

# CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **June 25, 2009**  
Time: **7:00 p.m.**  
Place: **Lyle Shields Meeting Room  
Brookens Administrative Center  
1776 E. Washington Street  
Urbana, IL 61802**

**Note: NO ENTRANCE TO BUILDING  
FROM WASHINGTON STREET PARKING  
LOT AFTER 4:30 PM.  
Use Northeast parking lot via Lierman Ave.,  
and enter building through Northeast  
door.**

*If you require special accommodations please notify the Department of Planning & Zoning at  
(217) 384-3708*

**EVERYONE MUST SIGN THE ATTENDANCE SHEET – ANYONE GIVING TESTIMONY MUST SIGN THE WITNESS FORM**

## AGENDA

1. Call to Order
2. Roll Call and Declaration of Quorum
3. Correspondence
4. Approval of Minutes (April 30, 2009)
5. Continued Public Hearings

**Note: Case 611-AM-08 and Case 648-S-09  
have been withdrawn by the  
Petitioners**

**Case 611-AM-08** Petitioner: **Casey's Retail Company and Henri Merkelo**

Request: **Amend the Zoning Map to change the zoning district designation from the R-5 Manufactured Home Park Zoning District to the B-4 General Business Zoning District.**

Location: **A 1.04 acre tract in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 10 of Urbana Township and commonly known as the vacant house at 2218 East University Avenue, Urbana.**

**\*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;**
  - 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;**

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**\*Case 637-V-08 cont.:**

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.**

6. New Public Hearings

**\*Case 648-S-09** Petitioner: **Casey's General Stores, Inc., Terry W. Handley, President; Michael R. Richardson, Vice-President; Russell D. Sukut, Vice President; Robert C. Ford, Vice President; Eli J. Wirt, Secretary; William J. Walljasper, Treasurer; and Julia L. Jackowski, Assistant Secretary**

Request: **Authorize the construction and use of a "Gasoline Service Station" as a Special Use in the B-2 Neighborhood Business Zoning District.**

Location: **A 1.04 acre tract in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 10 of Urbana Township and commonly known as the vacant house at 2218 East University Avenue, Urbana.**

7. Staff Report

8. Other Business

**A. Discussion of docket space for Wind Farm CBSUP**

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

10. Adjournment

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**\* Administrative Hearing. Cross Examination allowed.**



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.

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

11  
12 Mr. Hall stated that the following should be added as a new Item #10.G: if the subject property were in a  
13 residential zoning district the minimum required side yard for detached accessory buildings would only be  
14 five feet. The subject property is in a residential subdivision but not in a residential zoning district and there  
15 are no agricultural activities occurring on the adjacent property.

16  
17 Mr. Hall stated that the following should be added as a new Item #11.D: A number of neighbors have  
18 submitted letters of opposition to the requested variance: (1) In a letter dated April 21, 2009, Pamela and  
19 Doug Wendt who reside at 1365 CR 2545E, Ogden, testified that they knew to get a zoning use permit when  
20 they built a garage and they are opposed to granting the requested variance for the play house and pool pump  
21 house; (2) In a letter dated April 22, 2009, John and Michelle Johlas who reside at 1375 CR 2545E, Ogden,  
22 testified that they knew to get a zoning use permit when they built a garage and they are opposed to granting  
23 the requested variance for the play house and the pool pump house; (3) In a letter dated April 23, 2009,  
24 Duane and Nicole Setterdahl who reside at 1376 CR 2545E, Ogden testified that they are opposed to  
25 granting the requested variance for the play house and the pool pump house; (4) In a letter dated April 20,  
26 2009, Jim and Terri Rein who reside at 1361 CR 2545E, Ogden testified that they are opposed to the  
27 requested variance; (5) in a letter dated April 22, 2009, Jim and Nada Cagle who reside at 2547 CR 1375N,  
28 Ogden testified that they are opposed to the requested variance; and (6) in a letter dated April 28, 2009,  
29 Geoff and Jannah Coon who reside at 1374 CR 2545E, Ogden testified that they are opposed to the  
30 requested variance.

31  
32 Mr. Bluhm asked the Board if there were any questions for Mr. Hall.

33  
34 Mr. Palmgren asked Mr. Hall to explain the relevance of Case 643-V-08 to Case 637-V-08.

35  
36 Mr. Knight stated that the indication of Case 643-V-08 is in error and there is no relevance to this case.

37  
38 Mr. Bluhm called Mr. Mick Harshbarger to testify.

