

AS APPROVED OCTOBER 15, 2015

MINUTES OF REGULAR MEETING (AS AMENDED 10/20/2015)

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61802

DATE: September 10, 2015

PLACE: Lyle Shield's Meeting Room

1776 East Washington Street

Urbana, IL 61802

TIME: 7:00 p.m.

MEMBERS PRESENT: Catherine Capel, Debra Griest, Marilyn Lee, Brad Passalacqua, Jim Randol,

MEMBERS ABSENT : Eric Thorsland

STAFF PRESENT : Lori Busboom, John Hall, Susan Chavarria

OTHERS PRESENT : Lloyd Allen, Caleb Burton, Robert Frazier, Steve Koester, Keith Padgett

1. Call to Order

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

Mr. Hall informed the Board that due to the absence of Eric Thorsland, Chair, the Board needs to appoint an Interim Chair for tonight's meeting.

Mr. Passalacqua moved, seconded by Ms. Lee to appoint Ms. Capel as Interim Chair for tonight's meeting. The motion carried by voice vote.

2. Roll Call and Declaration of Quorum

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

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

3. Correspondence

None

4. Approval of Minutes

None

5. Continued Public Hearings

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None

6. New Public Hearings

Case 792-V-14 (REACTIVATED) Petitioner: **Robert Frazier** Request to authorize the following Variance from the Champaign County Zoning Ordinance in the I-1 Light Industry Zoning District: **Part A. Variance for 48 on-site parking spaces in lieu of the minimum required 67 parking spaces as required by Section 7.4 of the Zoning Ordinance; and Part B. Variance for a setback of 50 feet and a front yard of 20 feet between the principal building and Tiffany Court in lieu of the minimum required setback of 55 feet and the minimum required front yard of 25 feet as required by Section 5.3 of the Zoning Ordinance; and Part C. Variance for parking 0 feet from the front property line in lieu of the minimum required 10 feet from the front property line as required by Section 7.4.1 of the Zoning Ordinance; and Part D. Variance for allowing at least 19 off-street parking spaces on an adjacent lot in lieu of requiring all off-street parking spaces to be located on the same lot or tract of land as the use served, as required by Section 7.4.1 of the Zoning Ordinance. Location: Lot 4 of the Stahly Subdivision in the Southeast Quarter of Section 8 of Champaign Township and commonly known as the former LEX building located at 310 Tiffany Court, Champaign.**

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

Ms. Lee asked if Ms. Capel should have referred to this case as a reactivated case and not a continued case.

Mr. Hall stated that the status of the case is a minor technicality.

Ms. Capel stated that the case is a continued and reactivated case.

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

Mr. Robert Frazier stated that he had no statement at this time.

Ms. Capel asked if staff had any questions for the petitioner or new information for the Board regarding this case.

1 Mr. John Hall, Zoning Administrator, stated that staff does have questions for the petitioner regarding the
2 floor plan but currently he would like to discuss some of the larger issues related to this case. He said that
3 the Board is in a difficult position tonight because this case was continued from May and continued to July
4 and that meeting was cancelled which was a very critical time for this case. He said that the May 6, 2015,
5 Supplemental Memorandum reviewed parking concerns and included the revised site plan that was received
6 on March 30, 2015, which he realized that the site plan at this point is not simply the site plan received on
7 March 30th but also includes the email which was received on March 18th from Robert Frazier with
8 attachments. Mr. Hall stated that the key attachments to that March 18th email were a very rough indication
9 of the extra parking spaces that he has leased.

10
11 Mr. Hall stated that in January Mr. Thorsland recommended that Mr. Frazier provide a very accurate site
12 plan indicating all levels and uses and from a staff perspective it is fair to say that we may be half way there
13 but we have a site plan that absolutely depends on these other parking spaces and it is not all included on one
14 plan. He said that the site plan for this case is necessarily a floor plan also and is a floor plan of a building,
15 drawn by an architect in 1997, stated to be in compliance with the Illinois Accessibility Code but the
16 building was completely remodeled later and staff has no idea if the building now complies with the Illinois
17 Accessibility Code or the Americans with Disability Act. He said that he is uncomfortable because staff
18 authorized construction at one point but did not authorize the remodeling and hopefully the Attorney General
19 can take attention to that small detail if fines are ever imposed. He said that at this point this is the first time
20 that the Board has been presented with a floor plan that has been completely revised from what was earlier
21 designed by an architect and stated to be in compliance with all accessibility requirements. He said that he
22 does not see anything on the floor plan or the March 30th site plan indicated as restrooms as there should be
23 two restrooms and they should both be accessible to the public. He said that he has not taken the time to
24 walk through the building to see if the restrooms are there and he is waiting to see how important that is to
25 the Board.

26
27 Mr. Hall stated that the upstairs storage that is indicated on the site plan received March 30th -is indicated as
28 “upstairs storage” but he does not know if it is one storage space used for the business or if it is subdivided
29 into self-storage units. He said that a plan has never been received for the self-storage units on the first floor
30 which probably explains why we have never received one for the second floor. He said that he does not have
31 dimensions of the second floor storage area which is located in the middle portion of the building which is
32 the area that our office has never received permit fees for or ever approved or signed off for compliance.

33
34 Mr. Hall stated that there were a lot of issues reviewed in the May 6th Supplemental Memorandum and that
35 was a critical meeting and the memorandum laid out several important considerations and staff tried to
36 identify the most critical considerations in the July 8th Supplemental Memorandum. He noted that in the
37 second paragraph on page 2 of the July 8th memorandum the special conditions that are before the Board are
38 incompatible with the site plan received on March 30, 2015, as they do not match up with that site plan. He
39 said that at this point the Board needs to decide if they agree to these conditions and if the Board does, a
40 different site plan will be required. He recommended that a new site plan be on one sheet showing the entire
41 project, preferably with some kind of a statement from an Illinois Licensed Architect regarding accessibility.

1 He said that if the Board decides to deny the case, the Board could deny it on the basis of the March 30th site
2 plan or the Board could approve it, taking the time to tailor the Summary of Evidence so that the Board's
3 thinking is documented. He said there is a special condition indicating that staff must always have a lease on
4 file for the parking spaces. He said that this special condition is the only way for staff to track that there is in
5 fact the correct number of parking spaces under lease for this project. From a staff perspective, that is
6 probably better than what we have in an "as-of-right" case because it specifies the number of parking spaces
7 that have to be available which is why that is such a piece of key evidence and why it needs to be included
8 on the site plan. He said that this is just a quick review of the really significant issues that the Board needs to
9 review in this case and he apologized for the conditions that lead to the cancellation of the July 16th meeting
10 but it was out of staff's control. He said that he wonders if the Board has everything that it needs to take
11 final action on this case tonight, as much as he would hate to see it continued again, these are some
12 significant issues, at least from a staff level, which must be considered.

13
14 Ms. Lee stated that Special Condition C. on page 25 of 25 of the July 16, 2015, Summary of Evidence
15 indicates the following: Within one year of Final Determination in Case 792-V-14, the property owner must
16 reconstruct the curb that was removed and must submit all necessary engineering documentation that would
17 be required for meeting the original design and specifications in the Stahly Subdivision. She asked Mr. Hall
18 if the Champaign Township Highway Commissioner should have the say-so regarding the curb thus
19 eliminating the need for language like this.

20
21 Mr. Hall stated that the special condition could be revised but staff's thinking was if the curb is replaced to
22 what was there previously and that curb was accepted then why would that same curb not be acceptable
23 today. He said that if the Board agrees he would be happy to insert language regarding approval by the
24 Champaign Township Highway Commissioner.

25
26 Mr. Passalacqua asked if the Board requested additional information regarding the upstairs storage and a
27 floor plan at the previous meeting and no new information has been received.

28
29 Mr. Hall stated that from the previous time that this case was heard the Board does have new information
30 which is the undimensioned sketch of the upstairs storage. He said that as the Zoning Administrator he
31 would like to receive more specific information, but the petitioner did submit the minimal required
32 information by the Board and based on that review the Board may want to get more specific.

33
34 Mr. Randol stated that he would like to see a set of certified plans from a licensed architect showing what
35 everything actually is and where the restrooms are located.

36
37 Mr. Hall stated that technically, in 1997 staff had the plans from the architect and that is what was requested.
38 He said that after receipt of those plans staff reviewed and approved those plans but later the building was
39 completely remodeled without staff's comments so that is the minimum that the Board should ask for
40 because that is what it would need to be in compliance with the Illinois Accessibility Code.

41

1 Ms. Griest asked Mr. Hall if the remodel is the 2004 stamp on the drawing.

2
3 Mr. Hall stated that he does not remember the specifics but apparently that plan was not submitted until
4 November 30, 2004. He said that at that point staff was approving permits based on a condition that we
5 would receive the required documents prior to compliance. He said that the permit was received or approved
6 in 2002. He said that the stamp on the drawing does not relate to anything in red on that plan.

