

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: April 30, 2009

PLACE: Lyle Shields Meeting Room

1776 East Washington Street

Urbana, IL 61802

TIME: 7:00 p.m.

MEMBERS PRESENT: Doug Bluhm, Thomas Courson, Roger Miller, Melvin Schroeder, Eric Thorsland, Paul Palmgren

MEMBERS ABSENT : Catherine Capel

STAFF PRESENT : John Hall, Leroy Holliday, J.R. Knight

OTHERS PRESENT : Merle Ingersoll, Angela Stammer, Steven Stammer, Pamela Wendt, James Harper, Leah Harshbarger, Mick Harshbarger, Al Klein, Michael Wood

1. Call to Order

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

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

3. Correspondence

None

4. Approval of Minutes

None

5. Continued Public Hearing

None

Mr. Bluhm requested a motion to rearrange the agenda and hear Case 644-V-09, Mike Wood prior to Case 637-V-08, Mick and Leah Harshbarger.

Mr. Thorsland moved, seconded by Mr. Courson to rearrange the agenda and hear Case 644-V-09, Mike Wood prior to Case 637-V-08, Mick and Leah Harshbarger. The motion carried by voice vote.

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6. New Public Hearings

Case 637-V-08 Petitioner: **Mick and Leah Harshbarger** Request: **Authorize the following in the CR District: A. the construction and use of a detached accessory structure with a side yard of four feet and a rear yard of four feet, two inches in lieu of the required side yard of 10 feet and the required rear yard of 10 feet; and B. the construction and use of a detached accessory structure with a side yard of three feet, six inches in lieu of the required side yard of 10 feet; and C. Deleted.** Location: **Lot 27 of Deer Ridge Ingram’s Third Subdivision in Section 30 of Ogden Township and commonly known as the house at 2545 CR 1375N, Ogden.**

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

Mr. Hall distributed a Supplemental Memorandum dated April 30, 2009, to the Board for review. He said that attached to the memorandum is a letter from J.R. Knight, Associate Planner to Mr. and Mrs. Harshbarger dated January 21, 2009, and excerpts from the site plan for Ingram’s Third Subdivision which establish the dimensions of the 50 foot wide drainage easement that cuts across the southwest corner of the subject property. He said that as separate attachments to the Supplemental Memorandum are two letters that were received from neighbors and, not listed as an attachment but distributed at tonight’s meeting, an aerial photograph of the parcel boundaries which indicates the drainage easement at 50 feet wide. He said that the drainage easement appears relevant to the location of the playhouse and the pool but there is ample area for the playhouse to meet the side and rear yard requirements and still be outside of the drainage easement as the Zoning Ordinance requires. He said that it is a tangled web but when you review all of the structures that they are trying to get along the south side of the lot and the clearance between the drainage easement and the north/south public street it could be argued that there is some challenge in placing everything properly which may have something to do with the location of the pump house, although the Petitioner claims to be unaware of all of these considerations.

Mr., Hall reviewed the new evidence for the Summary of Evidence included in the Supplemental Memorandum dated April 30, 2009. He said that the following text should be added as new Item #7E.: A 50 feet wide drainage easement cuts across the southwest corner of the subject property and limits the location of structures along the south lot line as follows: (1) The playhouse is on the west side of the drainage easement. There appears to be adequate area to locate the play house within the required yards and still be outside the drainage easement; and (2) There is only approximately 135 feet of open space along the south lot line between the drainage easement and the public street and this space must accommodate the pool and pool deck, pool pump house, garage, and setback from the street.

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2 Mr. Hall stated that the following should be added as revised Items #8.B. and 8.C: B. Regarding Part A of
3 the proposed variance: (1) The drainage way that cuts across the southwest corner of the subject property
4 restricts the placement of the play house in that area, but there appears to be sufficient area to relocate the
5 playhouse so that it conforms to the minimum required yards; (2) It appears the playhouse would be less
6 difficult to move than the pool pump house because it is off the ground on treated posts; (3) The lot to the
7 south has excess area that, if available at a reasonable price could obviate the need for the variance; and C.
8 Regarding Part B of the proposed variance: (1) The pool pump house is located adjacent to the deepest part
9 of the pool; (2) The pool pump house is located on a concrete foundation and is connected to several utilities
10 that serve the pool which would make relocating the pump house expensive; and (3) The lot to the south has
11 excess area that, if available at a reasonable price, could obviate the need for the variance.
12

13 Mr. Hall stated that the following should be added as a new Item #10.G: if the subject property were in a
14 residential zoning district the minimum required side yard for detached accessory buildings would only be
15 five feet. The subject property is in a residential subdivision but not in a residential zoning district and there
16 are no agricultural activities occurring on the adjacent property.
17