39  
40 Mr. Harshbarger, who resides at 2545 CR 1375N, Ogden, submitted, to the Board for review and as  
41 Documents of Record, photographs of the subject property and a letter dated April 28, 2009, in favor of his  
42 requested variance from Michael and Renee Gabbard, who reside at 1379 CR 2545E, Ogden. He also  
43 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.

2

3 Mr. Bluhm asked the Board if there were any questions for Mr. Harshbarger.

4

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.

13

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

1 distance from the centerline of the road and that information has not been submitted to date. He asked Mr.  
2 Harshbarger if he was positive that the garage is 25 feet from the front property line along CR 2545E.

3  
4 Mr. Harshbarger stated yes.

5  
6 Mr. Hall asked Mr. Harshbarger if there are any other issues related to the placement of the pool pump house  
7 that the Board should be aware of.

8  
9 Mr. Harshbarger asked Mr. Hall if he means relocation issues.

10  
11 Mr. Hall stated no, but why the pool pump house is located at its current location.

12  
13 Mr. Harshbarger stated that the pool pump house is located at its current location because that is the location  
14 where the pool installers roughed in all of the plumbing and there is a propane tank sitting next to it.

15  
16 Mr. Hall asked Mr. Harshbarger if there was a reason why the pool was located so far away from the house.

17  
18 Mr. Harshbarger stated no.

19  
20 Mr. Hall stated that he did not know if perhaps the location was due to the existence of a septic tank or leach  
21 field near the house.

22  
23 Mr. Harshbarger stated no.

24  
25 Mr. Bluhm asked Mr. Harshbarger if in front of the storage shed and over to the property line is basically all  
26 rock area.

27  
28 Mr. Harshbarger stated yes.

29  
30 Mr. Hall asked Mr. Harshbarger if he could guess at this time what it would cost to move the pool pump  
31 house.

32  
33 Mr. Harshbarger stated no. He said that he would have to bust up concrete to move all of the plumbing.

34  
35 Mr. Hall asked Mr. Harshbarger if the structure is such that it could be broken loose from the foundation and  
36 moved.

37  
38 Mr. Harshbarger stated yes.

39  
40 Mr. Bluhm stated that the existing plumbing runs from the pool to the existing location.

41  
42 Mr. Harshbarger stated yes and also the power.

1 Mr. Thorsland asked Mr. Harshbarger if he installed the plumbing for the pool or did the pool contractors.  
2  
3 Mr. Harshbarger stated that the pool contractors installed the plumbing.  
4  
5 Mr. Courson asked Mr. Hall if pools are required to obtain a building permit.  
6  
7 Mr. Hall stated yes.  
8  
9 Mr. Courson asked Mr. Hall if Mr. Harshbarger obtained a permit for the pool.  
10  
11 Mr. Hall stated that he applied for the zoning use permit for the pool after it was constructed.  
12  
13 Mr. Bluhm asked Mr. Harshbarger if there was a fence around the pool.  
14  
15 Mr. Harshbarger stated yes.  
16  
17 Mr. Thorsland asked Mr. Harshbarger if he has considered purchasing land from the property to the south of  
18 his property.  
19  
20 Mr. Harshbarger stated that he has not spoken to the owners about such a purchase.  
21  
22 Mr. Hall informed Mr. Harshbarger, as a contractor, to submit a cost estimate for relocation of the pool  
23 pump house. He said that the cost estimate would not have to be at Mr. Harshbarger's cost but could  
24 indicate the fees incurred for hiring another contractor for relocation. He said that it would help the Board,  
25 in the decision, if he could acquire additional land along the south lot line from his neighbors. He said that  
26 perhaps the neighbors would be interested in selling but if they are perhaps the price is unreasonable. He  
27 said that this information would assist the Board in weighing this issue of buildings being built too close to  
28 the lot line without permits. He said that there is an irony to this situation because the neighbors, who are  
29 not builders, knew that permits were required.  
30  
31 Mr. Harshbarger noted that Mr. Hall just indicated that no permits were required.  
32  
33 Mr. Hall stated that the pool required a permit.  
34  
35 Mr. Harshbarger stated that he did pay for the pool permit.  
36  
37 Mr. Hall stated yes, but it was after the fact. He said that given what is on the ground now it would assist the  
38 Board to have the two requested items of evidence to weigh the cost of relocation or the cost of purchasing  
39 other land. He said that very often the finding will indicate that there is no additional land available for  
40 purchase.  
41  
42 Mr. Miller stated he would make it clear to Mr. Harshbarger that this is not a situation that the Board would  
43 expect to rubber stamp and send the petitioner on with a good night therefore additional information is

1 required.

2  
3 Mr. Thorsland asked Mr. Harshbarger if the playhouse was attached to the ground.

