

AS APPROVED AUGUST 25, 2016

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61802

DATE: July 28, 2016

PLACE: John Dimit Meeting Room

1776 East Washington Street

Urbana, IL 61802

TIME: 7:00 p.m.

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

MEMBERS ABSENT : Eric Thorsland

STAFF PRESENT : Lori Busboom, Susan Chavarria, John Hall

OTHERS PRESENT : Matt Deering, Nick Brian, Jeff Carpenter, Nathan Killion, Bonnie Blue, Steve Blue

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, Chairman of the Zoning Board of Appeals, the Board needs to appoint an interim Chair for tonight's meeting.

Mr. Passalacqua moved, seconded by Ms. Lee, to appoint Catherine 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.

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 (April 28, 2016 and May 26, 2016)

Ms. Capel entertained a motion to approve the minutes for April 28, 2016 and May 26, 2016.

1
2 **Ms. Griest moved, seconded by Mr. Passalacqua, to approve the minutes for April 28, 2016 and May**
3 **26, 2016.**

4
5 Ms. Capel asked the Board if there were corrections or additions required for the April 28, 2016, and May
6 26, 2016, minutes.

7
8 Mr. DiNovo noted that he was absent from the May 26th meeting therefore he will abstain from approving
9 the minutes for that meeting.

10
11 Ms. Chavarria stated that line 12 on page 36 of the May 26, 2016 minutes, should be corrected to indicate
12 the following: Ms. Capel entertained a motion to adjourn the meeting.

13
14 **The motion carried by voice vote.**

15
16 Ms. Capel entertained a motion to rearrange the agenda and hear Case 835-V-16, Nathan Killion and Brandi
17 Katrein prior to Case 822-S-16, Nick Brian, d.b.a. Greenside Lawn Care.

18
19 **Ms. Griest moved, seconded by Mr. Passalacqua, to rearrange the agenda and hear Case 835-V-16,**
20 **Nathan Killion and Brandi Katrein prior to Case 822-S-16, Nick Brian, d.b.a. Greenside Lawn Care.**
21 **The motion carried by voice vote.**

22
23 **5. Continued Public Hearing**

24
25 **Case 822-S-16 Petitioner: Nick Brian, d.b.a. Greenside Lawn Care Request to authorize a Special Use**
26 **Permit for a Contractor's Facility (with or without outdoor storage and/or outdoor operations) and an**
27 **office that contains a dwelling unit that is not used as a dwelling in addition to an existing single**
28 **family dwelling in the AG-1 Agriculture Zoning District. Location: An 11.09 acre tract comprised of**
29 **Lot 1 of Meadow Ridge Subdivision in the Southwest Quarter of the Northwest Quarter of Section 17**
30 **of Township 20 North, Range 8 East of the Third Principal Meridian in Hensley Township and**
31 **commonly known as the contractor business Greenside Lawn Care, located at 707 CR 2200North,**
32 **Champaign, Illinois.**

33
34 Ms. Capel informed the audience that Case 822-S-16 is an Administrative Case and as such the County
35 allows anyone the opportunity to cross examine any witness. She said that at the proper time she will ask for
36 a show of hands for those who would like to cross examine and each person will be called upon. She
37 requested that anyone called to cross examine go to the cross examination microphone to ask any questions.
38 She said that those who desire to cross examine are not required to sign the witness register but are requested
39 to clearly state their name before asking any questions. She noted that no new testimony is to be given
40 during the cross examination. She said that attorneys who have complied with Article 7.6 of the ZBA By-
41 Laws are exempt from cross examination.

42
43 Ms. Capel informed the audience that anyone wishing to testify for any public hearing tonight must sign the
44 witness register for that public hearing. She reminded the audience that when they sign the witness register
45 they are signing an oath. She asked the audience if anyone desired to sign the witness register at this time.

1
2 Ms. Capel asked the petitioner if he would like to make a brief statement regarding the request.

3
4 Mr. Matt Deering, attorney for the petitioner, stated that his office address is Meyer, Capel Law Firm, 306
5 W. Church Street, Champaign. He said that at this time his client is prepared to move ahead with the special
6 conditions as presented in Supplemental Memorandum #5, dated July 20, 2016. He said that they request
7 approval of Mr. Brian's request at tonight's meeting.

8
9 Mr. Deering stated that Mr. Brian is present tonight to answer any questions that the Board may have.

10
11 Ms. Capel asked the Board and staff if there were any questions for Mr. Deering.

12
13 Mr. DiNovo stated that he read the covenants of the subdivision, and it appears that 80% of the landowners
14 could consider amending the covenants to remove the impediment for a business.

15
16 Mr. Deering stated that Mr. DiNovo's suggestion is a consideration but it is not something that Mr. Brian
17 would like to pursue at this time.

18
19 Mr. Randol noted that the covenants of a subdivision do not have anything to do with this Board's
20 determination.

21
22 Mr. DiNovo disagreed.

23
24 Ms. Lee stated that the Board discussed the issue of the covenants during previous meetings.

25
26 Ms. Capel called Nick Brian to testify.

27
28 Mr. Brian declined to testify at this time.

29
30 Ms. Capel called Jeff Carpenter to testify.

31
32 Mr. Jeff Carpenter, who resides at 725 CR 2200N, Champaign, stated that he has no new information to
33 present tonight because everything has been said during the prior meetings. He said that he presented an
34 appraisal and the possible negative impacts to the neighborhood due to the expansion of the business'
35 activity. He said that, he also presented comments from two well respected realtors. He requested that the
36 Board not only consider the structures but a limit on the number of employees and vehicles and future
37 activities. He thanked the Board for the opportunity to present testimony regarding this case. He said that he
38 has never been involved in a process like this before, but it is his experience that in this role for civic duty
39 the Board receives more complaints than they do thanks. He said that he has found the Board to be very
40 cordial with the witnesses and petitioners during cases and he appreciates the Board's time.