7
8 Ms. Griest asked if all of the modifications indicated in red are changes since 2002 that the petitioner has
9 chosen to share with us but there may be others that we don't know about.

10
11 Mr. Hall stated that including the floor plan indicated on page 2 of Attachment C indicates the office for
12 Frazier Properties, six other offices off of a hallway, two spaces labeled BH1 and BH2. He said that BH2 is
13 available to all of the other offices but BH1 is not, which is why Mr. Hall questioned the restrooms. He said
14 that originally the plan indicated that the restrooms were located on the west side of the building but the
15 spaces indicated as BH1 and BH2 are on the east side of that building wing. He said that the Silverback
16 Barrel Club was previously a storage area but is now a gymnasium. He said that he would have to go back
17 through the drawings but he does believe that the Board did receive the Joseph Coble floor plan indicated as
18 Sheet 1. He said that the area that was subdivided into all of the separate offices was originally indicated as
19 new offices and sales room for Bright Ideas and there were two restrooms which appeared to meet the
20 accessibility standards and, as required by law, the licensed architect signed off on the plans. He said that
21 the changes that are indicated in red may be acceptable but they don't appear acceptable and more
22 importantly there is no licensed professional signing off on the revised plan which is a key thing for him. He
23 said that as the Zoning Administrator he is personally liable for any plan that is approved and he can be fined
24 up to \$1,000 if something gets built that does not meet the Illinois Accessibility Code therefore it is his goal
25 to never let that happen. He said that as staff there is only so much that we can force the petitioner to do
26 outside of a public hearing therefore the Board may want to give more detail in its directions to the
27 petitioner.

28
29 Ms. Capel asked the Board if there were any questions for Mr. Frazier.

30
31 Mr. Passalacqua stated yes.

32
33 Mr. Hall suggested that the Board take comments from witnesses prior to calling the petitioner to the witness
34 microphone.

35
36 Ms. Capel called Lloyd Allen to testify.

37
38 Mr. Lloyd Allen, who resides at 3222 Stoneybrook Drive, Champaign, asked Ms. Capel if anything can be
39 brought up that was discussed at the prior meetings.

40
41 Ms. Capel stated yes.

1
2 Mr. Allen stated that he has been involved in construction and has served on many committees throughout
3 his career. He noted that the Board does have the right to get an architect involved to verify that the non-
4 permitted additions and remodeling was done to comply with the code.
5
6 Mr. Hall stated that Mr. Allen is correct in regards to Illinois Accessibility Code.
7
8 Mr. Allen asked Mr. Hall if a permit would have been required for construction to assure it meets code.
9
10 Mr. Hall stated that Champaign County has never adopted a building code and the State of Illinois has a
11 mandated code for any new construction after February 2015. He said that when the State of Illinois adopted
12 that code they didn't provide any details regarding additions to existing buildings or remodeling so it is very
13 complicated and he does not require anything when it is an addition.
14
15 Mr. Allen asked Mr. Hall if staff has the responsibility regarding the square footage of building versus the
16 square footage of property.
17
18 Mr. Hall stated that under the Zoning Ordinance staff does have that responsibility and does review that.
19
20 Mr. Allen stated that if staff was never given a permit for approval then, why not still require it for review to
21 assure compliance.
22
23 Mr. Hall stated that he has tried as hard as he can to make it clear tonight that a permit should be a
24 requirement.
25
26 Mr. Allen stated that he would like to work through the list of requested variances and present his reasons
27 why they should not be approved. He said that Part A. indicates a variance for 48 on-site parking spaces in
28 lieu of the maximum required 67 parking spaces as required by Section 7.4 of the Zoning Ordinance. He
29 said that he does not believe that 67 parking spaces are enough with the way that Mr. Frazier is currently
30 using his property. Mr. Allen stated that he has one access into his rental property, which is to the back, and
31 it is a concrete driveway that was poured approximately one year ago and it seems like numerous people,
32 including Mr. Frazier, enjoy parking on the driveway. Mr. Allen said that Mr. Frazier parks buses on the
33 driveway overnight and his tenants park on the driveway to the point that anyone who has rental property in
34 this area is forced to use someone else's property to get to those rental spaces. He repeated that he does not
35 believe that 67 parking spaces is even enough for the way that Mr. Frazier is using the property.
36
37 Mr. Allen stated that Part B. indicates a variance for a setback of 50 feet and a front yard of 20 feet between
38 the principal building and Tiffany Drive in lieu of the minimum required setback of 55 feet and the
39 minimum required front yard of 25 feet as required by Section 5.3 of the Zoning Ordinance. Mr. Allen asked
40 Mr. Hall to indicate how long the minimum required setback of 55 feet and the minimum required front yard
41 of 25 feet have been in effect.

1
2 Mr. Hall stated that these requirements have been in effect from day one of the Zoning Ordinance.

3
4 Mr. Allen stated that this requirement has been in effect for years and he cannot see why this Board would
5 change this requirement when it has worked so well. He said that one person has violated the Zoning
6 Ordinance requirements by completing construction without obtaining a Zoning Use Permit so why would
7 the Board be willing to make an exception for that person.

8
9 Mr. Allen stated that Part C. indicates a variance for parking 0 feet from the front property line in lieu of the
10 minimum required 10 feet from the front property line as required by Section 7.4.1 of the Zoning Ordinance.
11 He said that he doesn't really have anything to say about this request.

12
13 Mr. Allen stated that Part D. indicates a variance for allowing at least 19 off-street parking spaces on an
14 adjacent lot in lieu of requiring all off-street parking spaces to be located on the same lot or tract of land as
15 the use served, as required by Section 7.4.1 of the Zoning Ordinance. He said that this Board does not have
16 a policy to enforce this request because the Board has no idea when a space is being leased or not. He said
17 that he does not know if Mr. Frazier's off-street parking is being leased currently and has heard rumors that
18 Mr. Frazier was no longer paying for the lease therefore he no longer has access to that property. He said
19 that the people who were parking at that location were landscapers and is now blocking the drive on the
20 other side. He said that Mr. Frazier has been involved in construction installing room additions, pools, etc.,
21 therefore he should be very knowledgeable about getting permits but now we have a person who has built
22 buildings without a permit and added a porch without a permit. Mr. Allen stated that in regards to life safety
23 the porch is over three foot and has no guardrails to prevent wheelchairs from rolling off of it and any city in
24 the world would not allow it. He said that Mr. Frazier has changed the use of the building and has admitted
25 to cutting three curbs on the property without permits. Mr. Allen stated that Mr. Frazier has modified the
26 buildings and no one knows if he complies with the restroom requirements. He said that staff has indicated
27 that two restrooms are required but what is the state code for bathrooms per people. Mr. Allen stated that
28 without an architect no one knows if Mr. Frazier is compliant locally or with the state which is the reason
29 why he has stated that the Board does have the right to force that an architect be involved. Mr. Allen stated
30 that he does not believe that Mr. Frazier has enough space and he continually gives tenants the use of the
31 property to the south to access their areas because the driveway is always blocked by parked vehicles. He
32 said that this has been dragged out long enough and we need a decision because this has been going on for
33 over one year.

34
35 Ms. Capel asked the Board if there were any questions for Mr. Allen and there were none.

36
37 Ms. Capel asked if staff had any questions for Mr. Allen.

38
39 Mr. Hall stated that in regards to the variance for off-site parking, a variance from the off-site parking
40 requirement is not a prohibited variance so the Board has the authority to grant that variance if they believe
41 they can make the necessary findings. He said that he would like to see a site plan of the off-street parking

1 because it is on an adjacent lot. He said that even if we went with what is before the Board tonight, we know
2 that the parking is adjacent and as long as that is leased for the use of the subject property, the Board still
3 needs to grant the variance because the off-street parking is not on-site and there is good justification for
4 granting it. He said that whether or not the Board will grant the variance or not is up to the Board but they
5 do have that authority.

6
7 Mr. Allen stated that he understands the Board's authority but how will the Board know if the off-street
8 parking is leased now or not.

9
10 Mr. Hall stated that the condition does not apply right now so he does not know but once this variance is
11 approved it will apply. He said that the current lease ends in 2018 if the payments are kept up.

12
13 Mr. Allen stated that the Board is basing this entire variance on that lease and will not know if it has been
14 cancelled.

15
16 Ms. Griest asked Mr. Hall if the variance was approved and it contained a condition regarding the lease, if
17 the lease lapsed for any potential reason would the variance no longer be valid. If not, she would question
18 how much value the condition provides if the condition is violated and that violation does not suspend the
19 authorization.

20
21 Mr. Hall stated that the lease does provide for default but the one weakness is that it doesn't require the
22 Zoning Administrator to be copied on those default documents. He said that this is a legal document and to
23 know whether it is enforceable might require review by the State's Attorney because he cannot provide the
24 legal review that the State's Attorney's Office can provide.

