Ms. Hitt had visited the subject property to conduct a compliance
4 inspection on the play house and the swimming pool to verify compliance and at that time the detached
5 garage was investigated and determined that it was too close to the property line as well as the centerline of
6 the road. She said that Mr. Harshbarger was notified and applied for a variance for the garage.
7
8 Mr. Passalacqua asked Mr. Harshbarger if he was at the meeting when the ZBA denied his variance request.
9
10 Mr. Harshbarger stated yes.
11
12 Mr. Passalacqua asked Mr. Harshbarger if he was aware of the changes that needed to be completed.
13
14 Mr. Harshbarger stated that he was not clear at that time as to what changes needed to be completed.
15
16 Ms. Lee asked if the encroaching portion of the garage was removed what amount of the garage would
17 remain.
18
19 Mr. Harshbarger stated that 42 feet 6 inches would remain.
20
21 Ms. Lee stated that Mr. Harshbarger indicated that removal of the encroaching portion would cost a lot. She
22 asked Mr. Harshbarger to indicate the definition of “cost a lot.”
23
24 Mr. Harshbarger stated that he has a quote from a contractor regarding removal of the encroaching portion of
25 the garage that he will submit to the Board.
26
27 Mr. Passalacqua stated that he really requires input from Mr. Hall because at this point he is done for the
28 night.
29
30 Mr. Thorsland asked the Board if there were any additional questions from the Board for Mr. Harshbarger
31 and there were none.
32
33 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Harshbarger and there was no one.
34
35 Mr. Thorsland called Pamela Wendt to testify.
36
37 Ms. Pamela Wendt, who resides at 1365 CR 2545 E, Ogden, stated that she realizes that everyone on the
38 Board has read the Preliminary Memorandum but she would like to point out that since 2008 Mr.

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1 Harshbarger and herself have been in front of the Board on different occasions regarding different issues
2 with structures being constructed on his property which was too close to the property line which is between
3 her property and his. She said that the play house was removed and placed away from her property line and
4 there was an issue with the pump house, a drain line and some bricks but the drain line and bricks were also
5 moved further from her property line. She said that her concern with all of this is that Mr. Harshbarger is a
6 contractor who builds structures and since he moved onto the subject property he has continued to build
7 things on his property without receiving the initial paperwork required by the County and then comes before
8 the Board requesting zoning variances. She said that different variances have been denied and different
9 variances have been allowed and some variances have been allowed with conditions requiring changes. She
10 said that the case that was called before the Board tonight was originally called in 2010 and a finding for
11 denial was determined in 2011 and nothing has changed since 2011. She said that earlier this week she had a
12 45 minute telephone conversation with John Hall and he apologized for not having enough staff to get out to
13 the subject property, the wind farm cases, etc.

14
15 Ms. Wendt stated that the fact of the matter is that not getting a permit to build and then requesting a
16 variance later and then having no follow through by staff or the Board. She said that everyone in the County
17 has to comply with the Zoning Ordinance but if there is no follow through then there are no consequences
18 for violating these rules and regulations. She said that she does not see that anything has changed on the
19 property since 2010 except that in 2013 Mr. Harshbarger intends to sell the property to someone else. She
20 said that she is not sure how a new case could come forth when there have been no changes since the initial
21 Board's denial.

22
23 Mr. Thorsland stated that the Board does not decide which cases will be heard but he understands Ms.
24 Wendt's point.

25
26 Mr. Thorsland asked the Board if there were any questions for Ms. Wendt.

27
28 Ms. Griest asked Ms. Wendt if she shares the adjoining property line which is adjacent to the garage.

29
30 Ms. Wendt stated that Mr. Harshbarger's south property line is her north property line.

31
32 Ms. Griest asked Ms. Wendt if her property is directly behind the pool house.

33
34 Ms. Wendt stated yes. She said that both portions of the requested variance affects her property.

35
36 Ms. Griest asked Ms. Wendt if she attended the public hearings in 2010 and 2011.

37
38 Ms. Wendt stated no. She said that she attended the public hearings that occurred in 2008 and 2009. She

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1 said that her family was out of the country during the 2010 and 2011 public hearings.
2
3 Ms. Griest asked Ms. Wendt if she was aware of the outcome of the 2011 denial.
4
5 Ms. Wendt stated that she was not aware of the outcome of those public hearings until the recent case came
6 forth.
7
8 Ms. Griest stated that no complaints were filed due to Mr. Harshbarger's non-compliance with the Board's
9 findings.
10
11 Ms. Wendt stated no, because she was not aware that his request had been denied.
12
13 Mr. Thorsland asked the Board if there were any additional questions for Ms. Wendt and there were none.
14
15 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Wendt and there was no one.
16
17 Mr. Thorsland called Ashley Schum to testify.
18
19 Ms. Ashley Schum, who resides at 403 Eagle Court, Gibson City, stated that they fell in love with the
20 property and they pay approximately \$100 per month to store their boat at an outside facility and one of the
21 reasons they desired to purchase the property was because they could store their boat in the garage. She said
22 that Mr. Copple is a Illinois State Trooper so he has his work vehicle, as well as his personal truck and she
23 has a car therefore they require a three-car garage.
24
25 Mr. Thorsland asked Ms. Schum where she and Mr. Copple are in the sale process.
26
27 Ms. Schum stated that everything has been approved and they are waiting on the determination from the
28 Board regarding the detached garage. She said that if the request is denied they will not purchase the
29 property.
30
31 Mr. Thorsland asked Ms. Schum if she and Mr. Copple have any intent of starting a home occupation which
32 would involve trucks and trailers.
33
34 Mr. Schum stated no.
35
36 Ms. Griest asked Ms. Schum if the variance was granted with conditions would she be willing to agree to a
37 condition that if the detached garage required reconstruction that it would be built to comply within the
38 prescribed setbacks by the County's Zoning Ordinance.

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Ms. Schum stated yes.

Mr. Thorsland stated that Mr. Ryan has some additional comments that he would like to present to the Board. Mr. Thorsland called Mr. Ryan to testify.

Mr. Ryan, attorney for the petitioners, stated that he has spoken with Ms. Schum and Mr. Copple extensively and they would abide by any special conditions imposed by the Board. He said that the special condition that if the request is granted that an original copy of the signed Final Determination in the variance case be filed with the Recorder of Deeds as a Miscellaneous Document as soon as possible after receiving the signed Final Determination. He said that the petitioners are not a construction company and as far as he knows nothing will be parked on the padded area for storage because the detached garage is large enough to store their boat. He said that the petitioner's personal vehicles will be parked in the attached garage or on the pad in front of the attached garage. He distributed a proposal from D & D Construction indicating the cost that would be incurred to correct the violation. He said that the petitioners did not have anything to do with creating this situation which is before the Board tonight. He said that there were some erroneous errors conducted by the current owner and he has admitted to such and it appears that this was one of the main concerns made by the previous Board and the situation was static other than concerns addressed by the Board regarding what Mr. Harshbarger did. He said that the petitioners were not aware of the subject property's issues when they signed the purchase contract but now that they do they are attempting to go through the property channels to obtain a variance. He said that their request is fairly minimal and it doesn't appear to impose any dangers. He said that the petitioners would like to obtain the variance due to the cost to remove the portion of the garage which is in violation and doing so would change the dynamics of the property that they desire to purchase.