41
42 Ms. Capel asked the Board and staff if there were any questions for Mr. Carpenter and there were none.

43
44 Ms. Capel asked the audience if anyone desired to cross examine Mr. Carpenter.

45

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1 Mr. Carpenter noted that he did have one question for Mr. Brian.

2

3 Ms. Capel requested that Mr. Carpenter proceed with his question.

4

5 Mr. Carpenter asked Mr. Brian if there are any third party vehicles stored onsite, or will he warehouse
6 anyone else's equipment? Mr. Carpenter stated that he was just curious.

7

8 Ms. Capel called Mr. Brian to the witness microphone.

9

10 Mr. Nick Brian approached the witness microphone and stated that he resides at 707 CR 2200N, Champaign.

11

12 Ms. Griest stated that she would like to follow-up on Mr. Carpenter's question. She asked Mr. Brian if he
13 was planning to store third party vehicles on the subject property.

14

15 Mr. Brian stated no.

16

17 Ms. Griest stated that the memorandum discusses six versus five employees. She said that the memorandum
18 indicates that the Board could approve the special use permit with six employees but doing so will require a
19 special condition. She asked Mr. Hall if staff has drafted such a special condition for the Board's review.

20

21 Mr. Hall stated that staff has not drafted such a special condition because when staff reviewed the minutes,
22 there was no clear indication that the Board was inclined to go that route.

23

24 Ms. Griest stated that if the special use was approved tonight, Mr. Brian would only be allowed five
25 employees, and that does not include Mr. Brian.

26

27 Mr. Hall stated that Ms. Griest was correct.

28

29 Mr. DiNovo asked if the principal use of the lot is a single family residence or a landscape business.

30

31 Mr. Hall stated that the principal use becomes the special use with the dwelling becoming an accessory use.

32

33 Ms. Capel asked the Board if they are comfortable with five employees or would they prefer to propose a
34 special condition for the allowance of six employees.

35

36 Ms. Griest stated that she is not sold on allowing six employees and is more comfortable with only allowing
37 five.

38

39 Ms. Capel asked Mr. Brian if he is comfortable with five or would he prefer that the Board propose a special
40 condition allowing six employees.

41

42 Mr. Deering stated that this subject was discussed at the last meeting and it is apparent that the Board prefers
43 only allowing five employees. He said that he is sure that Mr. Brian would like the ability to have six
44 employees but he is agreeable to the restriction of five employees.

45

1 Ms. Capel asked the Board if they were comfortable with her not reading all of the special conditions since
2 Mr. Deering previously testified that he and Mr. Brian are agreeable with all of the special conditions. The
3 Board agreed.

4
5 Ms. Capel asked staff if there were any new items to be added to the Documents of Record.

6
7 Mr. Hall stated that the following items should be added to the Documents of Record: 14. Supplemental
8 Memorandum #4 dated May 26, 2016, with attachments; 15. Handout at the May 26, 2016, public hearing by
9 Attorney Matt Deering, regarding Graber Buildings; 16. Revised Site Plan received June 06, 2016; 17. Letter
10 from Central Wisconsin Evergreens dated June 2, 2016 and received June 18, 2016; 18. Minutes of public
11 hearing on May 26, 2016; and 19. Supplemental Memorandum #5 dated July 20, 2016.

12
13 Mr. Hall stated that normally when a petitioner submits more than one site plan he prefers to document the
14 final, approved site plan as a special condition. He said that a new special condition regarding the final site
15 plan was not included on the July 20th memorandum and the minutes are very clear on what the approved site
16 plan is, but 15 years from now a staff person may open the case file and will require something that is idiot
17 proof. He said that with the Board's and the petitioner's indulgence, he would propose a new special
18 condition L. as follows:

19
20 **L. The approved site plan is the revised site plan received June 6, 2016.**

21
22 The special condition stated above is to ensure the following:

23 **To provide clear direction for all future inquiries.**

24
25 Ms. Capel asked Mr. Deering and Mr. Brian if they agreed to Special Condition L.

26
27 Mr. Deering and Mr. Brian indicated that they agreed to Special Condition L.

28
29 Ms. Capel entertained a motion to approve the special conditions.

30
31 **Mr. Randol moved, seconded by Ms. Griest to approve the special conditions.**

32
33 Mr. DiNovo stated that he has serious concerns regarding Special Condition B. He said that he believes that
34 Special Condition B. is improper because it basically states that Mr. Brian can do something that no one else
35 can. He asked why it is okay for Mr. Brian to conduct his business under this special use but not someone
36 else. He asked staff to indicate what Special Condition B. is intended to accomplish because it will put a
37 restriction on the special use that doesn't need to be there and should not be there.

38
39 Mr. Hall stated that Special Condition B. was originally proposed because the process of attending the public
40 hearing, listening to testimony, and responding to the concerns of neighbors is absolutely critical to ensure
41 that the operation of the special use will be, in fact, as was discussed in the public hearing. He said that no
42 other owner, except for Mr. Brian, went through this public process. He said that Mr. DiNovo is correct in
43 that all of the other conditions appear to nail this down.

44
45 Mr. DiNovo stated that what is enforceable is what is included in the Finding of Fact and any future owner

1 would know what is required with the special use. He said that the Board cannot assign zoning approvals to
2 specific individuals and that is what Special Condition B. is doing and it is improper. He said that this
3 condition is legally questionable and it is not permissible.