25
26 Ms. Griest asked Mr. Hall if he is addressing his response to her question whether default would suspend the
27 variance. She said that this is not a special use case, but a variance case whereas a condition like that in a
28 special use would automatically suspend the special use, but being a variance she questions whether it really
29 has any teeth.

30
31 Mr. Hall stated that it does have teeth provided that we are made aware of it and that is the problem because
32 the lease does not provide notice to the Zoning Administrator when there is a default and that is what we
33 need to have to make it enforceable.

34
35 Ms. Griest asked Mr. Hall to review what happens if the lease goes into default or lapses.

36
37 Mr. Hall stated that the condition currently indicates that a lease must be on file with the Department of
38 Planning and Zoning. He said that the current condition is clearly inadequate unless you interpret it to mean
39 a lease that is not in default, which one should assume but then again may not stand up in a court of law.

40
41 Ms. Griest stated that the language in the condition needs to be much stronger and contain filing

1 requirements for the Zoning Administrator to be notified of any lapse. She said that she is not sure that she
2 can support the current condition because it makes the whole concept too vulnerable.
3
4 Mr. Randol stated that if the landowner who is giving the lease decides to not renew the lease then it comes
5 back on the ZBA for something that they have already approved and in one or two years the current parking
6 may not be there.
7
8 Mr. Hall stated that under the terms that are before the Board there would have to be a new lease no later
9 than February 28, 2018, because the current lease expires on that date and unfortunately there is a loophole
10 because the lease could have been in default the entire time and the only time that the condition would kick
11 in is when the new lease is required.
12
13 Mr. Allen stated that this is why the Board should not approve it because the Board and staff have no control
14 over it and they can't monitor it. He said that Mr. Frazier could be in default right now. He said that if the
15 Board approves this case and Mr. Frazier lost the lease for non-payment how will the Board make up those
16 19 parking spaces.
17
18 Mr. Hall stated that he is of the opinion that an adequately reviewed lease and an adequate condition and
19 those are no two small tasks and perhaps the condition is the important thing, because there is already a lease
20 between the two parties and it apparently needs to be amended to meet the Board's required condition and
21 that would be up to the petitioner to get that done. He said that once the Board has this condition they have
22 more control than any other time during the permitting process regarding parking because people can sell off
23 the area that is required for their parking on any day of the week and staff would never know about it. He
24 said that this is one instance when the Board can absolutely nail it down if they get the adequate legal review
25 in the beginning and that is no small task.
26
27 Mr. Allen asked Ms. Capel if the Board is basing Part D of the variance on whether Mr. Frazier has the lease
28 right now.
29
30 Ms. Capel stated yes.
31
32 Mr. Allen asked if he would be out of order in asking Mr. Frazier if he still has a lease on that property.
33
34 Mr. Hall stated that the Board would not be out of order in asking the petitioner that question.
35
36 Mr. Allen suggested that the Board ask Mr. Frazier that question.
37
38 Ms. Capel asked Mr. Hall to indicate what the consequences are if the lease lapses.
39
40 Mr. Hall stated that then it becomes an enforcement case but right now there is no provision for that.
41

1 Mr. Passalacqua asked Mr. Hall if part of this property is already an enforcement case because there
2 were structures built without a permit and the parking spaces are a needed result of all of the after-the-
3 fact stuff has already been done. He asked Mr. Allen if he submitted the photos of the subject property
4 for review tonight.

5
6 Mr. Allen stated yes.
7

8 Mr. Passalacqua stated that he is attempting to interpret the pictures against the map. He said that if the
9 photograph is an indication of what happens every day then all of the parking spots in the back of the
10 property are basically useless.

11
12 Mr. Allen agreed.
13

14 Ms. Griest stated that she believes that the Board is spinning their wheels until they have a certified
15 architect's plan that gives the Board compliance with parking and accessibility and until then she
16 believes everyone is wasting their time in being here including the other witnesses and staff. She said
17 that there is no way the Board can go much further.
18

19 Mr. Hall stated that he does not know what the Board can do about vehicles being parked along the south
20 access way because when somebody parks there it makes the rest of the parking inaccessible unless they
21 knew enough to go around via the north route, which they could do.
22

23 Mr. Allen stated that the vehicles would have to go onto someone else's property. He requested that the
24 Board review the previously submitted photographs.
25

26 Mr. Hall stated that the north route is located on this property.
27

28 Mr. Allen stated that the access to the area is impossible because the septic is torn up.
29

30 Mr. Hall stated that from the documents that have been submitted to staff there is a traffic path on the north
31 side but perhaps this is another good question for the petitioner. He said that it is unfortunate that the Board
32 has to verify everything that is submitted in a zoning case but perhaps that is the situation that we are in.
33

34 Ms. Capel asked Mr. Hall if the Board could send someone out to inspect the property.
35

36 Ms. Chavarria stated that she has been to the property several times and can verify that the north side of the
37 building is inaccessible for vehicles with the septic and there is no level of pavement there. At this point
38 there is the southern concrete driveway and the gravel drive on the lot to the south, which is not on the
39 property, and the use of these drives is the only way to get around the vehicles that are parked in these
40 photos.
41

1 Mr. Hall asked Ms. Chavarria if her inspection finds that the plan that was submitted on March 30, 2015, that
2 shows red arrows indicating the direction of traffic movement along the north side of the property is not
3 possible.

4
5 Ms. Chavarria stated that her inspection did find that it is not possible, but it also wasn't clear at what point
6 Mr. Frazier is in his construction of the proposed site plan. She said that she did not highlight that point
7 because it could mean that construction is still forthcoming.

8
9 Ms. Lee stated that she understands that Ms. Griest would like to continue this meeting to a later date until
10 more information is received but there are witnesses here tonight who may have issues which may be
11 relevant to this case.

12
13 Ms. Capel stated that if someone has signed the witness register and they are still here she will call them to
14 testify.

15
16 Ms. Capel asked the Board if there were any additional questions for Mr. Allen.

17
18 Mr. Passalacqua asked Mr. Allen if the photographs are a clear indication of what goes on daily.

19
20 Mr. Allen stated that he sees this occurrence very often. He said that the buses were there for a good period
21 of time and people are always parking in the driveway so anyone else has to use the entrance on the property
22 to the south to travel to the back of the property. He said that the landscaper tenant parks in front of the one
23 building every day and night and he literally has to drive into the drive from the parking lot to the south. He
24 said that someone is always parked on the concrete and he could provide loads of pictures to prove it but
25 what good would it do.

26
27 Mr. Randol stated that he drives past the property several times during the week and there is always
28 something parked there. He said that the vehicle may not be there for an extensive period of time but there is
29 something always parked there.

30
31 Ms. Capel called Keith Padgett to testify.

32
33 Mr. Keith Padgett, Champaign Township Highway Commissioner, stated that his office is located at 3900
34 Kearns Drive, Champaign. He said that he appreciates all of the trials and tribulations in trying to get this
35 matter resolved beyond the sidewalk as the area from the sidewalk to the street is his jurisdiction. He said
36 that when the Board is done with all of the other issues regarding this property, Champaign Township needs
37 the curb replaced and he hopes that this is involved in the Board's final decision.

38
39 Ms. Capel asked the Board if there were any questions for Mr. Padgett.

40
41 Ms. Lee asked Mr. Padgett if he has tried to get Mr. Frazier to replace the curbs that he removed.

1
2 Mr. Padgett stated that he has not had contact with Mr. Frazier other than seeing him at these meetings. He
3 said that the curb has been cut and people drive across it all day long. He said that he does wonder what
4 damages are being done to utilities in this area that do not have a concrete surface over the top for protection.
5 He said that no damage may be occurring, but if there is damage, who will be held responsible for that
6 damage.

7
8 Ms. Lee asked Mr. Padgett if he has contacted any legal authority regarding this issue.
9

10 Mr. Padgett stated no because he has been attending the meetings regarding this property and letting the case
11 run its course.

12
13 Ms. Lee stated that this is destruction of government property.

14
15 Mr. Padgett stated that he agrees.

16
17 Ms. Capel asked the Board and staff if there were any additional questions for Mr. Padgett.
18

19 Mr. Hall stated that the condition may actually be written too broadly. He asked Mr. Padgett if the curb were
20 replaced with the exception of the two driveways would he be acceptable of the two driveways.

21
22 Mr. Padgett stated that the way that vehicles are parked there now they will have to attempt to jump the curb
23 and if they would change the way that they park there they would have to go in one drive and would not have
24 the daily traffic on the easement that is not protected. He said that this type of curb is a barrier curb which is
25 harder to drive over as opposed to some of the curbs you would find in a subdivision. He said that the
26 barrier curb is supposed to keep things out in the road.