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

Mr. Passalacqua asked Mr. Ryan if it is a gable wall that is being proposed to be removed in the estimate.

Mr. Ryan stated that he is not a contractor and only presented the estimate to the Board to indicate the cost of removal. He said that his clients do not desire removing any portion of the detached garage.

Mr. Passalacqua stated that he does not believe that removal is the responsibility of Mr. Ryan's clients.

Mr. Thorsland stated that before the Board discusses what the cost to remove the portion of the detached garage that was determined by the Board or any other factors that caused the original denial it has been established by the petitioner's attorney that removal of any portion of the structure is not desired by the petitioner. He said that the petitioner's do not intend to modify the property therefore it is the determination

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1 of this Board for their request as to whether they purchase the property or not.

2
3 Mr. Ryan stated that it doesn't matter whether the cost is \$10,000 or \$40,000 they do not intend to remove
4 any portion of the structure. He said that the cost estimate may be irrelevant but he wanted to give the Board
5 an idea of what it would cost the petitioners to comply with the Board's determination.

6
7 Mr. Thorsland asked the Board if there were any additional questions for Mr. Ryan.

8
9 Ms. Griest asked Mr. Ryan how the petitioners became aware of the subject property's violation.

10
11 Mr. Ryan stated that he believes that the memorandum indicates that the petitioners were made aware in
12 October. He said that he did not become involved with this issue until after the petitioners discovered the
13 violation on the property.

14
15 Ms. Busboom stated that staff received a telephone call from the realtor requesting the zoning district which
16 is common practice. She said that staff made the realtor aware of the denied variance and shortly thereafter
17 staff received calls from Michael Harshbarger, Ashley Schum and Mr. Ryan.

18
19 Mr. Thorsland asked the Board if there were any additional questions for Ms. Schum or Mr. Ryan.

20
21 Mr. Passalacqua asked Ms. Schum if their boat would fit inside a 42 foot garage.

22
23 Ms. Schum stated that she believed that the boat would fit because the boat with the trailer measures 32 feet.

24
25 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Schum or Mr. Ryan and there was
26 no one.

27
28 Ms. Busboom stated that when the realtor called the realtor did not indicate how far the potential buyers
29 were in the process and whether or not they had signed the purchase contract.

30
31 Mr. Thorsland called John Copple to testify.

32
33 Mr. John Copple, who resides at 403 Eagle Court, Gibson City, stated that he does not believe that the boat
34 would fit because it would be a tight fit now with the garage at its current dimension. He said that the boat is
35 26 feet with a two foot sundeck and the trailer adds seven feet. He said that the detached garage is 30' x 50'
36 and Mr. Harshbarger has a room built inside of the garage but he is sure that the boat would not fit.

37
38 Mr. Thorsland asked Mr. Copple if the boat would fit without the room.

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Mr. Copple stated that if the room was removed he would not be interested in the property.

Mr. Thorsland stated that the realtor called staff on October 22nd. He asked Mr. Copple how far he and Ms. Schum were in the process for purchasing the property.

Mr. Copple stated that they were pretty close to completing the purchase. He said that they found about the issues with the detached garage rather late in the game. He said that currently they live in Gibson City but their lease is up at the end of December.

Ms. Lee asked Mr. Copple if he and Ms. Schum signed the purchase contract prior to October 22nd.

Mr. Copple stated yes.

Mr. Thorsland called Ms. Schum to testify beside Mr. Copple.

Mr. Thorsland stated that the Board's concern at this time is who made the call to the Planning and Zoning Department.

Mr. Thorsland stated that it is his understanding that Mr. Copple and Ms. Schum desire to purchase the property in its current condition and anything different would not be desirable.

Mr. Copple stated that Mr. Thorsland was correct.

Mr. Thorsland stated that the sale is really pending the determination of this zoning case and modification of the structures is not acceptable.

Mr. Copple stated yes. He said that he reviewed the various special conditions and he agrees to all of the special conditions. He said that currently he stores the boat in his father's machine shed during the winter.

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

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

Mr. Thorsland called Reggie Taylor to testify.

Ms. Reggie Taylor, who resides at 3109 Meadowbrook Drive, Champaign, stated that she is a realtor and she represented Ashley Schum and John Copple during their purchase of the property. She said that the contract

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1 was written and signed in October and shortly thereafter she discovered the zoning issues with the detached
2 garage.

3
4 Mr. Thorsland asked Ms. Taylor how she discovered the zoning issues with the detached garage.

5
6 Mr. Taylor stated that someone who was aware of the circumstances with the subject property contacted her.
7 She said that her first question to her contact was whether or not the zoning issues would appear in the title
8 work and she was informed that it would not. She said that she immediately called the Planning and Zoning
9 office to find out more information about the subject property but at that point the petitioners were well into
10 the purchase contract and the appraisal was completed. She said that one of the confusing points for them is
11 that the requirement is 10 feet for a side yard but since there are two streets the property essentially has two
12 front yards. She said that she did not think anything about the garage being so close to the road because she
13 considered the yard as a side yard and not a front yard.

14
15 Mr. Thorsland stated that such confusion appears quite often with corner lots. He asked Ms. Taylor if she
16 has reviewed the memorandum regarding the previous case that was denied.

17
18 Ms. Taylor stated yes, but it is her understanding that Mr. Harshbarger never received an answer from staff
19 as to what he was supposed to do and that everything was put on the backburner.

20
21 Mr. Thorsland stated that the only thing that was put on the backburner was staff verifying that the
22 modifications has been completed.

23
24 Ms. Taylor stated that is her understanding as well.

25
26 Mr. Thorsland stated that the minutes make it very clear that the case was denied and the garage required
27 modification.

28
29 Mr. Thorsland asked the Board if they had any questions for Ms. Taylor.

30
31 Ms. Lee asked Ms. Taylor who contacted her about the circumstances with the subject property.

32
33 Ms. Taylor indicated that the appraiser contacted her.

34
35 Mr. Thorsland stated that the appraiser apparently received knowledge from staff regarding the property.

36
37 Mr. Thorsland asked the Board if there were any additional questions for Ms. Taylor and there were none.

38

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

2
3 Mr. Thorsland stated that Mr. Hall presented an alternative site plan with the existing driveway removed and
4 a new driveway installed and with the garage modified to be entered from the north. He said that Mr. Hall
5 indicated that this alternative site plan would eliminate the need for extensive special conditions related to
6 the street but would still require some significant changes to be made to the property. Mr. Thorsland stated
7 that the alternative site plan would take away the problems with the parking but would not take away the
8 issues with the building. He said that submitted testimony indicates that the problems with parking do not
9 appear to be an issue with the petitioners. He said that the Board also heard testimony from the petitioners
10 indicating that modification to the property is not acceptable in any way therefore the alternative site plan in
11 not really any option.