18 Mr. Hall stated that the following should be added as a new Item #11.D: A number of neighbors have
19 submitted letters of opposition to the requested variance: (1) In a letter dated April 21, 2009, Pamela and
20 Doug Wendt who reside at 1365 CR 2545E, Ogden, testified that they knew to get a zoning use permit when
21 they built a garage and they are opposed to granting the requested variance for the play house and pool
22 pump house; (2) In a letter dated April 22, 2009, John and Michelle Johlas who reside at 1375 CR 2545E,
23 Ogden, testified that they knew to get a zoning use permit when they built a garage and they are opposed to
24 granting the requested variance for the play house and the pool pump house; (3) In a letter dated April 23,
25 2009, Duane and Nicole Setterdahl who reside at 1376 CR 2545E, Ogden testified that they are opposed to
26 granting the requested variance for the play house and the pool pump house; (4) In a letter dated April 20,
27 2009, Jim and Terri Rein who reside at 1361 CR 2545E, Ogden testified that they are opposed to the
28 requested variance; (5) in a letter dated April 22, 2009, Jim and Nada Cagle who reside at 2547 CR 1375N,
29 Ogden testified that they are opposed to the requested variance; and (6) in a letter dated April 28, 2009,
30 Geoff and Jannah Coon who reside at 1374 CR 2545E, Ogden testified that they are opposed to the
31 requested variance.
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33 Mr. Bluhm asked the Board if there were any questions for Mr. Hall.
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35 Mr. Palmgren asked Mr. Hall to explain the relevance of Case 643-V-08 to Case 637-V-08.
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37 Mr. Knight stated that the indication of Case 643-V-08 is in error and there is no relevance to this case.
38

39 Mr. Bluhm called Mr. Mick Harshbarger to testify.
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41 Mr. Harshbarger, who resides at 2545 CR 1375N, Ogden, submitted, to the Board for review and as
42 Documents of Record, photographs of the subject property and a letter dated April 28, 2009, in favor of his
43 requested variance from Michael and Renee Gabbard, who reside at 1379 CR 2545E, Ogden. He also
44 submitted staff requested elevations of the floor of the detached garage located in the southeast quadrant of

1 his lot. He said that he has no new information to add to his case at this time.
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3 Mr. Bluhm asked the Board if there were any questions for Mr. Harshbarger.
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5 Mr. Miller asked Mr. Harshbarger how, as a contractor, he could have overlooked the fact that a building
6 permit was required.
7
8 Mr. Harshbarger stated that he was not aware that he needed a building permit for a detached garage or a
9 play house. He said that he has built these types of structures for many people in Champaign without
10 obtaining a permit.
11
12 Mr. Thorsland asked Mr. Harshbarger if he was familiar with the different required zoning setbacks.
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14 Mr. Harshbarger stated that he has always been told that the setback was five feet.
15
16 Mr. Miller informed Mr. Harshbarger that in some instances he is closer than five feet therefore if he was
17 aware that five feet was the requirement, which is incorrect, he still went above and beyond what he knew
18 was the requirement.
19
20 Mr. Hall asked Mr. Harshbarger if staff informed him that the setback requirement for detached structures
21 was five feet.
22
23 Mr. Harshbarger stated yes, he was told this when he was filling out the paperwork.
24
25 Mr. Hall asked Mr. Harshbarger if he came to the office to fill out the appropriate paperwork after the
26 structures were constructed.
27
28 Mr. Harshbarger stated yes.
29
30 Mr. Hall apologized for the incorrect information that staff conveyed to Mr. Harshbarger and informed him
31 that the correct setback for a detached structure is 10 feet.
32
33 Mr. Miller asked Mr. Hall if the variance is granted does the County normally request the permit fees or are
34 fines imposed.
35
36 Mr. Hall stated that no fines are imposed but the permit fees are collected. He said that the two structures
37 that were constructed did not require a permit or fees but they did need to meet the yard requirements. He
38 said that 150 square feet is the cutoff and both of the subject structures are under that square footage. He
39 said that it is normal procedure for staff to indicate that permits are not required for structures which are less
40 than 150 square feet but they do need to meet the yard requirements.
41
42 Mr. Hall stated that Mr. Harshbarger measured the setback for the garage on CR 2545E and indicated that it
43 was 25 feet from the front property line. He said that staff requested that Mr. Harshbarger measure the
44 distance from the centerline of the road and that information has not been submitted to date. He asked Mr.