4
5 Mr. Hall asked Mr. DiNovo if he is absolutely certain that Special Condition B. is legally questionable and is
6 not permissible.

7
8 Mr. DiNovo recommended the special condition should be reviewed by the State's Attorney's Office. He
9 said that zoning is about the land and not personalities. He recommended that Special Condition B. be
10 eliminated.

11
12 Ms. Lee stated that zoning is about the use and not personalities. She said that this case is about a specific
13 use.

14
15 Mr. DiNovo stated that it has a specific individual's name attached to it.

16
17 Ms. Lee stated that it is the use that the Board is dealing with.

18
19 Mr. DiNovo stated the use approval addresses all of the other conditions and facts associated with the case.

20
21 Mr. Hall stated that there is no name included in Special Condition B., only that the Special Use Permit
22 cannot be conveyed to a different owner.

23
24 Ms. Griest stated that the Board is granting the use as it was described in this case, but the Board is not
25 granting the conveyance to a new owner. She said that if the new owner wanted to continue to operate the
26 same type of business they would need to come back before this Board for approval.

27
28 Mr. DiNovo stated that there is no justification for this condition. He said that if this special use is
29 appropriate for the current owner, then is appropriate for any future owner. He said that the Board does not
30 have the power to distinguish who gets to make use of these rights and who doesn't. He said that the piece
31 of property has certain rights attached to it, or it doesn't, and those rights are available to anybody who owns
32 the land and the Board cannot decide which owner can and cannot use those rights. He said that this is
33 improper, will not stand legal scrutiny, and is bad practice.

34
35 Mr. Passalacqua stated that the Board will approve this case based on testimony and the petitioner's
36 agreement to the special conditions. He said that it would not be permissible for a future owner to operate
37 this use on the same property unless they went through this process and agreed to the special conditions and
38 accommodations that have been required by the Board.

39
40 Mr. DiNovo stated that the effect of the Special Use Permit is to alter the regulations that the Zoning
41 Ordinance has applied to a piece of property. He said that the Special Use Permit applies to that one piece of
42 property and it applies to that property regardless of who owns it. He said that the ZBA can only modify the
43 rules that apply to pieces of property.

44
45 Mr. Hall stated that he would be more than happy to pass this question along to the State's Attorney, but he

1 does not want to see this question hold up this decision. He said the Board can either move to the final
2 determination with the situation as it currently is or eliminate the condition. He said that he will follow up
3 with the State's Attorney.

4
5 Ms. Griest stated that this particular case has been very tightly structured and the restrictions of the use are
6 extremely narrow. She said that if there was a different owner who follows all of the imposed rules, she
7 would have no objections. She said that she will agree to eliminate Special Condition B.

8
9 Mr. Carpenter requested the opportunity to address the Board.

10
11 Ms. Capel allowed Mr. Carpenter to address the Board.

12
13 Mr. Jeff Carpenter, who resides at 725 CR 2200N, Champaign, stated that one of the neighbor's concerns
14 was the possibility of a special use or Rural Home Occupation running with the land. He said that Mr. Brian
15 may be doing something that is acceptable to the neighborhood, but could a trucking company move in with
16 ten semi-trucks.

17
18 Ms. Capel stated that everything that is included with the approved Special Use Permit is enforceable.

19
20 Mr. Hall stated that this special use permit is only good for a lawn care and snow removal contractor. He
21 said this special use permit is not being approved for a landscaping contractor, building contractor or a
22 trucking business.

23
24 Mr. DiNovo suggested, that given the sensitivity of the case, a different kind of motion that serves the same
25 purpose. He said that six months after the lawn care and snow removal business ceases operation, the
26 special use permit ends, except in the case of "force majeure" or a temporary situation. He said that the
27 special use is tied to the continuous operation of this business, and when the business is no longer operating,
28 then the special use will cease.

29
30 Ms. Lee stated that Mr. DiNovo's concern is covered in Special Condition C.

31
32 Mr. Passalacqua stated that the statement in Special Condition B. does not prevent the future owner from
33 having a special use on the property. He said that Special Condition B. prevents the future owner from
34 having this case done on their behalf. He said that all of the neighbors have the right to request a special use
35 permit for their property through this Board.

36
37 Ms. Griest stated that the condition is not taking away the right to sell the business, but has taken away the
38 right to sell the property with the business as a component.

39
40 Mr. DiNovo stated that he sees no reason to burden Mr. Brian with Special Condition B.

41
42 Mr. Hall stated that the interaction between the petitioner and the neighbors in this process does matter, even
43 though if something is not made a condition it is not enforceable.

44
45 Mr. Hall asked Mr. DiNovo if he would be agreeable to the Board keeping the condition with an