12
13 Mr. Passalacqua stated that he was not involved in the last public hearing regarding the garage but it appears
14 that the 30' x 50' detached garage was one project and the 12' x 30' addition to the garage was another
15 project and both were constructed without a permit and were constructed outside of compliance.

16
17 Ms. Busboom stated that the addition to the garage was constructed with a permit and that is why it is
18 setback seven plus feet and the rear yard is compliant as well.

19
20 Mr. Passalacqua stated that the addition was added to a non-compliant structure.

21
22 Mr. Thorsland stated that the Board has heard from all of the witnesses who signed the witness register. He
23 asked the Board if they were comfortable with continuing forward with the case or to continue the case to a
24 later date.

25
26 Ms. Griest stated that she understands the position that the purchasers are in but she does not know that there
27 is additional evidence that would resolve any of the lack of certainty. She said that she is the type of Board
28 member who always likes to find the common ground that works well for everyone however she has an
29 incredible low tolerance for people who blatantly disregard the regulations in the County. She said that Mr.
30 Harshbarger, of all people, is involved in the construction industry therefore he should be more aware of
31 those requirements and restrictions than the general lay public and it puts her in a very difficult situation.
32 She said that the subject property appears to be lovely and it escapes her why on a lot this large Mr.
33 Harshbarger couldn't have and wouldn't have made every possible effort to build on the property within the
34 required setbacks of the County.

35
36 Mr. Thorsland stated that the Board should be sure to review all of the minutes for the previous case.

37
38 Ms. Griest stated that she did review the minutes.

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1
2 Mr. Thorsland stated that what should have been done was that Mr. Harshbarger should have contacted the
3 County before construction to obtain a permit and to find out what the regulations were for that construction.
4 He said that there is a waterway on the subject property that pushes some of the construction into one portion
5 of the property and the waterway is discussed during the previous case. He said that some of the
6 construction is larger than the average size that is constructed but those items were forced that way partially
7 by the waterway's location. He said that he is not justifying the actions but is explaining some of the past
8 history.

9
10 Ms. Griest stated that she understands the difficulties and restrictions caused by drainage but there were
11 other solutions. She said that her dilemma is rewarding someone who blatantly disregarded the rules by
12 approving this petition but at the same time denying the purchasers approval when they had no participation
13 in the noncompliance that was created.

14
15 Mr. Thorsland asked Ms. Griest if there were conditions that would make her more comfortable that would
16 allow the variance.

17
18 Ms. Griest stated that it is possible.

19
20 Mr. Thorsland stated that his job is to get the Board to come to some sort of agreement regarding moving
21 forward or continuing the case to a later date.

22
23 Ms. Griest stated that she did ask Ms. Schum about conditions regarding reconstruction and there are a lot of
24 ways to reconfigure the 30' x 50' detached garage so that it remains a 30' x 50' building although concrete is
25 expensive depending on the degree of destruction. She said that her biggest concern comes from the fact that
26 if this is approved, having Mr. Harshbarger benefit from his lack of follow-up and lack of action in resolving
27 his noncompliance originally.

28
29 Mr. Passalacqua stated that Ms. Griest is discussing the buyer and the seller but the Board received
30 testimony from the neighbor which indicated that they are not very excited about the requested variance
31 either.

32
33 Ms. Griest stated that she understands Ms. Wendt's concerns but she is using her own personal inflection of
34 what she is inferring from what Ms. Wendt testified and Ms. Griest assumes that she would be much happier
35 if she had new neighbors that were compliant.

36
37 Mr. Passalacqua stated that he does not believe that who lives in the house is relevant but he does believe
38 that this is the exact same case that was previously denied and there has been no new information brought

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1 forward tonight other than the property is not proposed to house a Neighborhood Home Occupation. He said
2 that other than new ownership this appears to be the exact same case that this Board heard before he was a
3 member.

4
5 Mr. Thorsland stated that the only two differences are that there will be new ownership and that there will be
6 no Neighborhood Home Occupation on the property. He said that the current condition is not the fault of the
7 petitioners and even though Mr. Harshbarger is listed on the application it may have been a mistake to have
8 included him. He said that it may have been a cleaner application to not have included him because the
9 request is not due to the actions of Ms. Schum or Mr. Cople. He said that the proposed special conditions
10 are very similar to the special conditions that were proposed in the previous case.

11
12 Mr. Passalacqua stated that it is perfectly fine to have included Mr. Harshbarger as a co-petitioner because
13 the contract purchasers have testified that if any modifications are made then they are not interested in the
14 property and Mr. Harshbarger's goal is to sell the property.

15
16 Mr. Thorsland stated that someone needed to make a decision as to whether the Board is considering a
17 variance for the proposed owners or for the current owner and instead all parties were placed on the
18 application.

19
20 Mr. Passalacqua stated that after hearing the testimony it appears that Mr. Harshbarger was not clear as to the
21 direction that he was supposed to take after the denial of the first case. He said that he would like to hear
22 testimony from Mr. Hall because currently he is at an impasse. He said that on the other hand the minutes
23 are a form of public record and Mr. Harshbarger did testify that he was at the meeting and in his presence the
24 Board denied his request.

25
26 Mr. Thorsland stated that the minutes for the public hearing were approved and the memorandum in the
27 mailing indicated the reason why follow-up was not completed by staff.

28
29 Mr. Passalacqua stated that he does not believe that has a lot of merit but by the same token one of the
30 petitioners is a Illinois State Trooper and he will probably tell you that if you drive 85 m.p.h. and he catches
31 on the radar gun or visually catches you the law is still the law and you are in violation. He said that this is
32 one of the those cases where nobody wins and the Board gets to look like the bad guys but the fact from the
33 first case is that the structures had no permit and were and still are out of compliance.

34
35 Mr. Thorsland asked Mr. Passalacqua if there is anything that Mr. Hall could provide that would make him
36 want to wait for Mr. Hall's presence or work through the Finding of Fact tonight and get as far as the Board
37 can without Mr. Hall.