1 Harshbarger if he was positive that the garage is 25 feet from the front property line along CR 2545E.
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3 Mr. Harshbarger stated yes.
4
5 Mr. Hall asked Mr. Harshbarger if there are any other issues related to the placement of the pool pump
6 house that the Board should be aware of.
7
8 Mr. Harshbarger asked Mr. Hall if he means relocation issues.
9
10 Mr. Hall stated no, but why the pool pump house is located at its current location.
11
12 Mr. Harshbarger stated that the pool pump house is located at its current location because that is the location
13 where the pool installers roughed in all of the plumbing and there is a propane tank sitting next to it.
14
15 Mr. Hall asked Mr. Harshbarger if there was a reason why the pool was located so far away from the house.
16
17 Mr. Harshbarger stated no.
18
19 Mr. Hall stated that he did not know if perhaps the location was due to the existence of a septic tank or leach
20 field near the house.
21
22 Mr. Harshbarger stated no.
23
24 Mr. Bluhm asked Mr. Harshbarger if in front of the storage shed and over to the property line is basically all
25 rock area.
26
27 Mr. Harshbarger stated yes.
28
29 Mr. Hall asked Mr. Harshbarger if he could guess at this time what it would cost to move the pool pump
30 house.
31
32 Mr. Harshbarger stated no. He said that he would have to bust up concrete to move all of the plumbing.
33
34 Mr. Hall asked Mr. Harshbarger if the structure is such that it could be broken loose from the foundation and
35 moved.
36
37 Mr. Harshbarger stated yes.
38
39 Mr. Bluhm stated that the existing plumbing runs from the pool to the existing location.
40
41 Mr. Harshbarger stated yes and also the power.
42
43 Mr. Thorsland asked Mr. Harshbarger if he installed the plumbing for the pool or did the pool contractors.
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1 Mr. Harshbarger stated that the pool contractors installed the plumbing.
2
3 Mr. Courson asked Mr. Hall if pools are required to obtain a building permit.
4
5 Mr. Hall stated yes.
6
7 Mr. Courson asked Mr. Hall if Mr. Harshbarger obtained a permit for the pool.
8
9 Mr. Hall stated that he applied for the zoning use permit for the pool after it was constructed.
10
11 Mr. Bluhm asked Mr. Harshbarger if there was a fence around the pool.
12
13 Mr. Harshbarger stated yes.
14
15 Mr. Thorsland asked Mr. Harshbarger if he has considered purchasing land from the property to the south of
16 his property.
17
18 Mr. Harshbarger stated that he has not spoken to the owners about such a purchase.
19
20 Mr. Hall informed Mr. Harshbarger, as a contractor, to submit a cost estimate for relocation of the pool
21 pump house. He said that the cost estimate would not have to be at Mr. Harshbarger's cost but could
22 indicate the fees incurred for hiring another contractor for relocation. He said that it would help the Board,
23 in the decision, if he could acquire additional land along the south lot line from his neighbors. He said that
24 perhaps the neighbors would be interested in selling but if they are perhaps the price is unreasonable. He
25 said that this information would assist the Board in weighing this issue of buildings being built too close to
26 the lot line without permits. He said that there is an irony to this situation because the neighbors, who are
27 not builders, knew that permits were required.
28
29 Mr. Harshbarger noted that Mr. Hall just indicated that no permits were required.
30
31 Mr. Hall stated that the pool required a permit.
32
33 Mr. Harshbarger stated that he did pay for the pool permit.
34
35 Mr. Hall stated yes, but it was after the fact. He said that given what is on the ground now it would assist
36 the Board to have the two requested items of evidence to weigh the cost of relocation or the cost of
37 purchasing other land. He said that very often the finding will indicate that there is no additional land
38 available for purchase.
39
40 Mr. Miller stated he would make it clear to Mr. Harshbarger that this is not a situation that the Board would
41 expect to rubber stamp and send the petitioner on with a good night therefore additional information is
42 required.
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44 Mr. Thorsland asked Mr. Harshbarger if the playhouse was attached to the ground.

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2 Mr. Harshbarger stated that the playhouse is on 6' x 6' runners.
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4 Mr. Bluhm asked the Board if there were any additional questions for Mr. Harshbarger and there were none.
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6 Mr. Bluhm asked if staff had any additional questions for Mr. Harshbarger and there were none.
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8 Mr. Bluhm asked the audience if anyone in the audience desired to cross-examine Mr. Harshbarger and
9 there was no one.
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11 Mr. Bluhm called Ms. Leah Harshbarger to testify.
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13 Mr. Leah Harshbarger declined to speak at this time.
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15 Mr. Bluhm called Angela Stammer to testify.
16
17 Ms. Angela Stammer, who resides at 1377 CR 2545E, Ogden read a prepared statement and submitted a
18 copy of her statement as a Document of Record. Ms. Stammer thanked the Board for the opportunity to
19 speak regarding the variances requested by Mr. and Mrs. Harshbarger. She said that she and her husband
20 Steve live at 1377 CR 2545E which is located north of the Harshbarger's home. She implored the Zoning
21 Board of appeals to deny the request for variances. She said that the reason that they bought the property
22 they did when they were building their home had much to do with the large lots and the fact that these
23 homes were not on top of each other. She said that she works in Champaign and her husband works in
24 Urbana and when they were ready to build they looked at lots in Champaign and Urbana. She said that they
25 found that the majority of the houses and out structures seemed to be too close together. She said that a co-
26 worker of Steve's told him about her neighborhood near Homer Lake and when they went to look at the
27 property they fell in love. She said that they weighed the fact that it was approximately 25 miles each way
28 to and from work against having room to breathe and not feel penned in. They made their decision that this
29 is where they wanted to build their home and live and if this variance is allowed it is a slippery slope. She
30 said that all of a sudden the homes and any extra buildings begin to pile up and become just like living in
31 town and this would adversely affect the home values of everyone else in the subdivision. She said that
32 most of the people who live in their subdivision work in the Champaign-Urbana area and if the homes are
33 now as close together as the homes in town why would anyone tack on the extra time and money it takes to
34 drive to work. She said that if they are going to be squeezed together they might as well live in town and if
35 the Board grants one variance, in all fairness it will have to grant all of them. She said that the Harshbargers
36 are asking for 3 feet 6 inches but what happens when the next person wants 3 feet, then 2 feet 6 inches,
37 where will it stop.
38
39 Ms. Stammer stated that Mr. Harshbarger states that he did not know about the 10 foot setback and let's
40 assume for one minute that we believe that statement from someone in the construction business. She said
41 that she does not believe that ignorance is an excuse for following the law because if she is pulled over for
42 driving 45 in a 30 mile per hour zone and she tells the officer that she did not know the limit was 30 she will
43 still receive a ticket. She said that it is her responsibility to know the law just as it was the Harshbarger's
44 responsibility to know the zoning laws. She said that if a permit had been pulled any claimed ignorance