1 understanding or proviso that it must pass the review of the State's Attorney to be enforceable.
2
3 Ms. Lee stated that this same type of special condition has been imposed on previous special use cases. She
4 asked if passing this on to the State's Attorney could invalidate all of the previous cases with this special
5 condition.
6
7 Mr. Hall stated no, but it would be good to have an opinion from the State's Attorney. He said that he is not
8 going to change anything on previous zoning cases because they were approved with the condition that they
9 had. He said that, in his mind, this condition is only for this case. He said that he was expecting to modify
10 Special Condition B. so that the affirmation from the State's Attorney is written in to the condition. He
11 asked the Board if this inclusion is necessary or not, because every time you fool with a special condition
12 you run the risk of unintended consequences.
13
14 Mr. Hall read the proposed, revised language for Special Condition B. The Special Use Permit cannot be
15 conveyed to a different owner pending affirmation of this condition from the State's Attorney's Office.
16
17 Mr. Deering stated that rather than, pending affirmation of this condition, perhaps the language could
18 indicate, provided the condition is affirmed by the State's Attorney.
19
20 Mr. Hall stated that he does not want to insert the word "approval" because he is not sure that he can actually
21 get approval.
22
23 Mr. Deering stated that is actually pending affirmation of enforceability by the State's Attorney.
24
25 Mr. Hall stated that the State's Attorney has to affirm that this is an acceptable condition. He said that the
26 State's Attorney's Office doesn't have to agree with the condition, but they do have to affirm whether it is
27 enforceable or legal.
28
29 Ms. Griest asked Mr. Hall if the State's Attorney needs to affirm the condition or the enforceability of the
30 condition.
31
32 Mr. Hall stated that if Ms. Griest is referring to the legality, then yes, that is what he wants.
33
34 Ms. Griest stated that affirm provides a big arena. She said that perhaps the language could indicate the
35 State's Attorney's legal affirmation.
36
37 Mr. Deering stated that if the State's Attorney renders an opinion that it is enforceable, that does not mean
38 that it cannot be challenged in the court system. He said that it is questionable as to whether this condition is
39 enforceable, but Mr. Brian has decided to not make an issue of the special condition. He said that as with
40 anything else, as time goes by, all of the cases and decisions made by this Board are subject to legal attack.
41
42 Mr. Hall asked the Board if they are agreeable to adding the following to the end of Special Condition B.:
43 pending legal affirmation of this special condition by the State's Attorney's Office.
44
45 Ms. Capel asked the Board if they agreed to the special conditions as amended.

1
2 **The motion carried.**

3
4
5 **Findings of Fact for Case 822-S-15:**
6

7 From the documents of record and the testimony and exhibits received at the public hearing for zoning
8 case **822-S-15** held on **February 25, 2016, May 26, 2016, July 28, 2016**, the Zoning Board of Appeals
9 of Champaign County finds that:

10
11 **1. The requested Special Use Permit IS necessary for the public convenience at this location.**
12

13 Ms. Griest stated that the requested Special Use Permit IS necessary for the public convenience at this
14 location because it will bring an existing business into compliance with the current Zoning Ordinance.
15

16 Mr. DiNovo stated that it is a convenient location to serve markets in both Champaign and Mahomet.
17

18 **2. The requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS**
19 **IMPOSED HEREIN is so designed, located, and proposed to be operated so that it WILL**
20 **NOT be injurious to the district in which it shall be located or otherwise detrimental to the**
21 **public health, safety, and welfare because:**
22

23 **a. The street has ADEQUATE traffic capacity and the entrance location has**
24 **ADEQUATE visibility.**
25

26 Ms. Griest stated that the street has ADEQUATE traffic capacity and the entrance location has
27 ADEQUATE visibility.
28

29 **b. Emergency services availability is ADEQUATE.**
30

31 Mr. DiNovo stated that emergency services availability is ADEQUATE because the use poses no special
32 hazards and does not involve large numbers of people who might be vulnerable.
33

34 **c. The Special Use WILL be compatible with adjacent uses.**
35

36 Mr. DiNovo stated that the Special Use WILL be compatible with adjacent uses because there are similar
37 businesses within one-half mile.
38

39 Mr. DiNovo stated that the petitioner has made extensive efforts to address concerns of the neighbors.
40

41 **d. Surface and subsurface drainage will be ADEQUATE.**
42

43 Ms. Griest stated that surface and subsurface drainage will be ADEQUATE because they are not being
44 changed.
45

1 Mr. DiNovo stated that the subject property is not subject to the Stormwater Management Policy.

2
3 **e. Public safety will be ADEQUATE.**

4
5 Ms. Griest stated that public safety will be ADEQUATE.

6
7 **f. The provisions for parking will be ADEQUATE.**

8
9 Ms. Griest stated that the provisions for parking will be ADEQUATE.

10
11 Ms. Griest stated that the requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS
12 IMPOSED HEREIN is so designed, located, and proposed to be operated so that it WILL NOT be
13 injurious to the district in which it shall be located or otherwise detrimental to the public health, safety,
14 and welfare.

15
16 **3a. The requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS**
17 **IMPOSED HEREIN DOES conform to the applicable regulations and standards of the**
18 **DISTRICT in which it is located.**

19
20 Ms. Griest stated that the requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS
21 IMPOSED HEREIN DOES conform to the applicable regulations and standards of the DISTRICT in
22 which it is located.

23
24 **3b. The requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS**
25 **IMPOSED HEREIN DOES preserve the essential character of the DISTRICT in which it is**
26 **located because:**

27 **a. The Special Use will be designed to CONFORM to all relevant County ordinances**
28 **and codes.**

29
30 Ms. Griest stated that the Special Use will be designed to CONFORM to all relevant County ordinances
31 and codes.

32
33 **b. The Special Use WILL be compatible with adjacent uses.**

34
35 Ms. Griest stated that the Special Use WILL be compatible with adjacent uses.

36
37 **c. Public safety will be ADEQUATE.**

38
39 Ms. Griest stated that public safety will be ADEQUATE.

40
41 Ms. Griest stated that the requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS
42 IMPOSED HEREIN DOES preserve the essential character of the DISTRICT in which it is located.

1 **4. The requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS**
2 **IMPOSED HEREIN IS in harmony with the general purpose and intent of the Ordinance**
3 **because:**

- 4
5 **a. The Special Use is authorized in the District.**
6
7 **b. The requested Special Use Permit IS necessary for the public convenience at this**
8 **location.**

9
10 Ms. Griest stated that the requested Special Use Permit IS necessary for the public convenience at this
11 location.