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- 1 Mr. Passalacqua stated that as a courtesy to both parties he believes the Board should get as far as it can
2 tonight.
3
- 4 Mr. Thorsland asked the Board if they agreed with Mr. Passalacqua and the Board agreed.
5
- 6 Ms. Griest stated that she would like the opportunity to ask Ms. Wendt a few questions.
7
- 8 Mr. Thorsland called Pam Wendt to testify.
9
- 10 Ms. Griest stated that the question that she has for Ms. Wendt is related to the variance for the shed and if it
11 were granted. She asked Ms. Wendt to explain how the distance from the center of the road being 7-1/2'
12 narrower than what it should be has or has not directly impacted her negatively or was Ms. Wendt's earlier
13 statement not so much about that but more about the general pattern of behavior that she was experiencing.
14
- 15 Ms. Wendt stated that her concerns are two-fold. She said that she is concerned about the patterned behavior
16 where there is no follow through. She said that if she wants to build a structure on her property she is
17 required to go to the County to obtain a building permit, which she does do and follows all of the County's
18 rules and regulations but there has been time after time after time where that has not been done on the
19 subject property. She said that her second concern is not with the new owners coming in because they will
20 not have machinery and trucks with trailers. She said that over the period of the last several years there have
21 been times when trucks and trailers have been parked on the subject property and there have been complaints
22 from the school bus driver who comes to pick up her child and her neighbor's children. She said that the
23 school bus driver indicates that they cannot get past the vehicles when it is snowing and they have to pull
24 over onto another neighbor's yard. She said that these are her only concerns with the building.
25
- 26 Ms. Griest asked Ms. Wendt if she were permitted to express an opinion regarding whether this request
27 should or should not be approved would she prefer that it be approved or not be approved.
28
- 29 Mr. Thorsland stated that he does not want to put Ms. Wendt on the spot.
30
- 31 Ms. Griest stated that since Ms. Wendt is an adjacent landowner she will be heavily impacted therefore this
32 is a fair question.
33
- 34 Mr. Thorsland stated that Ms. Wendt has basically answered the question.
35
- 36 Ms. Griest stated that Ms. Wendt did not answer the question.
37
- 38 Mr. Thorsland stated that Ms. Wendt indicated that the new owners perhaps would not be as cavalier.

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1

2 Ms. Griest stated that she will ask her question differently. She asked Ms. Wendt if she has a strong
3 objection to the ZBA if they approved the requested variance for the distance of the existing shed to the road.

4

5 Mr. Thorsland informed Ms. Wendt that she does not have to answer Ms. Griest's question.

6

7 Ms. Griest informed Ms. Wendt that she does not have to answer any question. She said that if Ms. Wendt
8 does not have an opinion that would be a fair answer as well.

9

10 Ms. Wendt stated that her opinion is that the request went before the Board and it was denied for a reason
11 and there were supposed to be things done by Mr. Harshbarger and they were not done. She said that if Mr.
12 Harshbarger would have to do those modifications and the new owners desired to purchase the property then
13 she would not have a problem with that but her problem is that nothing has been followed through and there
14 continues to be issues.

15

16 Mr. Thorsland stated that Mr. Harshbarger testified that he no longer lives on the subject property and is
17 merely the owner of the property. He asked the Board if they desired more input on Mr. Harshbarger's
18 testimony.

19

20 Mr. Thorsland asked Ms. Wendt if within the recent months has she had any issues with vehicles in the
21 driveway or has that stopped.

22

23 Ms. Wendt stated that no one lives on the subject property at this time.

24

25 Mr. Thorsland asked the Board if there were any additional questions for Ms. Wendt and there was no one.

26

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

28

29 Mr. Greg Ryan, attorney for the petitioners, stated that his goal is to represent the contract purchasers and
30 Mr. Harshbarger was added to the variance application because staff recommended it due to Mr. Harshbarger
31 is the current owner. He said that he is not making excuses for what Mr. Harshbarger has or has not done
32 but he does not believe that the contract purchasers should be held to his actions. He said that in response to
33 the Board's concerns regarding there has been no change but he respectfully disagrees because there has
34 been change in that there are new applicants. He said that during the previous case the Board specifically
35 stated that the big problem that they had was that Mr. Harshbarger was the applicant and he was the one that
36 made the mistakes and the two issues which the Board has to consider the appropriate findings were not
37 determined. He said that if Mr. Harshbarger is out of the picture then he believes that his clients have
38 presented enough evidence to remedy those two issues that the Board had before and everything else is

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1 static.

2

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

4

5 Mr. Randol stated that he sees the potential for penalizing the new homeowners and not only has it been Mr.
6 Harshbarger's problem but it was compounded by staff not going back and enforcing what the Board
7 required to be done.

8

9 Mr. Thorsland stated that it is sad that is not the Board's responsibility and many times the Board has to mull
10 over these things after the fact. He said that staff has been apologetic.

11

12 Mr. Thorsland called for an additional five minute recess. He requested that the Board think about whether
13 they desire to move forward with the case tonight or continue it to a later date. He said that he believes that
14 the Board has everything that they need to move forward but that is only his opinion. He noted that there is a
15 full Board present tonight which is something that has not occurred for over a year's time.

16

17 **The Board recessed at 8:45 p.m.**

18 **The Board resumed at 8:50 p.m.**

19

20 Mr. Thorsland stated that if the Board desires we can start review of the Findings. He said that generally
21 regarding special conditions that may be present, the petitioner indicated the following: "The road will never
22 be made wider. Also, no more houses will be built. Petitioners, Schum and Copple are the contract
23 purchasers of the property in question who will allow the garage to remain in an "as is" condition." Mr.
24 Thorsland stated that staff included a re-hash of what occurred previously in Case 677-V-10 and an
25 explanation of why the Board made their finding.

26

27 Mr. Thorsland stated that generally regarding any practical difficulties or hardships related to carrying out
28 the strict letter of the Ordinance the petitioner indicated the following: "The costs to remedy the setback
29 issue would be great as the contract purchasers are not construction contractors. Also, the contract
30 purchasers were unaware of any setback problems when they entered into the contract to purchase said
31 property with the contract seller." Mr. Thorsland stated that the Board has received testimony to substantiate
32 the petitioner's statement on the application and at some point someone made the realtor aware of the zoning
33 violation which places us where we are today. He said that the Board has heard testimony that approval of
34 the variance is the last thing that needs to be completed before the sale is finalized. He asked the Board if
35 there was any additional evidence that should be added and there was none.

36

37 Mr. Thorsland stated that generally pertaining to whether or not the practical difficulties or hardships result
38 from the actions of the applicant the petitioner indicated the following: "The petitioners/contract purchasers

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1 did not cause the setback problem as it was the contract seller's error in constructing the garage in the
2 setback. The contract purchaser had nothing to do with the site plan or permit application involved in the
3 garage construction." He said that the Board heard evidence that substantiated that and the finding for Case
4 677-V-10 indicated that the special conditions, circumstances, hardships, or practical difficulties DO result
5 from actions of the applicant. He said that in Case 765-V-13 Mr. Harshbarger is still an applicant because he
6 is the current owner of the property.

7
8 Ms. Griest asked if the Summary of Evidence should indicate Mr. Ryan's testimony indicating that the only
9 reason why Mr. Harshbarger is listed as a co-petitioner is because he is still the current owner and it is
10 required by the County's regulations. She said that it is important that Mr. Ryan's testimony be specifically
11 stated in the Summary of Evidence.

12
13 Mr. Thorsland stated that Mr. Ryan's testimony could be added as a new Item #9.D.

14
15 Mr. Passalacqua stated that he believes that Mr. Ryan's testimony is important as well. He asked who the
16 true petitioners are for this case and if they are Ms. Schum and Mr. Copple.

17
18 Mr. Thorsland stated the rules for applying for the case indicate that the current owner has to be a co-
19 petitioner but the people requesting the variance are the contract purchasers. He said that the current owner
20 of the property previously requested the same variance and was denied.