27
28 Mr. Hall asked Mr. Padgett if it would be cumbersome if the Board wanted to include some sort of approval
29 from Mr. Padgett regarding post construction and then as-built.

30
31 Mr. Padgett stated that he could do that but he relies heavily on the Champaign County Engineering Division
32 for most of their road projects because they see these built every day and having them involved in it assures
33 that the curb is built correctly.

34
35 Mr. Passalacqua asked Mr. Padgett if the curb were replaced is there enough dimension in the apron to make
36 ingress in and out of those front parking spaces as designed on the print or will those spots become useless.

37
38 Mr. Padgett stated that he would say that those spots will become useless or parallel spots. He said that the
39 downfall has been cut off of the curb but the base and the flag are still there and in order to replace the curb
40 everything has to be torn out so that one solid unit can exist so that when he plows snow the top of the curb
41 isn't broken off.

1
2 Mr. Hall stated that before the curb can be replaced the remaining portion of the old curb must be removed
3 which is no small task.
4
5 Ms. Lee stated that it is really important to have the County engineers involved in this issue.
6
7 Mr. Passalacqua asked Mr. Padgett if the curb was milled when it was removed.
8
9 Mr. Padgett stated yes but the remainder of that curb base is still underground.
10
11 Ms. Capel asked the audience if anyone desired to cross examine Mr. Padgett.
12
13 Mr. Lloyd Allen stated that utility companies require raceways in the concrete for future access.
14
15 Ms. Capel informed Mr. Allen that new testimony cannot be offered during the cross examination.
16
17 Mr. Allen stated that Mr. Padgett did mention utilities during his testimony.
18
19 Ms. Capel agreed and allowed Mr. Allen to continue with his question.
20
21 Mr. Padgett stated that there can be in certain situations, if the utility is not there and is expected in the near
22 future they will sometimes require a steel duct or pipe placed under the driveway so that they can run their
23 wires through it. He said that he believes that water or gas lines are located on that side of the curb and it is
24 deep enough that the traffic is probably not hurting them but the concrete was not designed to have the traffic
25 on top of it because that is what driveways are for.
26
27 Mr. Allen noted that the water line is located at that location.
28
29 Ms. Capel asked the audience if anyone else desired to cross examine Mr. Padgett and there was no one.
30
31 Ms. Capel called Steve Koester to testify.
32
33 Mr. Steve Koester, who resides at 1919 N. Old Route 47, Monticello, stated that his business address is
34 located at the Stahly Industrial Park at 305 Tiffany Court and he jointly owns 314 Tiffany Court which is
35 located on the south side of Mr. Frazier's property. He said that he has been frustrated by the use of his
36 property as access for the tenants traveling to the rear of Mr. Frazier's property and he has had discussions
37 with Mr. Frazier about this issue. He said that they have discussed the relocation of the buses and the last
38 time that he knew there were still buses on the property, although Mr. Frazier testified at the previous
39 meeting that the buses would be gone within two weeks. Mr. Koester stated he would like to build a fence
40 but the property owner to the north built a very nice fence, which Mr. Koester constructed, and it has been
41 destroyed by Mr. Frazier's tenants, therefore he is sure that any improvements that he makes on that side

1 would suffer the same consequences. He said that he did have a discussion with Mr. Isaacs who is the
2 person who leased Mr. Frazier the 19 spaces that were previously discussed tonight and Mr. Isaacs indicated
3 that he did cancel the lease on the 19 parking spaces. He said that the information regarding the lease should
4 have been disclosed prior to this meeting. Mr. Koester stated that he agrees that the north area is virtually
5 impossible to access for tenants going to the rear of the property. He said that he would love to see a
6 resolution to this because it has gone on for a very long time and he has not seen a lot of improvement from
7 the action that has been taken so far. He said that he drives several miles to attend these meetings and has
8 done so several times even though the person who applied for the variance didn't bother to make the trip.
9 He requested a resolution to these issues and a decision regarding the variance request.

10
11 Ms. Capel asked the Board if there were any questions for Mr. Koester.

12
13 Ms. Lee asked Mr. Koester when he had his conversation with Mr. Isaacs.

14
15 Mr. Koester stated that two weeks ago he had his discussion with Mr. Isaacs, owner of 306 Tiffany Court.

16
17 Ms. Capel asked the Board and staff if there were any additional questions for Mr. Koester and there were
18 none.

19
20 Ms. Capel asked the audience if anyone desired to cross examine Mr. Koester and there was no one.

21
22 Ms. Capel called Caleb Burton to testify.

23
24 Mr. Caleb Burton, who resides at 2409 W. Daniel Street, Champaign, stated that he jointly owns 314 Tiffany
25 Court, which is the property that is encroached upon due to Mr. Frazier having vehicles parked on the side of
26 his building. He said that he is tired of seeing everyone driving over his property because that leads to them
27 illegally disposing their waste into the dumpsters on his property that he pays for. He said that this situation
28 with Mr. Frazier continues to cause problems with adjacent landowners.

29
30 Ms. Capel asked the Board if there were any questions for Mr. Burton and there were none.

31
32 Ms. Capel asked staff if there were any questions for Mr. Burton.

33
34 Mr. Hall asked Mr. Burton if he could imagine any situation under which he could lease the north 10 or 12
35 feet of his property to Mr. Frazier, provided that the lease was adequate in terms of payment. He asked Mr.
36 Burton if there was any reason why he couldn't lease the 10 or 12 feet to Mr. Frazier or does Mr. Burton
37 need that area for his own operations and parking.

38
39 Mr. Burton stated that it would be a conflict of interest to lease it because Mr. Frazier has tenants who travel
40 in and out of the property with heavy trucks and equipment. He said that it is his understanding that a
41 previous lease for additional parking expired due to nonpayment by Mr. Frazier so it would not behoove him

1 to enter in such a lease agreement.
2

3 Mr. Hall asked if a lease would be possible if the lease allowed for Mr. Burton's continued use of the area.
4 He said that the Board is facing the most difficult situation that the ZBA could ever face if the parking area is
5 not corrected because if not corrected very significant building area will have to be removed. He said that
6 removing minor building area has happened before and it is an accepted risk but when we are talking about
7 removing thousands of square feet of building area he wonders how long that may take to get resolved in the
8 court system. He asked Mr. Burton if the lease was reviewed so that staff knew the minute it went into
9 default could he make that area available to Mr. Frazier.

10
11 Mr. Burton stated no. He said that he has no interest at all in entering into a lease agreement with Mr.
12 Frazier.

13
14 Mr. Hall stated that sometimes the Board uses no available land as a justification for a variance.
15

16 Mr. Burton stated that the Board has spent hours discussing parking but there are significant other safety
17 issues with this property and parking is probably the smallest thing that we are dealing with here. He said
18 that for whatever reason, every time he attends these meetings the Boards tends to focus on parking and he
19 believes that the parking is the least important thing that the Board needs to talk about. He said this situation
20 has been going on for a long time and it is his intention to stay at his current location for a long time but Mr.
21 Frazier continues to operate out there and he does not want to deal with it. He said that he is not interested
22 in leasing any space to Mr. Frazier and he would like the Board to concentrate on the unauthorized buildings
23 and uses on the property and violations regarding setbacks. He said that he isn't even sure if the area in front
24 of the porch will allow for parallel parking.
25

26 Mr. Hall stated that the area has been measured and it is adequate for parallel parking and no variance would
27 be required for the parking if it were parallel to the building and against the building but there is a variance
28 required for setback, which is not an unusual request for a variance, but in this case the variance for a
29 setback implicates all of these other issues. He asked Mr. Burton if he has any concerns regarding life safety
30 in regards to just the vehicles on Mr. Frazier's property.
31

32 Mr. Burton stated that the life safety issues would be that there are no handrails and the steps are constructed
33 from landscape blocks therefore he cannot see how it can be ADA compliant.
34

35 Mr. Hall stated that he has not indicated that it is ADA compliant.
36

37 Mr. Burton stated that he could bring the Board a set of plans that he has drawn all over and indicate that the
38 plans indicate what he is going to do although he can't imagine that anyone could accept such drawings.
39

40 Ms. Capel asked the Board and staff if there were any additional questions for Mr. Burton and there were
41 none.

1
2 Ms. Capel asked the audience if anyone desired to cross examine Mr. Burton and there was no one.
3
4 Ms. Capel called Robert Frazier to testify.
5
6 Mr. Frazier declined to testify at this time.
7
8 Ms. Capel requested the Board's thoughts regarding this case.
9
10 Ms. Lee stated that the applicant should have informed staff that the lease was no longer in affect. She said
11 that if it was two weeks ago that it has been cancelled then Mr. Frazier is not acting in good faith.
12
13 Mr. Hall stated that at this point the discussion regarding the lease being cancelled is hearsay. He said that
14 the testimony regarding the cancelled lease has not been countered by the petitioner so maybe that means
15 something but it is still hearsay.
16
17 Ms. Lee asked if it would be appropriate to call the petitioner to the witness microphone so that the Board
18 can discuss this matter with him.
19
20 Mr. Hall stated that it is up to the Board.
21
22 Ms. Lee requested that Mr. Frazier be called to the witness microphone to address the Board.
23
24 Ms. Capel called Mr. Frazier to the witness microphone.
25
26 Mr. Robert Frazier stated that his business address is 310 Tiffany Court, Champaign.
27
28 Ms. Lee asked Mr. Frazier if the lease for the 19 parking spaces has been cancelled by the landlord due to
29 nonpayment.
30
31 Mr. Frazier stated no.
32
33 Ms. Lee asked Mr. Frazier if the lease has been cancelled by the landlord.
34
35 Mr. Frazier stated that the lease is good for six months and the check has already been approved and paid for
36 in cash therefore the lease is enforce for six months. He said that if after six months the landlord decides to
37 not renew the lease then that is his decision.
38
39 Ms. Lee asked Mr. Frazier when he made his last payment for the lease.
40
41 Mr. Frazier stated that the payments are made for six months as he has the option of a six month or yearly

1 lease. He said that he paid for a six month lease in full and Mr. Hall probably has record of that.