- 12
13 **c. The requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS**
14 **IMPOSED HEREIN is so designed, located, and proposed to be operated so that it**
15 **WILL NOT be injurious to the district in which it shall be located or otherwise**
16 **detrimental to the public health, safety, and welfare.**

17
18 Ms. Griest stated that the requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS
19 IMPOSED HEREIN is so designed, located, and proposed to be operated so that it WILL NOT be
20 injurious to the district in which it shall be located or otherwise detrimental to the public health, safety,
21 and welfare.

- 22
23 **d. The requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS**
24 **IMPOSED HEREIN DOES preserve the essential character of the DISTRICT in**
25 **which it is located.**

26
27 Ms. Griest stated the requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS
28 IMPOSED HEREIN DOES preserve the essential character of the DISTRICT in which it is located.

29
30 Ms. Griest stated the requested Special Use Permit SUBJECT TO THE SPECIAL CONDITIONS
31 IMPOSED HEREIN IS in harmony with the general purpose and intent of the Ordinance.

32
33 **5. The requested Special Use IS NOT an existing nonconforming use.**

34
35 **6. THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE**
36 **COMPLIANCE WITH THE CRITERIA FOR SPECIAL USE PERMITS AND FOR THE**
37 **PARTICULAR PURPOSES DESCRIBED BELOW:**

- 38
39 **A. This Special Use Permit is for a “lawn care and snow removal” Contractor’s Facility**
40 **(with outdoor storage and/or outdoor operations as noted on the site plan) and an**
41 **office that contains a dwelling unit that is not used as a dwelling.**

42
43 The special condition stated above is required to ensure the following:

44 **To ensure as much as possible that the Special Use Permit is conducted in**
45 **conformance with the testimony and evidence presented in the public hearing.**

- 1
2 **B. The Special Use Permit cannot be conveyed to a different owner, pending legal**
3 **affirmation of this condition by the States Attorney's Office.**
4

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

6 **To ensure that the Special Use Permit only applies to the applicant Nicholas Brian**
7 **who has provided the testimony and evidence presented in the public hearing.**
8

- 9 **C. In the event that the Contractor's Facility ceases to exist, the right to a second**
10 **dwelling unit will become void. A Miscellaneous Document must be filed with the**
11 **Recorder of Deeds within one month of approval of this Special Use Case so that a**
12 **prospective buyer will be alerted to that requirement.**
13

14 The special condition stated above is necessary to ensure the following:

15 **That the proposed Special Use complies with the Zoning Ordinance regarding**
16 **number of dwellings allowed on a property.**
17

- 18 **D. The Zoning Administrator shall not authorize a Zoning Use Permit Application or**
19 **issue a Zoning Compliance Certificate on the subject property until the lighting**
20 **specifications in Paragraph 6.1.2.A. of the Zoning Ordinance have been met.**
21

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

23 **That exterior lighting for the proposed Special Use meets the requirements**
24 **established for Special Uses in the Zoning Ordinance.**
25

- 26 **E. A Change of Use Permit shall be applied for within 30 days of the approval of Case**
27 **822-S-15 by the County Board.**
28

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

30 **The establishment of the proposed use shall be properly documented as required by**
31 **the Zoning Ordinance.**
32

- 33 **F. Approval of the Special Use Permit limits its operations to the existing large shed,**
34 **the existing salt shed, the existing parking and vehicle maneuvering area, the**
35 **proposed shed, the proposed concrete and gravel parking areas adjacent to the**
36 **proposed shed, and the house.**
37

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

39 **That any additional construction on the subject property only be for personal use**
40 **and not for expanding the Special Use.**
41

- 42 **G. With the exception of vehicles being used for late night snow removal and deicing**
43 **events, all vehicles, trailers, and equipment used in the Special Use Permit must be**
44 **parked indoors when onsite between the hours of 10PM and 7AM.**
45

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

1 To comply with the Champaign County Nuisance Ordinance regarding noise
2 impacts.

- 3
4 **H. All Zoning Ordinance requirements for a Rural Home Occupation, except for the**
5 **fuel tanks and ice melt and salt storage, apply to this Special Use Permit, except**
6 **where other special conditions on the Special Use Permit are more or less restrictive.**
7 The above special condition is required to ensure the following:
8 **That the Special Use is no more intensive than a Rural Home Occupation.**
9

- 10 **I. Outdoor storage and operations for the Special Use are limited to only those that are**
11 **specified on the approved site plan.**
12

13 The above special condition is required to ensure the following:
14 **That activities approved under the Special Use Permit do not expand beyond the**
15 **intent of the Zoning Ordinance.**
16

- 17 **J. The petitioner must plant evergreen screening from the northeast property corner**
18 **along the east lot line to screen the proposed shed and then westward to screen the**
19 **south face of the proposed shed as indicated on the approved Site Plan. As per**
20 **standard Department practice, a Norway Spruce vegetative screen must be four to**
21 **six feet high at the time of planting and will be planted in staggered rows and must**
22 **be planted in the fall of 2016.**
23

24 The above special condition is required to ensure the following:
25 **To promote public health, safety, and general welfare that is a purpose of the**
26 **Zoning Ordinance.**
27

- 28 **K. The approved site plan is the revised site plan received June 6, 2016.**
29

30 The special condition stated above is to ensure the following:
31 **To provide clear direction for all future inquiries.**
32

33 Ms. Capel entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings
34 of Fact as amended.
35

36 **Ms. Griest moved, seconded by Mr. Randol, to adopt the Summary of Evidence, Documents of**
37 **Record and Findings of Fact, as amended. The motion carried by voice vote.**
38

39 Ms. Capel entertained a motion to move to the Final Determination for Case 822-S-15.
40

41 **Ms. Griest moved, seconded by Ms. Lee, to move to the Final Determination for Case 822-S-15. The**
42 **motion carried by voice vote.**
43

44 Ms. Capel informed the petitioners that currently the Board has one member absent; therefore, it is at their
45 discretion to either continue Case 822-S-15 until a full Board is present or request that the present Board
46 move to the Final Determination. She informed the petitioners that four affirmative votes are required for

1 approval.