1 would have been settled at that time.

2
3 Ms. Stammer stated that aesthetics are said to play a part in minimum yard requirements and she can tell the
4 Board that the Harshbarger's property is not aesthetically pleasing. She said that the property appears
5 overly crowded and this is once again a detriment to the property values of all 12 houses in the subdivision
6 as well as those along CR 2550 East. She said that if she was looking for a house to buy today this would be
7 something that would turn her off. She said that a point was made that the lots in this neighborhood are
8 large and that is correct. She said that please keep in mind that they paid for these lots and specifically
9 chose them because of their size. She said that the Harshbargers also have a large lot and should have had
10 adequate room to build structures within the setbacks. She said that she was taught at an early age that life
11 is about choices and that we cannot have everything that we want, want being the relevant word. She said
12 that she and her husband are not asking that this family be denied any needs and if a child is offered a choice
13 between cake, cookies and pie that child is not given all three just because that is what he or she wants. She
14 said that if the Harshbargers were unable to build a large garage, a pool with a pump house and a play house
15 within the legally defined limits of their lot then they should have chosen what was most important. She
16 said that if all of us put building within just a few feet of the property lines safety does become an issue and
17 just because the Wendt's built their house at the other end of their property does not make the entire lot any
18 less theirs nor should they have to suffer. She said that Mrs. Wendt described to her how the plan to plant
19 trees on her property is what led to the discovery of the encroachment on her property line. Ms. Stammer
20 stated that this is not what she considers acceptable behavior and does not want the same thing happening to
21 her and she would daresay no member of the Board would like his or her property to be violated in this way.

22
23 Ms. Stammer stated that the Harshbarger's built not one but two structures out of compliance with existing
24 rules and are now asking for a variance therefore this is a case of beg forgiveness rather than ask permission
25 and allowing this variance is not a good precedence to set. She asked what kind of message does this give to
26 the community as a whole because if you do not like a rule, break it and then get the rule changed for
27 yourself. She said that this when extrapolated out would allow Rod Blagojevich to still be our Governor and
28 not be indicted you want to sell a Senate seat, go ahead and do it and just make it legal after the fact. She
29 said that if variances are granted just because it is more convenient for one person to ignore them then why
30 do we have any rules at all and why should those of us who follow the rules be made to suffer. She said that
31 she has seen other neighbors who built additional structures follow the rules by getting permits first and
32 following the rules regarding setbacks and if these variances are granted where is the incentive for others to
33 do the same.

34
35 Ms. Stammer begged the Board to deny these variances and instead maintain the integrity of the place she
36 and other families have chosen to call home and not reward those who thumb their noses at the rules.

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38 Mr. Bluhm asked the Board if there were any questions for Ms. Stammer and there were none.

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40 Mr. Bluhm asked if staff had any questions for Ms. Stammer and there were none.

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42 Mr. Bluhm asked the Mr. Harshbarger if he desired to cross examine Ms. Stammer and he did not.

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44 Mr. Bluhm asked the audience if anyone desired to cross examine Ms. Stammer and there was no one.

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Mr. Bluhm called Mr. Steven Stammer to testify.