21
22 Mr. Passalacqua stated that he sees it as punishing the current applicants. He said that if Mr. Harshbarger is
23 a co-petitioner for the case then the case is the same case that was requested in 2010 and denied in 2011
24 regardless of the intended use today. He said that since this is the same case then it will have same outcome.

25
26 Mr. Thorsland stated that new Item #9.D. should read as follows: Greg Ryan, attorney for the purchasers,
27 testified at the December 12, 2013, public hearing that because the County regulation requires that the
28 current owner of any property must be a petitioner in a request for a variance for any property action
29 therefore Mr. Ryan was required to add Mr. Harshbarger, the current owner, as a co-petitioner.

30
31 Mr. Thorsland asked the Board if they agreed to new Item #9.D. and the Board agreed.

32
33 Mr. Thorsland stated that generally pertaining to whether or not the Variance is in harmony with the general
34 purpose and intent of the Ordinance the petitioner indicated the following: "Based on the previous factual
35 findings of the Board and the previous proposed special conditions, if adopted, will protect people with any
36 traffic issues and the road commissioner previously indicated he had no problem with the previous proposed
37 special conditions." Mr. Thorsland stated that he does not believe that there is any new evidence to add to
38 this tonight. He said that this finding in Case 677-V-10 was determined that the requested variance, subject

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1 to the proposed special conditions, IS in harmony with the general purpose and intent of the Ordinance
2 because it protects people with any potential traffic issues in front of the building and the road commissioner
3 stated he had no problems with it in the letter that he signed; and if it were a side yard it would be adequate
4 but it is a front yard.

5
6 Mr. Thorsland asked the Board if there was anything that needed to be added to the finding and there was
7 none.

8
9 Mr. Thorsland stated that generally pertaining to the effects of the requested variance on the neighborhood
10 and the public health, safety, and welfare the petitioner indicated the following: “The variance requested is
11 relatively minor and will not have a detrimental effect on the neighborhood in this rural area. Also, on the
12 previous application the Fire Protection District had no response and the road commissioner indicated that he
13 was comfortable with the special conditions proposed.” Mr. Thorsland stated that the proposed special
14 conditions in Case 677-V-10 are similar to the special conditions for Case 765-V-13 and they involved long
15 vehicles. Mr. Thorsland stated that the petitioners indicated that the variance requested is relatively minor
16 although he believes that the 7 feet six inches is less than relatively minor and the photographic evidence
17 indicates that a normal car can be parked in the driveway without extending into the right-of-way.

18
19 Ms. Capel stated that a full size pickup truck would extend into the right-of-way of the street. She said that
20 she does not believe that this is a minor variance because Ms. Wendt testified that the school bus had to
21 drive into the neighbor’s yard to get around the vehicle that was parked on the subject property.

22
23 Mr. Thorsland stated that the Board cannot change the petitioner’s comments on the variance application but
24 the Board can point out testimony. He said that he would like to continue the Board’s review of this case by
25 reading the special conditions.

26
27 Mr. Thorsland stated that proposed special condition 14.A. is in regards to how encroachment of parked
28 vehicles into the right-of-way shall be limited. He read proposed special conditions as follows:

29 **A.1. At no time shall a parked or standing vehicle (ie, parked while attended) located**
30 **on the subject property extend onto the street pavement and past the line of the gravel**
31 **base of the pavement on either side of the driveway.**

32
33 **A.2. Unless otherwise directed by the Township Highway Commissioner, no parked or**
34 **standing vehicle (ie, parked while attended) located on the subject property shall**
35 **extend past the line of the right-of-way during times of anticipated street maintenance**
36 **(and it shall be the petitioner’s responsibility to anticipate street maintenance) or at**
37 **other times as requested by the Township Highway Commissioner.**

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- 1 **A.3. Unless otherwise directed by the Township Highway Commissioner, at no time**
- 2 **from dusk to dawn shall a parked vehicle located on the subject property extend**
- 3 **past the centerline of the roadside ditch in front of the subject garage.**
- 4
- 5 **A.4. Three documented violations of the special conditions of approval regarding**
- 6 **encroachment of parked vehicles into the street right-of-way between the garage and**
- 7 **the street shall void this approval and a new variance shall be required.**
- 8
- 9 **B. If the subject garage is damaged or destroyed to more than 50% of replacement**
- 10 **Value it shall be reconstructed in full compliance with the Champaign County Zoning**
- 11 **Ordinance.**
- 12
- 13 **C. The petitioner shall file an original copy of the signed Final Determination in this**
- 14 **variance case as a Miscellaneous Document with the Champaign County Recorder of**
- 15 **Deeds as soon as possible after receiving the signed Final Determination.**
- 16
- 17 **D. The Zoning Administrator shall not issue any additional Zoning Compliance**
- 18 **Certificates authorizing the use of buildings on the subject property unless the**
- 19 **petitioner submits a copy of the recorded document required by Condition D. above.**
- 20

21 Ms. Griest asked Mr. Thorsland if there was a possibility of adding a special condition indicating that no
22 Neighborhood Home Occupation may be permitted on the subject property.

23
24 Ms. Lee stated that indicating such would restrict the new owners from having a simple in-home computer
25 business that would be located entirely in the house.

26
27 Ms. Capel stated that such a restriction would run with the land.

28
29 Mr. Randol stated that an in-home computer business would not take up any parking area.

30
31 Ms. Griest stated that no one knows if an in-home computer business would take up any parking area.

32
33 Ms. Busboom stated that the proposed special condition could read as follows: No Neighborhood Home
34 Occupation could be granted for the subject property that involved any parking of vehicles in the driveway
35 along CR 2425E, such as trailers, trucks, etc. She said that if someone had an in-home business like
36 Tupperware or a hair salon their clients would need to park in the driveway to the north facing CR 1375N.

37
38 Mr. Thorsland stated that perhaps the special condition could read that should a Neighborhood Home

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- 1 Occupation be proposed on the property the request would require review by the ZBA regarding parking.
2
- 3 Ms. Busboom stated that if there is parking for the Neighborhood Home Occupation it would be restricted to
4 the driveway located on the north side of the subject property.
5
- 6 Mr. Passalacqua stated that the Board has already addressed parking therefore there is no need to restrict the
7 new owners from having a Neighborhood Home Occupation. He said that the Ms. Schum and Mr. Copple
8 have already testified that they will abide to the proposed special conditions.
9
- 10 Mr. Thorsland stated that rather than excluding the availability of have a Neighborhood Home Occupation
11 the Board wants to make sure that the petitioners agree to the proposed special condition regarding parking.
12 He said that agreeing to the proposed special conditions would not prohibit the new owners from having a
13 Neighborhood Home Occupation but protect the neighborhood from problems like the issue with the school
14 bus.
15
- 16 Ms. Griest stated that protecting the rest of the neighborhood is what she is looking for.
17
- 18 Mr. Thorsland stated that he agreed.
19
- 20 Mr. Randol stated that there are all kinds of home occupations that would not involve parking therefore to
21 eliminate the availability of a home occupation seems kind of foolish.
22
- 23 Mr. Thorsland stated that restricting the possibility of a home occupation is not necessary and the Board
24 needs to concentrate on addressing the parking issues.
25
- 26 Ms. Capel asked if the parking issue is complaint driven.
27
- 28 Ms. Busboom stated yes. She said that proposed special condition A.4 indicates that three documented
29 violations of the special conditions of approval regarding encroachment of parked vehicles into the street
30 right-of-way between the garage and the street shall void this approval and a new variance shall be required.
31
- 32 Mr. Thorsland stated that he is sure that if there is a problem staff will be contacted.
33
- 34 Ms. Griest asked Mr. Thorsland to indicate, per the proposed special conditions, where parking is allowed
35 and what is allowed to be parked on the subject property. She asked Mr. Thorsland to indicate what has
36 been achieved with the proposed special conditions as to where the vehicles can park and what can be parked
37 there. She said that if the property owners have a party, can their guests park along the street.
38