2
3 Mr. Hall stated that staff has no record of when Mr. Frazier does or does not pay his bills.

4
5 Mr. Frazier stated that the lease was paid on the date that the lease was written and he would have to look at
6 the cancelled check for a specific date.

7
8 Mr. Hall stated that the lease does not provide for a payment for only six months.

9
10 Mr. Frazier stated that it is a six month lease and it is paid for in full and he can provide a cancelled receipt.

11
12 Mr. Hall stated that the lease agreement states the following: “The Lessee agrees to pay as rent for said
13 premises the sum of \$1,500 per year beginning on the 1st day of March, 2015 to the 28th day of February,
14 2016.” He asked Mr. Frazier if there is another agreement which allows him to pay for this lease in six
15 month terms.

16
17 Mr. Frazier stated that the landlord does allow him to pay for the lease in six month increments or one year
18 in advance.

19
20 Ms. Lee stated that March 1st to September 1st is six months. She asked Mr. Frazier if he has paid for the
21 next six months.

22
23 Mr. Frazier stated that he has not paid for the second six months. He asked if the lease indicates when the
24 lease first started.

25
26 Ms. Griest stated that the lease does state that it begins on March 1, 2015 and today’s date is September 10th
27 therefore the lease is currently in default.

28
29 Mr. Frazier stated that Ms. Griest is correct.

30
31 Ms. Capel asked the Board if there were any additional questions for Mr. Frazier.

32
33 Mr. Hall stated that as a staff person he can ask Mr. Frazier questions about things that Mr. Frazier has not
34 discussed. He asked Mr. Frazier if there are two public accessible restrooms in the office portion of this
35 building which are accessible to all of the office spaces.

36
37 Mr. Frazier stated yes, and there has been no change since the original design.

38
39 Mr. Hall asked Mr. Frazier if there is some reason why these restrooms are not reflected in the red sketch on
40 the site plan received March 30, 2015. Mr. Hall stated that the site plan was supposed to indicate the interior
41 arrangement but Mr. Frazier is indicating that the plan did not include the restrooms.

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Mr. Frazier stated that page 2 of the plan indicates that there is a hallway leading to bathroom #2 and bathroom #1 leads into the larger area called the Silverback Barrel Club.

Mr. Hall stated that there are not two public bathrooms available for all of the various office spaces.

Ms. Griest stated that each office has to have access to both restrooms to be compliant and the drawing indicates that some of the offices have access to one restroom and the larger area has access to a restroom by itself.

Mr. Frazier agreed.

Mr. Hall asked Mr. Frazier to indicate what "BH" means on the plans.

Mr. Frazier stated that "BH" stands for bathroom.

Mr. Hall stated that it may well be that given the way the Illinois Plumbing Code is enforced or not it may be acceptable to have one restroom available for a portion of these office areas. He said that this would be unusual but he can't rule it out right now which, in his view, is why it is so important to have an architect certify that it meets the accessibility code.

Mr. Passalacqua stated that it appears that an architect needs to be involved in constructing plans for the curb that needs replaced, accessible restrooms, access to the property, parking, adequate dimensions, etc. He asked Mr. Frazier if he is willing to get an architect involved and do everything that is required to make this work.

Mr. Frazier stated yes.

Mr. Passalacqua stated that the Board is at a point where a homework list needs to be compiled for Mr. Frazier. He said that to be honest in looking at the sketch that has been drawn over in red and hearing the testimony and viewing the pictures, Mr. Frazier has about six parking spaces that can be used which is a long way away from what is even being varied. He said that if Mr. Frazier's heart is in this then it is time to get a more detailed drawing and show the Board how he can do this within the confines of his property and not by making ingress and egress through someone else's property. He said that parking is a topic that the Board talks about because the Board can put a number on it. He said that he has a real problem with all of the construction that was completed without a permit and all of that stuff needs to be brought up to speed or varied. He said that he believes that it is going to be very hard to give the Board a good site plan rewriting over the existing plan therefore a new professional print with real dimensions and a game plan on what is going to happen with the north egress and the disturbed ground. He said that testimony appears to indicate that the north throughway needs to be eliminated because it doesn't seem that it has the dimension to even get through. He said that another thing that the Board often requests is a copy of the lease that Mr. Frazier

1 has with his other tenants. He said that a lease normally will indicate to the tenants what is and is not
2 acceptable on the property. He said that a copy of those leases will assist the Board in making sure that the
3 tenants are aware of the appropriate parking areas and prevent them from parking on adjacent He said that
4 these required documents will add time to the case but if the Board has to decide on this case with the
5 testimony and Documents of Record that is currently in front of the Board then he is sure that the result will
6 be a 100% denial. He noted to Mr. Frazier that if his heart is truly in this project then there is a lot of work
7 that must be done.

8
9 Mr. Hall stated that he did not understand what Mr. Passalacqua meant by a throughway not being included.

10
11 Mr. Passalacqua stated that the throughway has been deemed impassible by the photographs and the site
12 visit. He said that if the throughway is indeed impassible then he can see why it should be included on a new
13 site plan.

14
15 Mr. Hall stated that perhaps all it needs is a note saying that it will be constructed if it is found to be
16 acceptable.

17
18 Mr. Passalacqua stated then that is what he is asking for.

19
20 Ms. Capel asked Mr. Hall if the Board can ask Mr. Frazier to build a fence.

21
22 Mr. Hall stated that if the fence is not for screening then it is a gray area and he would prefer to leave any
23 trespass issues as a private matter.

24
25 Mr. Frazier stated that there appears to be some confusion regarding the red arrows. He said that the red
26 arrows are indicating the pattern of rain runoff and is not indicating a traffic pattern.

27
28 Ms. Griest stated that the directional arrows are not driveways but are indicating rain runoff.

29
30 Mr. Frazier stated yes. He said that it is possible to make the north area accessible and he can talk to the
31 architect about that possibility.

32
33 Mr. Passalacqua stated that Mr. Frazier has no way to get to the back parking spots by using his property
34 because the photographs indicate that the buses are parked on the south side blocking that access.

35
36 Mr. Frazier stated that the buses can be moved and are not permanent.

37
38 Mr. Passalacqua stated that Mr. Frazier's testimony is just as important to him as the witness who testified
39 before Mr. Frazier. He said that the witness before Mr. Frazier has testified that the neighboring property
40 gets traveled upon because Mr. Frazier does not have open access there.

41

1 Mr. Frazier stated that there are cases when there have been vehicles parked there and as far as access
2 through the neighbor's property then the answer would be yes. He said that, as Mr. Hall stated, it is a legal
3 issue and if the neighbors have any problems, as far as he is concerned, they can file a lawsuit and settle it
4 through a court of law. He said that if the neighbors don't like it they can construct a fence.

5
6 Ms. Griest stated that she understands Mr. Frazier's anger or disappointment but he is asking this Board for
7 approval on a variance therefore it behooves him to be cooperative and to not patronize this Board because
8 currently the Board is looking at what is available for his parcel and only his parcel and all of the operations
9 must occur on his parcel. She said that it is her personal opinion that if the operations cannot occur on Mr.
10 Frazier's property, in good faith, she cannot consider approving the variance request.

11
12 Ms. Capel asked the Board if there were any additional questions for Mr. Frazier and there were none.

13
14 Ms. Capel asked staff if there were any questions for Mr. Frazier.