Mr. Steven Stammer, who resides at 1377 CR 2545 East, Ogden read a prepared statement and submitted a copy of the statement as a Document of Record. Mr. Stammer stated that he resides at 1377 CR 2545 East, Ogden in the Ingram’s Deer Ridge Subdivision. He said that he is present at tonight’s hearing to speak about the variance requests by Mr. Harshbarger, He said that as to this request he finds it hard to believe that Mr. Harshbarger did not know about the ten foot setback from the property line. He said that Mr. Harshbarger runs a construction business and if he is ignorant as to the Zoning Ordinance for setbacks and building permits then he wonders how his business survives. Mr. Stammer said that he has worked in construction in the past and even designed and contracted to have his house built in 2001, and even he, a person who does not do this for a living knew about the setback ordinance and the need for a building permit. He said that other neighbors who have put up their own accessory structures all knew to get the required permits and placed them within the property setbacks. He said that he understands that the pool house is built on a concrete slab and that it would be a lot of work to move it but since Mr. Harshbarger owns a construction business he should be able to relocate these structures easier than anyone else in the neighborhood.

Mr. Stammer stated that they bought their lot in this subdivision because they liked the small size, the large lots and the open feel and the quiet of the country. He said that at the time when Mr. Harshbarger bought his house there were several large tracts of land that were for sale within a 10 mile radius where they were not located in a subdivision where he could erect any size structure he wanted without disturbing his neighbors.

Mr. Stammer urged the Board to protect the neighborhood they bought into when they moved there and deny the petition to allow the operation of a business in this residential neighborhood. He also urged the Board to ensure that this contractor learns his lesson and researches local ordinances before building structures by making him move his structures into compliance. He said that he believes that an honest man does not follow the adage “Beg forgiveness, not permission.”

Mr. Bluhm asked the Board if there were any questions for Mr. Stammer and there were none.

Mr. Bluhm asked if staff had any questions for Mr. Stammer and there were none.

Mr. Bluhm asked Mr. Harshbarger if he desired to cross examine Mr. Stammer and he did not.

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

Mr. Bluhm called Ms. Pamela Wendt to testify.

Ms. Pamela Wendt, who resides at 1365 CR 2545 East, Ogden read a prepared statement and submitted a copy of her statement as a Document of Record. Ms. Wendt stated that she resides at 1365 CR 2545 East, Ogden with her husband and two young children and their property lies adjacent to the Harshbarger property to the south. She said that the Board has before them a plethora of letters that speak for themselves and the

1 authors of those letters are currently at the spring concert with their children. The letters include concerns
2 related to child safety, aesthetics, decline in property values and damage to property.

3
4 Ms. Wendt stated that she would like to address the confusion relating to the previously listed variance
5 request #C. She said that they are aware that Mr. Harshbarger has a Neighborhood Home Business he runs
6 out of his house and garage. She said that in the past, the NHO rules have not been followed by Mr.
7 Harshbarger and if the NHO rules are followed in the future Mr. Harshbarger will not have any vehicles,
8 construction equipment or trailers on his property unless they are in a closed garage. She said that this will
9 certainly decrease some concerns.

10
11 Ms. Wendt stated that the vast majority of homeowners are aware of setbacks and individuals employed in
12 the construction business certainly should be attuned to the rules of the *Champaign County Zoning*
13 *Ordinance* and regulations of such businesses. She said that blatant disregard for the building setback rules
14 is not an excuse for seeking variances and in the case of the Harshbargers the following occurred: (1) Mr.
15 Harshbarger did not follow the rules set forth by the covenants governing Ingram’s Third Subdivision; (2)
16 Mr. Harshbarger did not request a building permit prior to building the pool house or play house; (3) Mr.
17 Harshbarger did not follow the setback requirements specified in the *Zoning Ordinance*; (4) Mr.
18 Harshbarger utilized their property to obtain access to and build his pool and pool house causing damage to
19 their property on three occasions; and (5) Mr. Harshbarger installed landscaping around his pool and pool
20 house on their property.

21
22 Ms. Wendt stated that in an attempt to address the above issues she went to speak with Mr. Harshbarger and
23 he replied in an aggressive and assaultive manner stating that she wasn’t using her property therefore she
24 should not be concerned. She said that for obvious reasons this was and is unacceptable. She said that if the
25 Board chooses to allow the variances at stake they would be setting a precedent for others who blatantly
26 disregard the rules and regulations set forth by the County and those that the other neighbors in the
27 community follow.

28
29 Ms. Wendt stated that Mr. Harshbarger chose to build three buildings without a permit and two of those
30 buildings are in violation of the setback requirements set forth by the County. She said that when asked why
31 a variance should be granted Mr. Harshbarger replied “look(s) great with house and garage and pool.” She
32 said that this is not a reason to grant a variance.

33
34 Mr. Bluhm asked the Board if there were any questions for Ms. Wendt.

35
36 Mr. Thorsland asked Ms. Wendt how she would feel about selling a small portion of her property to Mr.
37 Harshbarger.

38
39 Ms. Wendt stated that she would have to discuss this issue with her family.

40
41 Mr. Thorsland asked Ms. Wendt if the landscaping which intruded upon her property had been removed.

42
43 Ms. Wendt stated yes.