2
3 Mr. Deering and Mr. Brian requested that the present Board move to the Final Determination.

4
5 **Final Determination for Case 822-S-15:**

6
7 Ms. Griest moved, seconded by Mr. DiNovo, that the Champaign County Zoning Board of Appeals
8 finds that, based upon the application, testimony, and other evidence received in this case, the
9 requirements of Section 9.1.11B. for approval HAVE been met, and pursuant to the authority granted
10 by Section 9.1.6.B. of the Champaign County Zoning Ordinance, determines that:

11
12 **The Special Use requested in Case 822-S-16 is hereby GRANTED WITH SPECIAL**
13 **CONDITIONS, to the applicant Nicholas Brian d.b.a. Greenside Lawn Care, to authorize the**
14 **following as a Special Use on land in the AG-1, Agriculture Zoning District:**

15
16 **Authorize a Special Use Permit for a Contractor's Facility with or without outdoor**
17 **Storage and/or outdoor operations and an office that contains a dwelling unit that is**
18 **not used as a dwelling in addition to an existing single family dwelling in the AG-1,**
19 **Agriculture Zoning District.**

20
21 **SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:**

- 22
23 **A. This Special Use Permit is for a "lawn care and snow removal" Contractor's Facility**
24 **(with outdoor storage and/or outdoor operations as noted on the site plan) and an**
25 **office that contains a dwelling unit that is not used as a dwelling.**
- 26
27 **B. The Special Use Permit cannot be conveyed to a different owner pending legal**
28 **affirmation of this condition by the States Attorney's Office.**
- 29
30 **C. In the event that the Contractor's Facility ceases to exist, the right to a second**
31 **dwelling unit will become void. A Miscellaneous Document must be filed with the**
32 **Recorder of Deeds within one month of approval of this Special Use Case so that a**
33 **prospective buyer will be alerted to that requirement.**
- 34
35 **D. The Zoning Administrator shall not authorize a Zoning Use Permit Application or**
36 **issue a Zoning Compliance Certificate on the subject property until the lighting**
37 **specifications in Paragraph 6.1.2.A. of the Zoning Ordinance have been met.**
- 38
39 **E. A Change of Use Permit shall be applied for within 30 days of the approval of Case**
40 **822-S-15 by the County Board.**
- 41
42 **F. Approval of the Special Use Permit limits its operations to the existing large shed,**
43 **the existing salt shed, the existing parking and vehicle maneuvering area, the**
44 **proposed shed, the proposed concrete and gravel parking areas adjacent to the**
45 **proposed shed, and the house.**
- 46

- 1 **G. With the exception of vehicles being used for late night snow removal and deicing**
- 2 **events, all vehicles, trailers, and equipment used in the Special Use Permit must be**
- 3 **parked indoors when onsite between the hours of 10PM and 7AM.**
- 4
- 5 **H. All Zoning Ordinance requirements for a Rural Home Occupation, except for the**
- 6 **fuel tanks and ice melt and salt storage, apply to this Special Use Permit, except**
- 7 **where other special conditions on the Special Use Permit are more or less restrictive.**
- 8
- 9 **I. Outdoor storage and operations for the Special Use are limited to only those that are**
- 10 **specified on the approved site plan.**
- 11
- 12 **J. The petitioner must plant evergreen screening from the northeast property corner**
- 13 **along the east lot line to screen the proposed shed and then westward to screen the**
- 14 **south face of the proposed shed as indicated on the approved Site Plan. As per**
- 15 **standard Department practice, a Norway Spruce vegetative screen must be four to**
- 16 **six feet high at the time of planting and will be planted in staggered rows and must**
- 17 **be planted in the fall of 2016.**
- 18
- 19 **K. The approved site plan is the revised site plan received June 6, 2016.**

20
21 Ms. Capel requested a roll call vote.

22
23 The vote was called as follows:

25 Lee – yes	Passalacqua – yes	Randol – yes
26 Thorsland – absent	Griest – yes	DiNovo – yes
27 Capel - yes		

28
29 Mr. Hall informed the petitioner that he has received an approval for his request. He stated that Ms.
30 Chavarria will be in touch regarding any additional steps which need to be taken. He thanked Mr. Brian for
31 his cooperation.

32
33 Mr. DiNovo stated that the Board has no obligation to enforce the covenants of a subdivision. The Board
34 does have to make a finding as to whether or not the proposed use is compatible with the surrounding
35 properties. He said that noncompliance with the covenants is not unlike any other issue regarding defects to
36 the subject property’s title that come before this Board, such as, easement or boundary line encroachment,
37 and the Board would not just let that go. He said that it is bad practice to have the provisions in the Zoning
38 Ordinance at odds with the rights that the property owner has under title of the property. He said that if the
39 property owners of the subdivision can resolve the conflict between their covenants and the Zoning
40 Ordinance then they should do it. He said that the County has been very liberal in allowing commercial uses
41 in the rural zoning districts. He said that it is reasonable for people to purchase a lot, not in a recorded
42 subdivision, and expect the ability to do whatever the Zoning Ordinance allows, regardless of any
43 surrounding covenants. He said that this is probably a policy question for the County Board, but the ZBA
44 should take into account that there are people who have taken the trouble to seek out a property that is
45 protected by covenants.