15
16 Mr. Hall stated that to clarify his misreading of the red arrows being rain runoff arrows and not traffic pattern
17 arrows goes back to the original plan that was submitted. He said that it was previously explained that there
18 was a driveway around the north side of the property and given the nature of this property he cannot imagine
19 anything being approved if Mr. Frazier cannot guarantee to this Board that there will be a complete path
20 around the edge of his property for vehicles that will be kept clear with no parking at any time. He said that
21 frankly he believes that the Board should carefully consider whether they want to consider this case or deny
22 it and have staff take it to the State's Attorney's office for court action.

23
24 Ms. Capel asked the audience if anyone desired to cross examine Mr. Frazier.

25
26 Mr. Lloyd Allen asked Mr. Frazier if he knew why Mr. Isaacs would indicate that the lease had been
27 cancelled if it wasn't.

28
29 Mr. Frazier stated that one tenant violated the lease and parked his truck and dumped his excess wood on the
30 leased area therefore the lease was cancelled.

31
32 Mr. Allen asked Mr. Frazier if Mr. Isaacs notified him that the lease had been cancelled.

33
34 Mr. Frazier stated that he and Mr. Isaacs were both upset over the situation and the lease was cancelled but
35 Mr. Frazier indicated that he is willing to discuss the lease with Mr. Isaacs.

36
37 Ms. Capel asked the Board if they desired to proceed with this case.

38
39 **Ms. Lee moved, based on Mr. Hall's previous discussion, that the Board deny all of these things and**
40 **proceed to the State's Attorney's Office.**

41

1 Mr. Hall stated that a denial has to have just as carefully constructed findings as an approval and he would
2 dare say even more carefully constructed.

3

4 **Ms. Lee withdrew her motion at this time.**

5

6 Mr. Passalacqua stated that he is not an architect however it appears that some of the square footage of the
7 building must be removed to get vehicles legally on the lot. He asked Mr. Frazier if this is an expense and
8 proposal that he can work with.

9

10 Mr. Frazier stated that he is willing to work with an architect to make sure that the property is in compliance
11 with the rules.

12

13 Mr. Passalacqua stated that there are vehicles which need to leave Tiffany Court and there are probably
14 lumber, shingles, concrete floors and stairways that need to leave Tiffany Court. He said that Mr. Frazier
15 will have to lose part of the building structure and some vehicles to make this property hold what he desires
16 it to hold. He said that the required reconstruction of the curb which the Champaign Township Highway
17 Commissioner discussed has to be replaced which will get the parallel parking in front of the building down
18 to four or five spots.

19

20 Mr. Frazier stated that he would go back to the original design.

21

22 Mr. Passalacqua asked Mr. Hall how much building area has to go away if we actually have a feasible count
23 on parking spots.

24

25 Mr. Hall asked Mr. Passalacqua if he is assuming that the leased parking is no longer part of the package.

26

27 Mr. Passalacqua stated that he has no confidence in the leased parking whatsoever.

28

29 Mr. Hall stated that this is a huge issue.

30

31 Ms. Chavarria stated that at one time she had calculated that it would take 3,000 square feet out of the
32 building although that was before the leased parking was ever an option. She said that staff will need to
33 recalculate the square footage based on the plan that has been presented to assure that it is in compliance
34 with the Zoning Ordinance.

35

36 Ms. Griest asked Mr. Hall if the impervious ratio has been calculated for this site.

37

38 Mr. Hall stated that this subdivision was approved by the City of Champaign with stormwater detention
39 provided so the whole lot is nearly all impervious area and is just fine in terms of detention. He said that one
40 thing that staff has learned from Tiffany Court is that detention is one thing but adequate stormwater
41 conveyance, so that stormwater can get to the basin, is another and our current way of doing developments

1 like this does not provide for that. He said that the subdivision plat is what it is. He stressed that having
2 leased parking under a good lease, wherein staff gets notified when there are any changes, is so far so much
3 better than the normal parking analysis that is done and getting an adequate lease is no small thing but it is
4 no more difficult than hiring an architect to draw the plan.

5
6 Mr. Randol asked if the Board could request that the leaseholder appear before the Board.
7

8 Mr. Hall stated that the Board can request that anyone appear and the Board could go so far to make them
9 appear. He said that staff can send Mr. Isaacs a letter requesting his attendance at the next meeting regarding
10 this case.

11
12 Mr. Randol stated that it would be nice to have Mr. Isaacs appear before the Board to testify whether he
13 would or would not have a problem leasing the space for Mr. Frazier's parking. He said that currently Mr.
14 Frazier has a contract that is basically void.

15
16 Ms. Capel stated that not only is it a voided lease but it was paid in way that is not indicated in the lease.
17

18 Mr. Randol stated that Mr. Isaacs needs to tell the Board if he is going to do a six month lease with Mr.
19 Frazier because Mr. Randol would question as to what will happen at the end of six months more than he
20 would question what will happen at the end of one year.

21
22 Mr. Hall stated that as long as the Board can make sure that staff is notified when the parking is no longer
23 available then it would be very clear as to what staff needs to do. He said that it would be good to know if
24 both parties would be willing to revise the lease to include some conditions. He said that he would like to
25 talk to the State's Attorney's office to receive some guidance regarding those conditions and that would not
26 be an unusual request. He said that he would like the Board to try to meet some kind of a requirement like
27 that before they just deny the request.

28
29 Mr. Randol stated that the Board needs to review plans from an architect so that the Board has solid
30 information.

31
32 Mr. Hall stated that the Board needs to know what the payment terms are and everything has to be specified
33 in the lease. He said that if there are outside agreements that allow other things to happen then, in his
34 opinion that is the same as not meeting the condition.

35
36 Ms. Lee stated that she knows that Mr. Hall has great confidence in drafted leases but in her practical
37 experience it could appear that you have a good lease or any other legal document but you can't predict what
38 crazy things are going to happen if you don't have it in writing in that document.

39
40 Ms. Griest stated that the Board has a bigger problem than the 19 parking spaces because it could be that
41 there are substantially more than 19 parking spaces that are required. She said that until the Board sees an

1 actual drawing by an architect, the Board will not know the number of spaces that are required.

2
3 Mr. Hall asked Ms. Griest if she is referring to the number of spaces that are needed.

4
5 Ms. Griest stated that she is referring to the number of additional spaces that are needed because the Board
6 has heard testimony, including from Mr. Frazier, that not all of the parking spaces on the marked up drawing
7 are viable spaces and that when some those spaces are used they completely obstruct the traffic flow. She
8 said that until she sees something from an architect that indicates that this is in compliance and that it meets
9 the requirements for parking, the Board will not know if the required amount of parking is 19 or 67 spaces.
10 She said that she is sure that Mr. Hall discussed this earlier but she is torn by the fact that the Board can
11 count ten spaces inside of a garage that is being used for bus parking as ten parking spaces. She said that she
12 would consider those ten spaces as garage stalls.

13
14 Mr. Hall stated that staff has already reviewed this and staff is not counting on ten inside parking spaces
15 within a garage which is less than 3,000 square feet. He said that staff assumed only however many there
16 were on the west side originally therefore staff saw that there was a lot of over optimism in the tally of the
17 parking spaces that Mr. Frazier submitted. He said that staff did their own calculation, and other than
18 somebody blocking the perimeter path so that vehicles cannot get to the west side, there is enough space. He
19 said that if there is a bus sitting on the south property line then most of the parking is not available if there is
20 not a path on the north. He said that from the very beginning staff was told that there was a path on the north
21 or that there would be a path on the north.

22
23 Ms. Capel stated that Mr. Isaacs' property also has 32 parking spaces.

24
25 Mr. Passalacqua stated that the numbers could always change because the township highway commissioner
26 testified that the curb needs replaced and the angled parking spots won't work anymore.

27
28 Mr. Hall stated that staff had assumed that and knew that the Board would not accept perpendicular spaces.

29
30 Ms. Griest stated that her error is that she counted the "p's" on the drawing and came up with 38 parking
31 spots with the note that indicated ten inside parking spaces. She asked if staff had a different plan with
32 parking that the Board hasn't seen yet.

33
34 Mr. Hall stated no, staff did their own take-off and disregarded things that staff knew were not accurate. He
35 said that staff would never have let this case get this far if staff hadn't done that. He said that the one thing
36 that staff did not know is anything about the so-called "upstairs storage."

37
38 Mr. Passalacqua asked if the square footage of the "upstairs storage" requires more parking spots.

39
40 Ms. Chavarria stated that there is a notation that existing upstairs storage is 1,500 square feet therefore she
41 calculated that square footage in the new configuration of 67 required parking spaces.