1 Mr. Bluhm asked if the Board had any additional questions for Ms. Wendt and there were none.
2
3 Mr. Bluhm asked if staff had any questions for Ms. Wendt and there were none.
4
5 Mr. Hall clarified that there were three buildings constructed, two of which did not need a permit but did
6 require variances. He said that the storage building that is being used for the Neighborhood Home
7 Occupation did not require any variances, but did require a permit which Mr. Harshbarger did not get
8 until after the building had been constructed. He said that the pool was also built without a permit
9 therefore everything on the property that Mr. Harshbarger has added was done without following the
10 rules.
11
12 Mr. Bluhm asked Mr. Harshbarger if he desired to cross examine Ms. Wendt and he did not.
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14 Mr. Bluhm asked the audience if anyone desired to cross examine Ms. Wendt and there was no one.
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16 Mr. Bluhm called Mr. Jim Harper to testify.
17
18 Mr. Harper declined to speak at this time.
19
20 Mr. Bluhm asked the audience if anyone else in the audience desired to sign the witness register to present
21 testimony regarding Case 637-V-08 and there was no one.
22
23 Mr. Bluhm closed the witness register.
24
25 Mr. Bluhm noted that the Zoning Board of Appeals has no jurisdiction over covenants of a subdivision
26 therefore any testimony regarding covenant violations is not an issue that the Board can address.
27
28 Mr. Bluhm stated that Ms. Wendt clarified in her testimony that most of the people who submitted letters
29 regarding this case are absent due to a previously scheduled school spring concert for their children.
30
31 Mr. Thorsland stated that he counted seven letters of opposition.
32
33 Mr. Palmgren requested a clarification of the permit situation. He said that the playhouse and pool house did
34 not need a permit because they were too small but their location is at issue. He asked if the house had a
35 permit issued and is there anything else on the lot that has issues. He asked what the note was about
36 regarding floor plan and finished floor.
37
38 Mr. Hall stated that the house had a permit issued. He said that Ingram's Subdivision is not located in the
39 mapped floodplain but it does have lots that are subject to flooding and it is connected to the mapped
40 floodplain therefore floor elevations must be verified. He said that since the garage was built without a
41 permit it is possible that the garage was built too low but based on the letter that Mr. Harshbarger submitted
42 at tonight's meeting it may be okay therefore the permit could be issued once the variances are completed.
43 He said that the permits for the pool and the garage have been applied for but cannot be approved until the
44 variances are addressed.

1
2 Mr. Courson stated that he would like to review some cost estimates to move the pool house and have the
3 Petitioner make a good faith effort to contact adjacent property owners to see if any property is available for
4 purchase.
5
6 Mr. Bluhm stated that the Board will have to address that issue in the finding and at this point it is unknown
7 if any additional land is available.
8
9 Mr. Thorsland stated that he would assume that the cost to move the playhouse would be low but it would be
10 nice to have that information.
11
12 Mr. Bluhm asked the Board if there was anything else that staff needs to investigate or that the Petitioner
13 should submit before the continuance date.
14
15 Mr. Palmgren asked when the aerial photograph was shot.
16
17 Mr. Hall stated 2008.
18
19 Mr. Thorsland clarified that the truck and trailer should be stored inside the storage shed.
20
21 Mr. Hall stated that Mr. Harshbarger can have one vehicle outside but everything else has to be inside.
22
23 Mr. Thorsland stated that if the property was located in a residential district the setback for the accessory
24 structures would be five foot but vehicles would have to be inside.
25
26 Mr. Hall stated that in a residential zoning district there would be an absolute limit to how many vehicles
27 could be had.
28
29 Mr. Thorsland stated that in the CR District there is a 10 foot setback for an accessory structure but the
30 vehicles can be outside.
31
32 Mr. Hall stated yes but no more than one vehicle could be stored outside.
33
34 Mr. Bluhm requested clarification as to if only the truck could be outside or could the truck and trailer be
35 stored outside.
36
37 Mr. Hall stated that his interpretation is that a trailer could be attached to the vehicle but the trailer itself
38 could not be outside. He said the trailer could not sit outside by itself because it would be considered
39 outdoor storage unless it is attached to the vehicle.
40
41 Mr. Bluhm requested a continuance date.
42
43 Mr. Hall stated that the May 28th hearing is going to be exclusively for Casey's General Store. Cases 611-
44 AM-08; 647-S-09; and 648-V-09. He said that the case will be re-advertised and it is anticipated that it will

1 take two hearings to complete. He said that the public hearing for June 11th is for Case 634-AM-08, Part B.
2 and one additional case. He recommended that Case 637-V-08 be continued to the June 25, 2009, public
3 hearing.

4
5 **Mr. Thorsland moved, seconded by Mr. Schroeder to continue Case 637-V-08 to the June 25, 2009,**
6 **public hearing. The motion carried by voice vote.**

7
8 Mr. Hall informed Mr. Harshbarger that he can contact the office at anytime regarding any questions that he
9 may have and recommended that he obtain the requested information as soon as possible so that it can be
10 ready for the June 25, 2009, public hearing.