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- 1 Mr. Passalacqua stated no, because at no time can a parked or standing vehicle (ie, parked while attended)
2 located on the subject property extend onto the street pavement and past the line of the gravel base of the
3 pavement on either side of the driveway
4
- 5 Ms. Griest stated that she has a problem with that special condition because it restricts the new property
6 owners more than their adjoining neighbors.
7
- 8 Mr. Randol stated that the proposed special condition is only dealing with the driveway in front of the
9 subject garage.
10
- 11 Ms. Griest stated that this may be true but the proposed special condition does not indicate that.
12
- 13 Mr. Randol stated that the detached garage is what the Board is dealing with.
14
- 15 Ms. Griest stated that the proposed special condition does not say it.
16
- 17 Ms. Busboom stated that the proposed special condition indicates in front of the subject garage.
18
- 19 Ms. Griest stated that only proposed special condition A.3 includes the subject garage.
20
- 21 Mr. Passalacqua stated that the proposed special conditions discuss a parked vehicle extending into the right-
22 of-way which includes everyone in the neighborhood because no one can park within the right-of-way.
23
- 24 Ms. Griest stated that you are parking within the right-of-way when you park along the side of a country
25 road.
26
- 27 Ms. Capel stated that if people continuously park along a country road there will be complaints voiced to
28 staff.
29
- 30 Mr. Passalacqua stated that no parking in the right-of-way is a County rule because he has had an officer stop
31 at his house when he had guests informing him that they cannot park along the road. He said that the ZBA
32 cannot rewrite the County's law.
33
- 34 Ms. Griest stated that is definitely a law and the Board has someone in the audience who could testify to
35 such but she does not want to restrict the new homeowners more tightly than necessary.
36
- 37 Mr. Thorsland stated that nothing would please him more than someone to have an open house in their new
38 home and too many people came over and the neighbors were happy because they were invited. He said that

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1 Mr. Passalacqua was correct in that if the Board stated it only in cases where there would be a large amount
2 of traffic there would be restrictions on how the property owners could use the property and it would be
3 stated very clearly that their clients could not park within the street but this is a residential property and a
4 Neighborhood Home Occupation would not reach that type of level.

5
6 Mr. Passalacqua stated that the property owners have already indicated that they do not intend to have a
7 home occupation and even if they did they would have to come before this Board anyway.

8
9 Ms. Capel informed Mr. Passalacqua that a Neighborhood Home Occupation is not reviewed by the ZBA.

10
11 Mr. Thorsland stated that the same parking regulations would apply.

12
13 Ms. Griest stated that if the petitioner is comfortable with the proposed special conditions then she is too.

14
15 Mr. Thorsland stated that at this time he will review the proposed special conditions with the petitioners and
16 they need to indicate that agree and understand or disagree.

17
18 Mr. Passalacqua asked Mr. Thorsland if at this time if he is only considering Ms. Schum and Mr. Copple as
19 the petitioners.

20
21 Mr. Thorsland stated no.

22
23 Mr. Thorsland read the proposed special conditions as follows:

- 24
25 **A. Encroachment of parked vehicles into the right-of-way shall be limited.** There is
26 reduced parking space in front of the subject garage due to the non-compliant front yard
27 (distance between the garage and property line/right-of-way line) of only 17 feet and 6 inches
28 in lieu of the minimum required front yard of 25 feet. There is approximately 19 feet of
29 clearance between the property line/right-of-way line and the edge of the gravel base of the
30 pavement and therefore a total of approximately 36 feet 6 inches between the garage and the
31 edge of the gravel base of the pavement in lieu of the minimum 44 feet that would otherwise
32 be required. The reduced parking space may result in encroachment of parked vehicles into
33 the right-of-way and there are related highway safety concerns depending upon the amount of
34 encroachment. The Township Highway Commissioner is the final authority on whether or
35 not any parking is allowed in the right-of-way. However, the Zoning Board of Appeals may
36 be able to help the Highway Commissioner by including some explicit special conditions for
37 parking that extends into the right-of-way. Any special condition of the ZBA can be
38 overridden by the Highway Commissioner at any time. The following special conditions are

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1 proposed to address safety concerns associated with the reduced parking space in front of the
2 subject garage but are not intended to apply to the subject property in general:

3 **(1) At no time shall a parked standing vehicle (ie, parked while attended) located on**
4 **the subject property extend onto the street pavement and past the line of the**
5 **gravel base of the pavement on either side of the driveway.** (Note: This condition
6 will allow a parked vehicle to extend as much as 18 feet into the right-of-way but not
7 onto the pavement and should ensure that there are no unusual traffic safety issues
8 arising due to the reduced parking space in front of the garage. This condition is
9 intended to be subordinate to the Township Highway Commissioner’s authority and
10 the Township Highway Commissioner can enforce any required parking restrictions
11 in the right-of-way.)
12

13 Mr. Thorsland asked the petitioners if they agreed and understood proposed special condition 1.

14
15 Mr., Copple indicated that they agreed and understood proposed special condition 1.
16

17 Mr. Thorsland read proposed special condition A.(2) as follows:

18 **(2) Unless otherwise directed by the Township Highway Commissioner, no parked**
19 **or standing vehicle (ie, parked while attended) located on the subject property**
20 **shall extend past the line of the right-of-way during times of anticipated street**
21 **maintenance (and it shall be the petitioner’s responsibility to anticipate street**
22 **maintenance) or at other times as requested by the Township Highway**
23 **Commissioner.** (Note: This condition requires that no vehicle extend past the
24 property line during times of anticipated street maintenance such as application of
25 road oil or clearing of snow and should ensure there are no unusual property damage
26 issues caused by necessary street maintenance due to the reduced parking space in
27 front of the garage. This condition is intended to be subordinate to the Township
28 Highway commissioner’s authority and the Township Highway Commissioner can
29 enforce any required parking restrictions in the right-of-way.
30

31 Mr. Thorsland asked the petitioners if they agreed and understood proposed special condition A.(2).

32
33 Mr. Copple stated that they agreed and understood proposed special condition A.(2).
34

35 Mr. Thorsland read proposed special condition A.(3) as follows:
36

37 **(3) Unless otherwise directed by the Township Highway Commissioner, at no time**
38 **from dusk to dawn shall a parked vehicle located on the subject property extend**

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1 **past the centerline of the roadside ditch in front of the subject garage.** (Note:
 2 Even though there are no liability issues to be concerned about the Board may want
 3 to require this greater amount of separation between the edge of pavement and parked
 4 vehicles at nighttime. This condition should provide approximately 10 feet
 5 separation between a parked vehicle and the edge of the pavement base. This
 6 condition is intended to be subordinate to the Township Highway Commissioner’s
 7 authority and the Township Highway Commissioner can enforce any required
 8 parking restrictions in the right-of-way.)
 9

10 Mr. Thorsland asked the petitioners if they agreed and understood proposed special condition A.(3).

11
12 Mr. Copple stated that they agreed and understood proposed special condition A.(3).