1 Mr. Passalacqua stated that if the Board concerned itself with covenants, the Board could see ridiculous
2 covenants. He said that covenants are set forth by the builders and they are never the same, thus no two will
3 ever be the same. He said that the Board has always sworn that covenants are not a concern of this Board,
4 unless there is some standardized method that neighborhoods or subdivisions would have to abide by. The
5 Board would be asking for a ton of trouble in concerning itself with a set of covenants that were written by a
6 person who may have been having a good or bad day, or someone who didn't want anyone to do anything
7 next to his property. He said that tying anything that the Board does to a covenant is bad practice in itself.

8
9 Mr. DiNovo stated that the Board is obliged to deny a petition if it is in conflict with surrounding properties.
10 He said that there are covenants that are relevant for the Board's consideration.

11
12 Mr. Passalacqua stated that it is probable that all of the new property owners in his subdivision are not aware
13 that covenants even exist because they are not on record and they wouldn't know where to obtain a copy. He
14 said that he may have a dusty copy in his file from sixteen years ago, but the people who are not original
15 owners have no idea that covenants even existed.

16
17 Ms. Griest stated that the covenants are a contractual agreement between the owners as part of their
18 purchasing documentation. She said that if the Board gets into governing zoning based upon the contents of
19 a legal agreement that they enter into outside of this entity, the Board will be dabbling into things where the
20 Board has no rights and that they are unable to enforce, and the Board has no business being in that arena.
21 She said that she does not want to get into an issue regarding how many chickens someone can have on their
22 property.

23
24 Mr. Passalacqua stated that disagreement of the covenants is a private issue between the property owners and
25 not this Board.

26
27 Mr. Hall stated that he agrees with both sides of the table.

28
29 Ms. Griest stated that there are times when the Board walks a very fine line of not enforcing covenants, but
30 hears the concerns by bringing all of the parties to the table so that a reasonable compromise can be agreed
31 upon.

32
33 Ms. Capel stated that the Board cannot negotiate their determination based upon covenants that can be
34 changed by 80% of the landowners.

35
36 Mr. DiNovo stated that he is just stating that the covenants are a relevant consideration.

37
38 **6. New Public Hearings**

39
40 **Case 835-V-16 Petitioner: Nathan Killion and Brandi Katrein Request to authorize the following**
41 **variance in the AG-2 Agriculture Zoning District: A detached garage with a side yard of 5 feet in lieu**
42 **of the minimum required 10 feet for detached accessory structures. Location: Lot 4 of the Rivera**
43 **Subdivision in the Northwest Quarter of the Southwest Quarter of Section 2 in Urbana Township and**
44 **commonly known as the residence at 3302 Nordland Drive, Urbana.**

1 Ms. Capel informed the audience that Case 835-V-16 is an Administrative Case and as such the County
2 allows anyone the opportunity to cross examine any witness. She said that at the proper time she will ask for
3 a show of hands for those who would like to cross examine and each person will be called upon. She
4 requested that anyone called to cross examine go to the cross examination microphone to ask any questions.
5 She said that those who desire to cross examine are not required to sign the witness register but are requested
6 to clearly state their name before asking any questions. She noted that no new testimony is to be given
7 during the cross examination. She said that attorneys who have complied with Article 7.6 of the ZBA By-
8 Laws are exempt from cross examination.

9
10 Ms. Capel informed the audience that anyone wishing to testify for any public hearing tonight must sign the
11 witness register for that public hearing. She reminded the audience that when they sign the witness register
12 they are signing an oath. She asked the audience if anyone desired to sign the witness register at this time.

13
14 Ms. Capel asked the petitioner if he would like to make a brief statement regarding the request.

15
16 Mr. Nathan Killion, who resides at 3302 Nordland Drive, Urbana, stated that their request is as stated in the
17 documentation. He said that he has already shortened the length of the garage, and if he is not able to place
18 the garage within five feet of the property line, he would have to drive over the existing septic system.

19
20 Ms. Capel called John Hall to testify.

21
22 Mr. John Hall, Zoning Administrator, distributed Supplemental Memorandum #1 dated July 20, 2016, to the
23 Board for review. He said that the new memorandum includes an email dated July 07, 2016, from Mr.
24 Killion regarding the room layout of the proposed garage.

25
26 Ms. Capel asked the Board if there were any questions for the petitioner and there were none.

27
28 Ms. Capel asked the audience if anyone desired to present testimony regarding this case and there was no
29 one.

30
31 Ms. Capel closed the witness register.

32
33 Ms. Capel stated that no special conditions are proposed at this time.

34
35 Ms. Capel entertained a motion to move the Findings of Fact for Case 835-V-16.

36
37 **Mr. Randol moved, seconded by Ms. Griest to move to the Findings of Fact for Case 835-V-16. The**
38 **motion carried by voice vote.**

39
40 **Findings of Fact for Case 835-V-16:**

41
42 From the documents of record and the testimony and exhibits received at the public hearing for zoning
43 case **835-V-16** held on **July 28, 2016**, the Zoning Board of Appeals of Champaign County finds that:
44

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

4 Ms. Griest stated that special condition and circumstances DO exist which are peculiar to the
5 land or structure involved, which are not applicable to other similarly situated land and structures
6 elsewhere in the same district because the lot was created prior to zoning and has a utility
7 easement that is not being utilized.

8
9 Mr. Randol stated that the location keeps the petitioner from driving across the septic field.