11
12 **Case 644-V-09 Petitioner: Michael Wood Request: Authorize the creation and use of a lot that is 5.5**
13 **acres in area on best prime farmland in lieu of the maximum allowed three acres on best prime**
14 **farmland. Location: A 5.5 acre tract in the West half of the West half of the Southwest quarter of the**
15 **Southwest Quarter of Section 19 of Pesotum Township and commonly known as the house at 202 CR**
16 **600E, Pesotum.**

17
18 Mr. Hall stated that the Petitioner has been speaking with staff for a few months and has been fortunate
19 enough to do some extensive landscaping on some land which is adjacent to his home. Mr. Hall said that
20 the Petitioner has arranged to obtain additional land which is north of the landscaped area and is currently in
21 use as farmland, but is located in a wet area and is undesirable for farming. He said that as Mrs. Wood, the
22 Petitioner’s mother, gets the property in order for her estate there may be additional divisions but at this time
23 Mr. Wood has decided to just move ahead on the variance for maximum lot size for a lot that will be owned
24 by Michael Wood. He said that there is no new information regarding this case to present at tonight’s
25 hearing nor are there any outstanding issues.

26
27 Mr. Bluhm asked the Board if there were any questions for Mr. Hall and there were none.

28
29 Mr. Bluhm informed the audience that this is an Administrative Case and as such the County allows anyone
30 the opportunity to cross examine any witness. He said that at the proper time she will ask for a show of
31 hands for those who would like to cross examine and each person will be called upon. He requested that
32 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
33 those who desire to cross examine are not required to sign the witness register but are requested to clearly
34 state their name before asking any questions. He noted that no new testimony is to be given during the cross
35 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt
36 from cross examination.

37
38 Mr. Bluhm called Mr. Merle Ingersoll to testify.

39
40 Mr. Merle Ingersoll, Engineer for HDC Engineering, stated that he is representing Michael Wood who is
41 requesting a variance so that he can extend his property boundaries to what is shown on the exhibit before
42 the Board. He said that the land Mr. Wood owns currently and all of the land adjacent to him has been
43 owned by his immediate family and his parents have lived in the farmstead, directly south of his home, and
44 they own all of the land which surrounds Mr. Wood’s homestead. Mr. Ingersoll stated that Mr. Wood’s

1 parents deeded one acre to Tom Wood, Michael’s brother, in 1977 and 1.16 acres to Michael in 1984. He
2 said that all of the improvements which have been completed on Michael’s land and the adjacent land were
3 done between 1984 and 2004, with his parent’s permission. He said that the original thought was that as
4 Michael could afford it he could expand his property.
5

6 Mr. Ingersoll stated that approximately 3.87 acres of the land is not being used for agriculture and all
7 improvements were completed before 2004. He said that approximately the 1.34 acres of land that has been
8 requested in the variance has an existing drainage way and during the rainy season a majority of the land
9 does pond because the swale to the west is not low enough to drain it properly and until they cut the swale a
10 little deeper it will not drain well. He said that Michael envisions planting grass, trees and possibly an
11 orchard and a constructing a storage shed on the high ground. Mr. Ingersoll stated that he contacted the
12 Champaign County Highway Department for right-of-way information and Mr. John Cooper reported that
13 the recorded right-of-way easement for township road 600E was 40 feet wide. Mr. Ingersoll stated that
14 originally he thought that the pond may be an issue but it has been measured and calculated to be
15 approximately 29,000 square feet or 0.67 acres. He said that he is available to answer any technical
16 questions that the Board may have but he believes that most of the information has been included in the
17 memorandum.
18

19 Mr. Bluhm asked the Board if there were any questions for Mr. Ingersoll and there were none.
20

21 Mr. Bluhm asked if staff had any questions for Mr. Ingersoll and there were none.
22

23 Mr. Bluhm asked the audience if there were any questions for Mr. Ingersoll and there was no one.
24

25 Mr. Bluhm asked the Board if there was any further discussion regarding this case and there was none.
26

27 Mr. Bluhm asked the audience if anyone desired to present testimony regarding Case 644-V-08, and there
28 was no one.
29

30 Mr. Bluhm closed the witness register for Case 644-V-08.
31

32 **Summary of Evidence for Case 644-V-08:**
33

34 Mr. Hall stated that Item #7.D should be revised to indicate the following: The northern approximately 1.7
35 acres of land which is currently in use a farmland is problematic for modern farm equipment and is adjacent
36 to a drainage way which makes it too wet for farming and too wet to be used as a separate lot. He said that a
37 new Item #10.F. should be added as follows: Merle Ingersoll testified at the public hearing on April 30,
38 2009, that the surface area of the pond is .67 acres which is less than one acre and is fully conforming.
39

40 **Finding of Fact for Case 644-V-08:**
41

42 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
43 644-V-09 held on April 30, 2009, 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**
- 2 **structure involved, which are not applicable to other similarly situated land and**
- 3 **structures elsewhere in the same district.**

4

5 Mr. Palmgren stated that special conditions and circumstances DO exist which are peculiar to the land or

6 structure involved, which are not applicable to other similarly situated land and structures elsewhere in the

7 same district because the land is not farmable because it is too wet. He said that the land is family owned

8 and with the improvements the land is no longer suitable for agriculture.