13
14 Mr. Thorsland read proposed special condition A.(4) as follows:

15
 16 **(4) Three documented violations of the special conditions of approval regarding**
 17 **encroachment of parked vehicles into the street right-of-way between the garage**
 18 **and the street shall void this approval and a new variance shall be required.**
 19 (Note: This condition provides a long term enforcement mechanism for the special
 20 conditions. Documentation of a violation generally requires dated photographic
 21 evidence. As proposed these three documented violations could occur years apart
 22 and under different owners. Voidance of the variance approval will be a violation of
 23 the Zoning Ordinance and the Zoning Administrator would presumably send a Notice
 24 of Violation to the owner.)
 25

26 Mr. Thorsland asked the petitioners if they agreed and understood proposed special condition A.(4).

27
28 Mr. Copple stated that they agreed and understood proposed special condition A.(4).

29
30 Mr. Thorsland read proposed special condition B. as follows:

31
 32 **B. If the subject garage is damaged or destroyed to more than 50% of replacement value it**
 33 **shall be reconstructed in full compliance with the Champaign County Zoning**
 34 **Ordinance.** (Note: The replacement value shall assume replacement by a third party and
 35 not by the homeowner.)
 36 The special condition stated above is required to ensure the following:
 37 To ensure that if the garage must be rebuilt it will be rebuilt to the requirements of the
 38 Ordinance.

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1
2 Mr. Thorsland asked the petitioners if they agreed and understood proposed special condition B.

3
4 Mr. Copple stated that they agreed and understood proposed special condition B.

5
6 **C. The petitioner shall file an original copy of the signed Final Determination in this**
7 **variance case as a Miscellaneous Document with the Champaign County Recorder of**
8 **Deeds as soon as possible after receiving the signed Final Determination.**

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

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

12
13 Mr. Thorsland asked the petitioners if they agreed and understood proposed special condition C.

14
15 Mr. Copple stated that they agreed and understood proposed special condition C.

16
17 Mr. Thorsland asked if a timeline of 30 days should be inserted.

18
19 Mr. Passalacqua stated that he is also concerned about a timeline because he does not know how the
20 petitioners could record this if they do not own the property. He said that he is not clear and asked if there is
21 a detail missed during the final walk through or extenuating circumstances occur during the closing and the
22 deal falls through, the variance is moot.

23
24 Mr. Thorsland stated yes, as far as he knows.

25
26 Ms. Capel stated no, because the Board will be granting this to Mr. Harshbarger.

27
28 Mr. Thorsland stated that Ms. Capel is correct.

29
30 Mr. Passalacqua stated that he needs direction as the Board moves forward because he is having a hard time
31 making a decision in this case. He said that he does not feel that it is appropriate to stifle the purchase of this
32 dream home for this couple because of actions that are outside of their control, however along with Ms.
33 Griest he has a problem with the non-permitting. He said that he understands that there has been testimony
34 indicating that there was no real direction given regarding the resolution, however he has a problem with the
35 person being awake and alert enough to know that changes were required due to the outcome of the case. He
36 said that the Board will be making a decision on a piece of property and it appears that everything is in order
37 but he has bought and sold a lot of properties and sometimes during the final hour things do not go perfectly
38 right.

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38

Mr. Thorsland stated that it is unfortunate that Mr. Hall or the State's Attorney is not present at tonight's hearing for guidance. He said that he is wondering if all of this is contingent upon Ms. Schum and Mr. Copple finishing the purchase of the property.

Mr. Passalacqua stated that the State's Attorney's comment indicated that the original decision was perfectly legitimate and there was no reason to doubt that decision in regards to recourse because the Board is required by the Ordinance to find an affirmative on all of the Board's decisions.

Mr. Thorsland stated that if this case has come before the Board for only Mr. Harshbarger as the current owner then this would be the same case and we all know how that ended. He said that his question is not answered by the State's Attorney's comments but can the Board place a condition on the variance indicating that this variance is only granted upon the change of ownership and he does not believe that the Board can do that. He said that he believes that Mr. Harshbarger is honest and so are the two proposed owners and he doesn't know if there was different way that it could be presented to the zoning office as an application for a variance because Ms. Schum and Mr. Copple do not desire to purchase the property without knowing the outcome of the variance.

Mr. Passalacqua stated that he does not know how Ms. Schum and Mr. Copple can obtain this variance without having ownership.

Mr. Thorsland stated that he agrees and the more the Board talks about this issue the less likely it is that the case will be finished tonight.

Mr. Passalacqua stated that through questioning and testimony the Board asked who bears the responsibility of the required modifications in the estimate. He said that Ms. Schum and Mr. Copple are not going to hire the contractor for the modifications if they do not own the property.

Ms. Capel stated that they couldn't.

Mr. Passalacqua stated that at this point Ms. Schum and Mr. Copple has as much legal right to obtain the variance as he does.

Mr. Thorsland stated that he likes the property which is adjacent to his but the guy's shed is across his property line and he may want to buy it but if he doesn't assimilate it into his property a variance is required because the shed is over the line. He said that he does not want to buy the property if he cannot get a variance because he wants to buy the property because of the shed. Mr. Thorsland stated that he cannot come to the ZBA as the guy next door and indicate that he wants to obtain a variance and then he will talk to

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1 the owner to see if he can buy it.

2
3 Ms. Capel stated that initially Mr. Ryan indicated that there was evidence that would make the two negative
4 findings in the last case positive although the only thing that changed is that there is a contract on the
5 property. She said that the owner of the subject property is still the same and ultimately if the Board grants
6 the variance the Board will be granting it to the current owner of the property.

7
8 Mr. Thorsland stated that the current owner of the property is in violation of the denial and has not made
9 amends to the denied case which took place over two years ago. He said that the minutes are very clear that
10 the current owner was told that the garage was 7 foot 6 inches too big and it had to be modified for
11 compliance.

12
13 Ms. Lee stated that the Board previously discussed that the Board may be punishing the contract purchasers
14 if the request is denied but in essence if the variance is granted the Board would be rewarding the contract
15 seller.