10
11 **2. Practical difficulties or hardships created by carrying out the strict letter of the regulations**
12 **sought to be varied WILL prevent reasonable or otherwise permitted use of the land or**
13 **structure or construction.**

14 Mr. Passalacqua stated that practical difficulties or hardships created by carrying out the strict
15 letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use
16 of the land or structure or construction because the expense to relocate the septic would be
17 prohibitive.

18
19 Mr. DiNovo stated that the property is such that the garage cannot be moved to another location.

20
21 Ms. Capel stated that if the garage were made smaller it would no longer serve the purpose for
22 which it is designed.

23
24 **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT result**
25 **from actions of the applicant.**

26
27 Mr. Passalacqua stated that special conditions, circumstances, hardships, or practical difficulties
28 DO NOT result from actions of the applicant.

29
30 Ms. Griest stated that the lot was created prior to the establishment of the Zoning Ordinance on
31 October 10, 1973.

32
33 **4. The requested variance IS in harmony with the general purpose and intent of the**
34 **Ordinance.**

35
36 Mr. DiNovo stated that the requested variance IS in harmony with the general purpose and intent
37 of the Ordinance because the lot is similar to a number of lots in the same neighborhood that
38 happen to be zoned R-1, and in those districts no variance would be required.

39
40 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
41 **detrimental to the public health, safety, or welfare.**

42
43 Ms. Griest stated that the requested variance WILL NOT be injurious to the neighborhood or
44 otherwise detrimental to the public health, safety, or welfare because both the road commissioner

1 and the Carroll FPD were contacted and no comments were received. She said that the subject
2 property is only 1.7 miles from the Carroll FPD.
3

4 **6. The requested variance IS the minimum variation that will make possible the reasonable**
5 **use of the land/structure.**
6

7 Mr. DiNovo stated that the requested variance IS the minimum variation that will make possible
8 the reasonable use of the land/structure because it will just allow the driveway to clear the septic
9 system.
10

11 **7. NO SPECIAL CONDITIONS ARE HEREBY IMPOSED**
12

13 Ms. Capel stated that a new item #3 should be added to Documents of Record as follows: 3. Supplemental
14 Memorandum #1 dated July 20, 2016, with attachments.
15

16 Ms. Capel entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings of
17 Fact as amended.
18

19 **Ms. Griest moved, seconded by Ms. Lee, to adopt the Summary of Evidence, Documents of Record**
20 **and Findings of Fact as amended. The motion carried by voice vote.**
21

22 Ms. Capel entertained a motion to move to the Final Determination for Case 835-V-16.
23

24 **Ms. Griest moved, seconded by Ms. Lee, to move to the Final Determination for Case 835-V-16. The**
25 **motion carried by voice vote.**
26

27 Ms. Capel informed the petitioners that currently the Board has one member absent; therefore, it is at their
28 discretion to either continue Case 835-V-16 until a full Board is present or request that the present Board
29 move to the Final Determination. She informed the petitioners that four affirmative votes are required for
30 approval.
31

32 Mr. Killion requested that the present Board move to the Final Determination.
33

34 **Final Determination for Case 835-V-16:**
35

36 **Ms. Griest moved, seconded by Mr. DiNovo, that the Champaign County Zoning Board of Appeals**
37 **finds that, based upon the application, testimony, and other evidence received in this case, that the**
38 **requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority granted**
39 **by Section 9.1.6.B. of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of**
40 **Champaign County determines that the Variance requested in Case 835-V-16 is hereby GRANTED to**
41 **the petitioners Nathan Killion and Brandi Katrein to authorize the following variance in the AG-2**
42 **Agriculture Zoning District:**
43

44 **A detached garage with a side yard of 5 feet in lieu of the minimum required 10 feet for**
45 **detached accessory structures.**

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Ms. Capel requested a roll call vote.

The roll was called as follows:

DiNovo – yes	Griest – yes	Lee – yes
Passalacqua – yes	Randol – yes	Thorsland – absent
Capel – yes		

Mr. Hall informed the petitioners that they have received an approval for their request. He said that staff will contact Mr. Killion regarding the next steps.

Ms. Capel stated that the Board will now hear Case 822-S-15.

7. Staff Report

None

8. Other Business

- A. Review of Docket
- B. Rescheduling
 - (1) Case 823-S-15
 - (2) Cases 828-S-16 and 834-V-16

Mr. Hall stated that the Board does have three cases which require rescheduling on the docket. He said that these cases were included on the July 14th agenda which was cancelled. He said that Ms. Chavarria contacted both petitioners, and the Champaign County Forest Preserve District indicated that they were available for the August 25th and September 29th meetings, therefore; he recommended a continuance date of August 25th for Cases 828-S-16 and 834-V-16.

Mr. Hall stated that the petitioners for Case 823-S-15 are available for any date on the docket, therefore; staff recommends a continuance date of October 27th.

Ms. Capel entertained a motion to continue Cases 828-S-16 and 834-V-16 to the August 25th meeting and continue Case 823-S-15 to the October 27th meeting.

Ms. Griest moved, seconded by Mr. Passalacqua, to continue Cases 828-S-16 and 834-V-16 to the August 25th meeting and continue Case 823-S-15 to the October 27th meeting. The motion carried by voice vote.

Mr. Hall noted that the receipt of zoning cases has dropped off. He said that when petitioners discover that cases are stacking up like this on the docket they find alternatives in meeting their needs; thus, staff has had two or three cases withdrawn.

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

2

3 None

4

5 **10. Adjournment**

6

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

8

9 **Ms. Griest moved, seconded by Mr. Passalacqua, to adjourn the meeting. The motion carried by voice**
10 **vote.**

11

12 The meeting adjourned at 8:23 p.m.

13

14

15 Respectfully submitted

16

17

18

19

20 Secretary of Zoning Board of Appeals

21