4  
5 Mr. Harshbarger stated that the playhouse is on 6' x 6' runners.

6  
7 Mr. Bluhm asked the Board if there were any additional questions for Mr. Harshbarger and there were none.

8  
9 Mr. Bluhm asked if staff had any additional questions for Mr. Harshbarger and there were none.

10  
11 Mr. Bluhm asked the audience if anyone in the audience desired to cross-examine Mr. Harshbarger and there  
12 was no one.

13  
14 Mr. Bluhm called Ms. Leah Harshbarger to testify.

15  
16 Mr. Leah Harshbarger declined to speak at this time.

17  
18 Mr. Bluhm called Angela Stammer to testify.

19  
20 Ms. Angela Stammer, who resides at 1377 CR 2545E, Ogden read a prepared statement and submitted a  
21 copy of her statement as a Document of Record. Ms. Stammer thanked the Board for the opportunity to  
22 speak regarding the variances requested by Mr. and Mrs. Harshbarger. She said that she and her husband  
23 Steve live at 1377 CR 2545E which is located north of the Harshbarger's home. She implored the Zoning  
24 Board of appeals to deny the request for variances. She said that the reason that they bought the property  
25 they did when they were building their home had much to do with the large lots and the fact that these homes  
26 were not on top of each other. She said that she works in Champaign and her husband works in Urbana and  
27 when they were ready to build they looked at lots in Champaign and Urbana. She said that they found that  
28 the majority of the houses and out structures seemed to be too close together. She said that a co-worker of  
29 Steve's told him about her neighborhood near Homer Lake and when they went to look at the property they  
30 fell in love. She said that they weighed the fact that it was approximately 25 miles each way to and from  
31 work against having room to breathe and not feel penned in. They made their decision that this is where they  
32 wanted to build their home and live and if this variance is allowed it is a slippery slope. She said that all of a  
33 sudden the homes and any extra buildings begin to pile up and become just like living in town and this  
34 would adversely affect the home values of everyone else in the subdivision. She said that most of the people  
35 who live in their subdivision work in the Champaign-Urbana area and if the homes are now as close together  
36 as the homes in town why would anyone tack on the extra time and money it takes to drive to work. She  
37 said that if they are going to be squeezed together they might as well live in town and if the Board grants one  
38 variance, in all fairness it will have to grant all of them. She said that the Harshbargers are asking for 3 feet  
39 6 inches but what happens when the next person wants 3 feet, then 2 feet 6 inches, where will it stop.

40  
41 Ms. Stammer stated that Mr. Harshbarger states that he did not know about the 10 foot setback and let's  
42 assume for one minute that we believe that statement from someone in the construction business. She said  
43 that she does not believe that ignorance is an excuse for following the law because if she is pulled over for

1 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  
2 still receive a ticket. She said that it is her responsibility to know the law just as it was the Harshbarger's  
3 responsibility to know the zoning laws. She said that if a permit had been pulled any claimed ignorance  
4 would have been settled at that time.  
5

6 Ms. Stammer stated that aesthetics are said to play a part in minimum yard requirements and she can tell the  
7 Board that the Harshbarger's property is not aesthetically pleasing. She said that the property appears overly  
8 crowded and this is once again a detriment to the property values of all 12 houses in the subdivision as well  
9 as those along CR 2550 East. She said that if she was looking for a house to buy today this would be  
10 something that would turn her off. She said that a point was made that the lots in this neighborhood are  
11 large and that is correct. She said that please keep in mind that they paid for these lots and specifically chose  
12 them because of their size. She said that the Harshbargers also have a large lot and should have had  
13 adequate room to build structures within the setbacks. She said that she was taught at an early age that life is  
14 about choices and that we cannot have everything that we want, want being the relevant word. She said that  
15 she and her husband are not asking that this family be denied any needs and if a child is offered a choice  
16 between cake, cookies and pie that child is not given all three just because that is what he or she wants. She  
17 said that if the Harshbargers were unable to build a large garage, a pool with a pump house and a play house  
18 within the legally defined limits of their lot then they should have chosen what was most important. She said  
19 that if all of us put building within just a few feet of the property lines safety does become an issue and just  
20 because the Wendt's built their house at the other end of their property does not make the entire lot any less  
21 theirs nor should they have to suffer. She said that Mrs. Wendt described to her how the plan to plant trees  
22 on her property is what led to the discovery of the encroachment on her property line. Ms. Stammer stated  
23 that this is not what she considers acceptable behavior and does not want the same thing happening to her  
24 and she would daresay no member of the Board would like his or her property to be violated in this way.  
25