1
2 Mr. Hall asked what the parking load assumed for the 1,500 square feet.
3
4 Ms. Chavarria stated that it was used as storage for the business.
5
6 Mr. Hall asked Ms. Chavarria if the upstairs storage is used for the business or storage as in “self-storage.”
7
8 Ms. Chavarria stated storage for the business.
9
10 Mr. Hall asked Mr. Frazier if the upstairs storage is used for his business or is it rented out.
11
12 Mr. Frazier stated both.
13
14 Mr. Hall stated that he does not know the percentage of the area that is used for the business.
15
16 Mr. Frazier stated that staff has made it perfectly clear that they do not understand the drawings and that they
17 do not indicate what information is required. He said that at this point it has been recommended that he hire
18 an architect to work directly with staff so that everyone understands what is on the property and what needs
19 to be changed in order to be compliant with the Zoning Ordinance. He said that his recommendation would
20 be that we could argue about this and that for a long time or we could hire an architect so that it could all be
21 hammered out. He asked the Board if they would be agreeable to that.
22
23 Mr. Randol informed Mr. Frazier that he is the one who needs an architect and not the Board.
24
25 Mr. Frazier stated that he understands who needs the architect.
26
27 Ms. Lee asked Mr. Frazier to define what he meant when he previously indicated “both.”
28
29 Mr. Frazier stated that the front portion of the building has a few mini-warehouses and the rest is his attic
30 space.
31
32 Ms. Lee asked Mr. Frazier to indicate what portion of the 1,500 square feet is used for his business and what
33 portion is used as rental space.
34
35 Mr. Frazier stated that he is not sure of the square footage.
36
37 Ms. Capel stated that the architectural plans will indicate the square footage if the “upstairs storage.”
38
39 Mr. Frazier stated that his rendition of the architect’s drawings from the original plans are not good enough
40 therefore he will hire an architect to prepare a more accurate plan for the Board’s review.
41

1 Mr. Passalacqua asked staff if the minutes can indicate the items that are required by the Board or should the
2 Board and staff begin a list of the things that are required for review.

3
4 Mr. Hall encouraged the Board to construct the list during this public hearing. He said that we got into detail
5 about the parking spaces because the Board was not convinced that the 32 leased spaces met the necessary
6 requirements and if the Board is still doubtful of that he is uncomfortable with Mr. Frazier hiring an architect
7 to do a plan.

8
9 Mr. Passalacqua stated that he is no architect but he is getting the impression that Mr. Frazier needs to lose
10 3,000 square feet of space that he rents out. Mr. Passalacqua said that he is also getting the impression that
11 Mr. Frazier will need to lose some of his own vehicles and tenants which means that Mr. Frazier will lose
12 money. Mr. Passalacqua stated that Mr. Frazier is also going to spend money because the curb must be
13 replaced and there could be required demolition and both will be very expensive. Mr. Passalacqua stated
14 that if Mr. Frazier believes that he can make this calculation work without 3,000 square feet of rentable
15 space and without tenants who have buses or wood chippers then Mr. Frazier is in good faith but if we are
16 just kicking this can down the road then that is in bad faith. Mr. Passalacqua said that if Mr. Frazier is not
17 comfortable in losing square footage and vehicles then everyone's time is being wasted.

18
19 Mr. Frazier stated that he had built a garage for LEX buses for when LEX was in business and that garage is
20 currently vacant. He said that he has already taken half of the garage down and it is not closed in due to the
21 pending decision that this Board will make. He said that he is comfortable taking the rest of the building
22 down and going back to the original buildings that was granted over 20 years ago by Champaign County. He
23 said that if we are talking about a simple wooden structure with some metal on the roof then he is willing to
24 remove it.

25
26 Mr. Passalacqua stated that to make numbers work and the parking load work there are probably some things
27 that need to leave. He said that there are structures on the property currently that were not part of the original
28 approval therefore those structures must be addressed by this Board as well.

29
30 Mr. Frazier stated that other than the garage, he has built a cover over the front of the building to keep the
31 rain off of people using the existing wheelchair access. He said that his structures look very nice.

32
33 Mr. Passalacqua stated that there is no doubt in his mind that the structure is nice and functional although it
34 still has to fall within the County's requirements.

35
36 Mr. Frazier stated that the building may be beautiful and functional for everyone but due to the zoning laws
37 he will have to rip it down.

38
39 Mr. Passalacqua stated that this process is not a personal attack. He said that the Board must consider how
40 not only the uses on the property affect Mr. Frazier but also how they affect Mr. Frazier's neighbors. Mr.
41 Passalacqua said that in order for Mr. Frazier to use his property as it is today he has to use more than his

1 own property and from testimony the neighbors would like that to stop. Mr. Passalacqua stated that the
2 Board is in a tight spot because they do not want to inform Mr. Frazier that he can't do something on his
3 property as income or personal use but the Board also doesn't want those uses to affect Mr. Frazier's
4 neighbors. He said that all of the things that may be required will be expensive and time consuming but the
5 Board is trying to find a way to make it happen.

6
7 Mr. Frazier agreed that there has to be a way to make all of this work.

8
9 Mr. Hall asked the Board if they desire a plan that has no leased parking.

10
11 Ms. Griest stated that she would prefer a plan indicating no leased parking.

12
13 Ms. Lee agreed with Ms. Griest.

14
15 Mr. Hall stated that originally there were only 11 spaces where the bus garage is now located and currently to
16 make this work Mr. Frazier needs 32 off-site spaces. He said that a lot more building area than just the
17 garage and the new covered area over the walkway will need to be removed if the Board desires no leased
18 parking and going back to parallel parking on the west, and even then the Board will have to rely on this
19 perimeter traffic path to be open. He said that if the Board is prepared to accept that Mr. Frazier will do his
20 best to keep it open then okay but he is seriously concerned about how much building area needs to be
21 removed to make all of the parking fit on this property.

22
23 Mr. Passalacqua stated that during a previous case for a storage building on a small lot, the Board required a
24 professional print and found that for the petitioner to have adequate parking and a loading berth the building
25 would not be large enough for it to be functional, so today the lot is in grass. He said that he does not
26 believe that this case needs to go in that same direction but it is the same kind of a thing except the building
27 is after the fact. He said that everything is hearsay at this point and the Board does not have a good record of
28 rental history for off-site parking but testimony indicates that this is not a happy neighborhood. He said that
29 relying on a third party to make this happen does not sit well with him today.

30
31 Ms. Griest asked Mr. Hall how many parking spaces were indicated on the approved site plan for this parcel
32 before Mr. Frazier began constructing extra buildings that were not permitted.

33
34 Mr. Passalacqua stated that Ms. Griest's question is not an easy question for staff to answer because at that
35 time it was just an approved site plan for Bright Ideas.

36
37 Ms. Lee stated that Mr. Frazier also sold off some of the land.

38
39 Mr. Hall stated that the main difference is the changing of what is now a gym that was previously just one
40 storage area. He said that this change was big because those spaces cannot be provided on this property. He
41 said that staff has gone back and verified that this property worked before but the uses were so much

1 different. He said that the property did not have a gymnasium or upstairs storage area. He said that there has
2 been testimony about how the gymnasium clients desire parking close by but that is not going to happen.

3
4 Mr. Randol stated that off-site parking is not going to remedy the gymnasium clients' desire for close by
5 parking either.

6
7 Mr. Hall stated that the off-site parking is just across the property lot line to the north. He said that Mr.
8 Frazier leased property to the north for off-site parking and the gymnasium is in the chiropractic office on the
9 northwest corner and is in the perfect location for those customers.

10
11 Mr. Frazier stated that no one, other than the wood chipper, parked on the leased parking spaces during the
12 last six months.

13
14 Mr. Hall asked Mr. Frazier if everyone was able to park on his property.

15
16 Mr. Frazier stated yes, every day. He said that no one parked on the leased property and no one parked in the
17 street either. He said that this is not a normal gymnasium but is a specialized gym and only a handful of
18 people are present at any one time because it is more for dead lifters and not people on treadmills. He said
19 that he monitored the parking during the six month time period when he had the 32 parking spaces available
20 not one person parked on that area, not even the wood chipper. He said that his neighbors could also
21 probably testify that no one has parked on the leased area as well. He said that he is not trying to indicate
22 that he is not going to follow the regulations or rules but the actual rules do not correlate with the usage. He
23 said that the only thing that has changed since he built Bright Ideas and the mini-warehouse complex 20
24 years ago is that the garage area is now a gym and he did build a structure over where his buses were stored.
25 He said that the mini-warehouses have always remained as mini-warehouses and Bright Ideas and its parking
26 was approved by the Champaign County ZBA. He said that he admits that he did cut the curb and if the
27 rules indicate that the curbs must be replaced and the original parallel parking scheme has to be followed
28 then he will obviously do that. He said that perhaps a better alternative for parking would be if he purchased
29 that area rather than leasing it but he must know if purchasing that property is acceptable by the Board.

30
31 Mr. Randol stated that he still would like to have an architect submit a complete set of plans. He said that
32 once staff and the Board can review those plans we can provide a set of variables for parking that may or
33 may not be needed.