16
17 Mr. Thorsland stated that the Board may not be punishing the contract purchasers in moving the contract
18 seller away from a problematic property. He said that at this point he is not sure what the Board will be
19 doing.

20
21 Ms. Capel stated that the fact is that the current owner is requesting the same variance which has previously
22 been denied by this Board.

23
24 Ms. Busboom stated that the existing landowner and the future landowners are indicated on the purchase
25 contract and the variance application but the variance is on the property. She said that the variance was
26 denied on the property.

27
28 Mr. Thorsland stated that Ms. Busboom was correct and nothing has changed on the property since the last
29 denial other than the movement of a few bricks and the playhouse.

30
31 Ms. Busboom stated that it is almost like the Board has to shut off who the current owner is and the potential
32 buyers are of the subject property.

33
34 Mr. Thorsland stated that if the Board shuts off who the potential buyers and the current owner is the
35 property is still in violation and from where he sits the Board has already determined a denial.

36
37 Mr. Thorsland stated that there is a full Board present tonight and this case could be completed tonight or the
38 case could be continued to a later date. He said that he does not know what more information could be

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1 provided therefore perhaps the Board should wait to hear from Mr. Hall.

2
3 Mr. Passalacqua stated that the Board needs input from the State's Attorney because currently the Board is
4 hearing the same case that was heard in 2011. He said that he does not believe that the potential buyers have
5 a right to request a variance until they are the owner of record.

6
7 Ms. Busboom stated that the Board has heard cases previously which included contract buyers as co-
8 petitioners.

9
10 Mr. Passalacqua asked Ms. Busboom if that situation has ever occurred on a case that was previously denied.

11
12 Ms. Busboom stated no, but the Board has allowed contract purchasers to make a request for special uses,
13 variances, and map amendments as long as the current owner is a party for that petition.

14
15 Mr. Thorsland stated that Ms. Busboom is correct. He said that the Board recently heard a case that was in
16 Wilbur Heights and the contract purchaser realized that the Board was not going to grant the request
17 therefore he backed out of the contract.

18
19 Mr. Passalacqua asked if the landowner was the petitioner.

20
21 Mr. Thorsland stated yes, the landowner was the petitioner but the contract purchaser was a co-petitioner.

22
23 Mr. Randol stated that had this not been brought to the Board's attention and the new owners came to the
24 Board requesting a variance after the fact the Board would more than likely go through all of this and
25 approved a variance for the new landowners. He said that the Board would not require the new landowners
26 to tear down a structure that they purchased not knowing the previous issues with the property.

27
28 Mr. Miller stated that it would set a bad precedence.

29
30 Mr. Thorsland stated that without being flipped it is the double forgiveness that would have benefitted the
31 new owners. He said that there was a mistake that the Board did not enforce with the previous denial and if
32 the new owners purchased the property and came to the Board afterwards the Board would probably approve
33 their request. He said that in an effort to be compliant and get everything straightened out before hand
34 forgiveness is better than permission. He said that the Board needs to formulate a question for the State's
35 Attorney.

36
37 Ms. Griest stated that she has the question formulated for the State's Attorney as follows: She said that in
38 the first denial all of the Findings of Facts could not be found affirmative in favor to the petitioner. She said

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1 that as long as the same petitioner continues to be a party to the variance, which they must be by the
2 County's own regulation, how does the Board determine Finding of Fact #3 regarding special conditions,
3 circumstances, hardships or practical difficulties do not result from the actions of the applicant. She asked
4 how the Board can determine DO NOT for Finding of Fact #3 when one of the applicants created the
5 problem.

6
7 Ms. Capel stated that she agrees with Ms. Busboom's point in that the Board will be granting the variance
8 for the subject property and not the context of a given petitioner.

9
10 Mr. Thorsland stated that the Board is supposed to deal with every case in an individual basis but if the
11 Board puts out a message that if someone has a blatant violation on their property that has been previously
12 denied by the ZBA their best recourse is to find a new buyer and request the variance again under the new
13 buyer only.

14
15 Mr. Passalacqua stated that it is true that the variance goes with the land but this issue is a result of the act of
16 the petitioner because the land did not build the non-compliant structure.

17
18 Mr. Thorsland stated that he would like input from the State's Attorney therefore it is not possible to
19 continue this hearing to the first meeting in February. He said that it is very important to explain to the
20 petitioners to explain why the Board does what it does.

21
22 Mr. Thorsland stated that there are probably several points in the case where things went wrong. He said
23 that there is a full Board and at one time Ms. Griest served as the Chair of the ZBA and has returned to serve
24 on the Board again. He said that there has never been a time when the Board enjoyed a case when a structure
25 was built in violation without a permit and the owner who built the structure comes to the Board to ask for
26 forgiveness. He said that the Board needs clarification regarding who the variance for this case is being
27 given to because the same variance has already been denied to one of the petitioners and the co-petitioners
28 do not have any ownership in the property.

29
30 Mr. Thorsland entertained a motion to continue Case 765-V-13 to the tentative January 30, 2014, meeting.

31
32 **Ms. Griest moved, seconded by Mr. Miller to continue Case 765-V-13 to the tentative January 30,**
33 **2014, meeting. The motion carried by voice vote.**

34
35 **7. Staff Report**

36 Mr. Busboom stated that Mr. Hall is out of the office currently to assist his wife after surgery. She said that
37 hopefully Mr. Hall will back in the office on Monday although it may only be part-time. She said that Ms.
38 Berry's brother-in-law passed away one hour before this meeting therefore it is unknown when she will be

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1 back in the office as well. Ms. Busboom stated that currently she and Ms. Hitt are the present staff at the
2 office.

3
4 **8. Other Business**

5 **A. Review of Docket**
6

7 Mr. Thorsland reviewed the docket with the Board regarding upcoming meetings. He requested that all
8 Board members attend the meetings.
9

10 **B. Review of ZBA Member Handbook**
11

12 Ms. Busboom distributed the ZBA Member Handbooks. She noted that the new members need to complete
13 the Statement of Economic Interest.
14

15 Ms. Capel asked if all members need to complete the F.O.I.A. and Open Meetings Act Training every year.
16

17 Mr. Thorsland stated yes.
18

19 Mr. Thorsland entertained a motion to continue the meeting to 9:45 p.m.
20

21 **Ms. Griest moved, seconded Mr. Passalacqua to continue the meeting to 9:45 p.m. The motion carried**
22 **by voice vote.**
23

24 **C. 2014 Zoning Board of Appeals Calendar**
25

26 No Action was taken on the 2014 ZBA Calendar.
27

28 Ms. Griest indicated that she will not be attending the February 13, 2014, meeting.
29

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

32 None
33

34 **10. Adjournment**
35

36 Mr. Thorsland entertained a motion to adjourn the meeting.
37

38 **Ms. Griest moved, seconded by Mr. Randol to adjourn the meeting. The motion carried by voice vote.**

ZBA

AS APPROVED JANUARY 30, 2014

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1

2 The meeting adjourned at 9:42 p.m.

3

4

5 Respectfully submitted

6

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8

9

10 Secretary of Zoning Board of Appeals

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18