26 Ms. Stammer stated that the Harshbarger's built not one but two structures out of compliance with existing  
27 rules and are now asking for a variance therefore this is a case of beg forgiveness rather than ask permission  
28 and allowing this variance is not a good precedence to set. She asked what kind of message does this give to  
29 the community as a whole because if you do not like a rule, break it and then get the rule changed for  
30 yourself. She said that this when extrapolated out would allow Rod Blagojevich to still be our Governor and  
31 not be indicted you want to sell a Senate seat, go ahead and do it and just make it legal after the fact. She  
32 said that if variances are granted just because it is more convenient for one person to ignore them then why  
33 do we have any rules at all and why should those of us who follow the rules be made to suffer. She said that  
34 she has seen other neighbors who built additional structures follow the rules by getting permits first and  
35 following the rules regarding setbacks and if these variances are granted where is the incentive for others to  
36 do the same.  
37

38 Ms. Stammer begged the Board to deny these variances and instead maintain the integrity of the place she  
39 and other families have chosen to call home and not reward those who thumb their noses at the rules.  
40

41 Mr. Bluhm asked the Board if there were any questions for Ms. Stammer and there were none.  
42

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

1  
2 Mr. Bluhm asked the Mr. Harshbarger if he desired to cross examine Ms. Stammer and he did not.

3  
4 Mr. Bluhm asked the audience if anyone desired to cross examine Ms. Stammer and there was no one.

5  
6 Mr. Bluhm called Mr. Steven Stammer to testify.

7  
8 Mr. Steven Stammer, who resides at 1377 CR 2545 East, Ogden read a prepared statement and submitted a  
9 copy of the statement as a Document of Record. Mr. Stammer stated that he resides at 1377 CR 2545 East,  
10 Ogden in the Ingram's Deer Ridge Subdivision. He said that he is present at tonight's hearing to speak about  
11 the variance requests by Mr. Harshbarger, He said that as to this request he finds it hard to believe that Mr.  
12 Harshbarger did not know about the ten foot setback from the property line. He said that Mr. Harshbarger  
13 runs a construction business and if he is ignorant as to the Zoning Ordinance for setbacks and building  
14 permits then he wonders how his business survives. Mr. Stammer said that he has worked in construction in  
15 the past and even designed and contracted to have his house built in 2001, and even he, a person who does  
16 not do this for a living knew about the setback ordinance and the need for a building permit. He said that  
17 other neighbors who have put up their own accessory structures all knew to get the required permits and  
18 placed them within the property setbacks. He said that he understands that the pool house is built on a  
19 concrete slab and that it would be a lot of work to move it but since Mr. Harshbarger owns a construction  
20 business he should be able to relocate these structures easier than anyone else in the neighborhood.

21  
22 Mr. Stammer stated that they bought their lot in this subdivision because they liked the small size, the large  
23 lots and the open feel and the quiet of the country. He said that at the time when Mr. Harshbarger bought his  
24 house there were several large tracts of land that were for sale within a 10 mile radius where they were not  
25 located in a subdivision where he could erect any size structure he wanted without disturbing his neighbors.

26  
27 Mr. Stammer urged the Board to protect the neighborhood they bought into when they moved there and deny  
28 the petition to allow the operation of a business in this residential neighborhood. He also urged the Board to  
29 ensure that this contractor learns his lesson and researches local ordinances before building structures by  
30 making him move his structures into compliance. He said that he believes that an honest man does not  
31 follow the adage "Beg forgiveness, not permission."

32  
33 Mr. Bluhm asked the Board if there were any questions for Mr. Stammer and there were none.

34  
35 Mr. Bluhm asked if staff had any questions for Mr. Stammer and there were none.

36  
37 Mr. Bluhm asked Mr. Harshbarger if he desired to cross examine Mr. Stammer and he did not.

38  
39 Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Stammer and there was no one.

40  
41 Mr. Bluhm called Ms. Pamela Wendt to testify.

42  
43 Ms. Pamela Wendt, who resides at 1365 CR 2545 East, Ogden read a prepared statement and submitted a

1 copy of her statement as a Document of Record. Ms. Wendt stated that she resides at 1365 CR 2545 East,  
2 Ogden with her husband and two young children and their property lies adjacent to the Harshbarger property  
3 to the south. She said that the Board has before them a plethora of letters that speak for themselves and the  
4 authors of those letters are currently at the spring concert with their children. The letters include concerns  
5 related to child safety, aesthetics, decline in property values and damage to property.  
6