34
35 Ms. Capel stated that there is a possibility that a lease can be written indicating that staff and the Board must
36 be notified of any lapses.

37
38 Mr. Hall stated that if the Board had a choice between a lease and an outright purchase an outright purchase
39 would always be preferred. He said that in this location it would probably require some kind of subdivision
40 approval with the City of Champaign. He said that the purchase would be better if it could be done. He said
41 that staff can spend all of the time it takes to find out what can be done on this parcel, given what Mr. Frazier

1 is willing to do. He said that Mr. Frazier stated that he is willing to remove the bus garage and build the
2 traffic path along the north and talk more about the upstairs storage so that staff knows what the required
3 parking loading is. He said that he is assuming that the Board desires to have something in the lease
4 regarding that a traffic aisle can never be blocked.

5
6 Mr. Passalacqua stated that if the traffic aisle is blocked then those parking spots do not count.

7
8 Ms. Capel stated that perhaps a condition could be constructed regarding the traffic aisle.

9
10 Mr. Hall agreed. He said that such a condition is something that Mr. Frazier must be prepared for.

11
12 Mr. Passalacqua stated that the Board needs to review the use of the property when designing the
13 throughways. He said that if one of Mr. Frazier's tenants has a large truck with a large trailer there needs to
14 be an accommodation on the property for the truck to maneuver on the property. He said that everything that
15 occurs on the property needs to happen on the property. He said that this is not an inexpensive proposal and
16 part of the homework for Mr. Frazier may be a cost analysis to determine if he will earn enough rental
17 income and maintain enough use from his property to do the things that are required to make this happen.

18
19 Ms. Capel asked the audience if anyone desired to cross examine Mr. Frazier and there was no one.

20
21 Ms. Capel called Mr. Lloyd Allen to testify.

22
23 Mr. Lloyd Allen stated that the Board is stuck on the parking issue. He said that the parallel parking area
24 was discussed but everything has changed from the original blueprint. He said that Mr. Frazier built the
25 front building in 2004 and not 20 years ago. Mr. Allen stated that when Mr. Frazier constructed the
26 overhang on the building he lost his access to the parallel parking therefore requiring people to drive on the
27 sidewalk to exit the property. He said that he believes that the upstairs storage area is more than 1,500
28 square feet because the Board also needs to count the upper office in the new part that was constructed. He
29 said that months ago the Board suggested to Mr. Frazier that he obtain the services of a registered architect
30 to assure that everything was in compliance on the property. He asked why the Board has waited over seven
31 months to acquire the document that they have already suggested that Mr. Frazier obtain for review. He
32 asked why the Board is dragging this issue out because there are other issues to be resolved on this property.
33 He requested that the Board settle something on this property and stop dragging it out.

34
35 Mr. Hall stated that the one thing that the ZBA has to do is exhaust all remedies at the Zoning Board and
36 until it is exhausted they don't have a good basis for denial. He said that the Board has not approached the
37 patience with this petitioner that they have done in other cases even though from Mr. Allen's position it
38 appears a little over the top. He said that only after all remedies have been exhausted will the Board have
39 any basis for a denial.

40
41 Mr. Allen stated that the Board is doing all of this for uses and structures that was not permitted by the

1 County and are all after the fact.

2
3 Mr. Hall stated that all of these issues will be taken care of in the end. He noted that zoning does not exist to
4 penalize people but to make things conform to the Ordinance and that is what staff and the Board are here
5 for and both have put in a lot of time working on it.

6
7 Mr. Passalacqua stated that he has the same concerns but the ZBA is not a penalty Board. He said that he
8 has seen a lot of cases that are after the fact and they irritate him but it is not this Board's venue to penalize
9 those petitioners. He said that he cannot state that he agrees with everything 100% but the County has
10 Ordinances and other people which are more powerful than this Board to satisfy and it is frustrating to
11 everyone. He said that the Board has to try to make it work and not everything gets approved. He said that
12 he understands and appreciates Mr. Allen's frustration with this case.

13
14 Mr. Allen stated that he has attended every one of these meetings, unlike everyone else, but the Board has
15 policies as to how long these variance cases should take and one year is not one of those policies. He said
16 that the policy states that cases are to be finalized in a reasonable amount of time and being that this is the
17 same case number as when Mr. Frazier originally applied this case has taken more than one year to finalize.

18
19 Ms. Capel asked the audience if anyone desired to cross examine Mr. Allen and there was no one.

20
21 Ms. Capel asked the audience if anyone else desired to testify regarding this case and there was no one.

22
23 Ms. Capel closed the witness register.

24
25 Ms. Capel entertained a motion to continue Case 792-V-14.

26
27 Ms. Lee asked Mr. Hall if the Board should have a motion regarding the requirement of the services of an
28 architect.

29
30 Mr. Hall stated that the Board has made that requirement very clear and Mr. Frazier has agreed to the
31 Board's request. He said that there is a lot that needs to be done and the Board could revisit this case within
32 the 100 day limit on November 12th.

33
34 Mr. Passalacqua asked Mr. Hall if it is feasible that staff would have time to review any newly submitted
35 plans and information to see if it is in Mr. Frazier's best interest financially and then allow him to decide if
36 he wants to proceed further. He said that it may be possible that there will not be another meeting regarding
37 this request.

38
39 Mr. Hall stated that Mr. Passalacqua is correct in that there may not be another meeting regarding this
40 request but staff does have to get some information from Mr. Frazier before he puts an architect to work.

41

1 Mr. Passalacqua stated that he does not want Mr. Frazier to hire an architect tomorrow and spend over
2 \$6,000 and then find out that it is not financially feasible.

3
4 Mr. Hall stated that Mr. Frazier can always hire an architect but he should not put him to work until he has
5 some information from staff about what parking scenario seems to be one that the Board would support.

6
7 Mr. Passalacqua stated that it should be clear to everyone that the feeling of this Board is that this does not
8 work in its current configuration and it does need a lot of work. He said that major changes must happen for
9 this request to be considered.

10
11 Ms. Griest stated that the Board has seen this scenario before where petitioners in good faith want to proceed
12 but once they actually got all of the information that was available to them they decided that it was simply
13 not financially feasible. She said that Mr. Frazier needs some time to make those assessments based upon
14 hard facts that fit within the law. She said that she understands the witnesses' concerns but this is a Board
15 that tries to find the win that works for everyone and not just one side or the other. She said that she believes
16 that Mr. Frazier is going to come to a conclusion that this is not feasible the way that it is currently
17 configured therefore we may or may not see everyone back.

18
19 **Ms. Griest moved to continue Case 792-V-14 to the November 12, 2015, meeting.**

20
21 Mr. Hall stated that the case that is already docketed for November 12th is likely to be two cases when it
22 comes back to the Board. He said that due to the physical constraints of having people sit through a hearing,
23 it may be better to suspend the rules and continue this case to the December 17th meeting. He said that a
24 continuance to December 17th is one month later than the 100 day limit but there is no other case currently
25 docketed for December 17th.

26
27 **Ms. Griest amended her motion to include suspending the 100 day limit for continuance and continue**
28 **Case 792-V-14 to the December 17th meeting.**

29
30 Mr. Passalacqua stated that he would rather see the case be continued to a busy night because the December
31 17th meeting is not necessarily a time when he is in town and he would like to be a part of this case. He said
32 that even if it will be a tough load on a docket date he would rather not see this continued to December 17th.
33 He said that a continuance of 100 days is a lot but 130 is too much.

34
35 Mr. Randol stated that he agreed with Mr. Passalacqua.

36
37 **Ms. Griest withdrew her amended motion.**

38
39 **Ms. Griest moved, seconded by Mr. Passalacqua to continue Case 792-V-14 to the October 29, 2015,**
40 **meeting. The motion carried by voice vote.**

41

1 Ms. Chavarria stated that staff is trying to ensure that Mr. Frazier has an architect to prepare plans but how is
2 staff to know how long this will take. She asked Mr. Hall what happens if Mr. Frazier does not get back to
3 staff before October 29th.

4
5 Mr. Hall stated that if nothing else the October 29th meeting can be a good status update which is just a
6 reality which is why he was recommending a continuance to the December 17th meeting. He said that
7 December is always a difficult month for the Zoning Board.

8

9 **7. Staff Report**

10

11 None

12

13 **8. Other Business**

14 A. Review of Docket

15

16 None

17

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

19

20 None

21

22 **10. Adjournment**

23

24 Ms. Capel entertained a motion to adjourn the meeting.

25

26 **Ms. Griest moved, seconded by Ms. Passalacqua to adjourn the meeting at 9:09 p.m. The motion**
27 **carried by voice vote.**

28

29 The meeting adjourned at 9:09 p.m.

30

31

32 Respectfully submitted

33

34

35

36 Secretary of Zoning Board of Appeals

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39

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41

ZBA

AS APPROVED OCTOBER 15, 2015

9/10/15

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