9

10 Mr. Thorsland stated that the improvements were completed before the maximum lot size requirement was

11 adopted.

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

16

17 Mr. Miller stated that practical difficulties or hardships created by carrying out the strict letter of the

18 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure

19 or construction because the improvements, such as the pond, have already occurred as well as other

20 landscape items.

- 21
- 22 **3. The special conditions, circumstances, hardships or practical difficulties DO NOT**
- 23 **result from actions of the applicant.**

24

25 Mr. Thorsland stated that the special conditions, circumstances, hardships or practical difficulties DO NOT

26 result from actions of the applicant because the existing and proposed expansion is all under the same

27 ownership by one family. He said that a minimum amount of farmland will be removed from production.

- 28
- 29 **4. The requested variance IS in harmony with the general purpose and intent of the**
- 30 **Ordinance.**

31

32 Mr. Thorsland stated that the requested variance IS in harmony with the general purpose and intent of the

33 *Ordinance* because the variance will include all of the improvements that were made before 2004 before the

34 maximum lot size requirement was adopted.

35

36 Mr. Miller stated that the surrounding property to the north and the south of the subject property are also

37 residential type uses.

- 38
- 39 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
- 40 **detrimental to the public health, safety or welfare.**

41

42 Mr. Palmgren stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise

43 detrimental to the public health, safety or welfare because there are residences to the north and south of the

44 subject property and the ground is poor for agriculture and is family owned.

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Mr. Thorsland stated that no additional dwellings are proposed therefore no additional traffic will be created.

6. The requested variance IS the minimum variation that will make possible the reasonable use of the land or structure.

Mr. Thorsland stated that the requested variance IS the minimum variation that will make possible the reasonable use of the land or structure because the variance will allow all features to be accommodated in one lot.

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

Mr. Schroeder moved, seconded by Mr. Miller to close the public hearing for Case 644-V-09. The motion carried by voice vote.

Mr. Bluhm informed Mr. Ingersoll that the Board has one member absent from tonight’s meeting and it is at his discretion if the Board moves forward to the Final Determination or continues Case 644-V-09 to a later date when a full Board is present. He noted that it will take four positive votes in his favor to approve the variance.

Mr. Ingersoll requested that the present Board continue to the Final Determination.

Final Determination:

Mr. Thorsland moved, seconded by Mr. Palmgren that the Champaign County Zoning Board of Appeals finds that, based upon the application, testimony and other evidence received in this case, that the requirements of Section 9.1.9.C., HAVE been met and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that the variance requested in Case 644-V-09 is hereby GRANTED to the petitioner, Michael Wood, to authorize the creation and use of a lot that is 5.5 acres in area on best prime farmland in lieu of the maximum allowed three acres on best prime farmland.

The roll was called:

Capel-absent	Courson-yes	Miller-yes
Palmgren-yes	Schroeder-yes	Thorsland-yes
Bluhm-yes		

Mr. Hall informed Mr. Wood that he has received approval of his request and staff will send him the appropriate paperwork as soon as possible.

Mr. Bluhm stated that the Board will now return to Case 637-V-08, Mick and Leah Harshbarger.

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7. Staff Report

None

8. Other Business

Mr. Hall stated that Case 634-AM-08, Part A will go back to ELUC on May 11th and staff is still anticipating County Board action on May 21st.

Mr. Knight stated that he just returned from the American Planning Association National Conference and attended a session on residential scale wind turbines and planning in pipeline areas. He said that last year this Board amended the Ordinance regarding pipeline setbacks and based on what he heard it appears that the County did a good job. He said that the Pipeline and Hazardous Materials Safety Administration has a document coming out this summer with recommendations but it sounds like the County's *Ordinance* will probably meet those recommendations.

Mr. Schroeder stated that if the Board would like to see what type of damages will be incurred during the construction of the wind farms they should drive down, south of Tuscola, and witness what the installation of the new underground pipelines destroyed. He said that it is his understanding that the new pipeline travels from the east coast to the west coast and there isn't a thing that the landowners can do about its installation and the damages that the installation causes. He said that this Board is an important entity for such matters.

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

None

10. Adjournment

Mr. Palmgren moved, seconded by Mr. Thorsland to adjourn the April 30, 2009, public hearing. The motion carried by voice vote.

The meeting adjourned at 8:14 p.m.

Respectfully submitted

ZBA

AS APPROVED JUNE 25, 2009

4-30-09

Secretary of Zoning Board of Appeals

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