7 Ms. Wendt stated that she would like to address the confusion relating to the previously listed variance  
8 request #C. She said that they are aware that Mr. Harshbarger has a Neighborhood Home Business he runs  
9 out of his house and garage. She said that in the past, the NHO rules have not been followed by Mr.  
10 Harshbarger and if the NHO rules are followed in the future Mr. Harshbarger will not have any vehicles,  
11 construction equipment or trailers on his property unless they are in a closed garage. She said that this will  
12 certainly decrease some concerns.  
13

14 Ms. Wendt stated that the vast majority of homeowners are aware of setbacks and individuals employed in  
15 the construction business certainly should be attuned to the rules of the *Champaign County Zoning*  
16 *Ordinance* and regulations of such businesses. She said that blatant disregard for the building setback rules  
17 is not an excuse for seeking variances and in the case of the Harshbargers the following occurred: (1) Mr.  
18 Harshbarger did not follow the rules set forth by the covenants governing Ingram’s Third Subdivision; (2)  
19 Mr. Harshbarger did not request a building permit prior to building the pool house or play house; (3) Mr.  
20 Harshbarger did not follow the setback requirements specified in the *Zoning Ordinance*; (4) Mr. Harshbarger  
21 utilized their property to obtain access to and build his pool and pool house causing damage to their property  
22 on three occasions; and (5) Mr. Harshbarger installed landscaping around his pool and pool house on their  
23 property.  
24

25 Ms. Wendt stated that in an attempt to address the above issues she went to speak with Mr. Harshbarger and  
26 he replied in an aggressive and assaultive manner stating that she wasn’t using her property therefore she  
27 should not be concerned. She said that for obvious reasons this was and is unacceptable. She said that if the  
28 Board chooses to allow the variances at stake they would be setting a precedent for others who blatantly  
29 disregard the rules and regulations set forth by the County and those that the other neighbors in the  
30 community follow.  
31

32 Ms. Wendt stated that Mr. Harshbarger chose to build three buildings without a permit and two of those  
33 buildings are in violation of the setback requirements set forth by the County. She said that when asked why  
34 a variance should be granted Mr. Harshbarger replied “look(s) great with house and garage and pool.” She  
35 said that this is not a reason to grant a variance.  
36

37 Mr. Bluhm asked the Board if there were any questions for Ms. Wendt.  
38

39 Mr. Thorsland asked Ms. Wendt how she would feel about selling a small portion of her property to Mr.  
40 Harshbarger.  
41

42 Ms. Wendt stated that she would have to discuss this issue with her family.  
43

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

2

3 Ms. Wendt stated yes.

4

5 Mr. Bluhm asked if the Board had any additional questions for Ms. Wendt and there were none.

6

7 Mr. Bluhm asked if staff had any questions for Ms. Wendt and there were none.

8

9 Mr. Hall clarified that there were three buildings constructed, two of which did not need a permit but did  
10 require variances. He said that the storage building that is being used for the Neighborhood Home  
11 Occupation did not require any variances, but did require a permit which Mr. Harshbarger did not get  
12 until after the building had been constructed. He said that the pool was also built without a permit  
13 therefore everything on the property that Mr. Harshbarger has added was done without following the  
14 rules.

15

16 Mr. Bluhm asked Mr. Harshbarger if he desired to cross examine Ms. Wendt and he did not.

17

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

19

20 Mr. Bluhm called Mr. Jim Harper to testify.

21

22 Mr. Harper declined to speak at this time.

23

24 Mr. Bluhm asked the audience if anyone else in the audience desired to sign the witness register to present  
25 testimony regarding Case 637-V-08 and there was no one.

26

27 Mr. Bluhm closed the witness register.

28

29 Mr. Bluhm noted that the Zoning Board of Appeals has no jurisdiction over covenants of a subdivision  
30 therefore any testimony regarding covenant violations is not an issue that the Board can address.

31

32 Mr. Bluhm stated that Ms. Wendt clarified in her testimony that most of the people who submitted letters  
33 regarding this case are absent due to a previously scheduled school spring concert for their children.

34

35 Mr. Thorsland stated that he counted seven letters of opposition.

36

37 Mr. Palmgren requested a clarification of the permit situation. He said that the playhouse and pool house did  
38 not need a permit because they were too small but their location is at issue. He asked if the house had a  
39 permit issued and is there anything else on the lot that has issues. He asked what the note was about  
40 regarding floor plan and finished floor.

41

42 Mr. Hall stated that the house had a permit issued. He said that Ingram's Subdivision is not located in the  
43 mapped floodplain but it does have lots that are subject to flooding and it is connected to the mapped

1 floodplain therefore floor elevations must be verified. He said that since the garage was built without a  
2 permit it is possible that the garage was built too low but based on the letter that Mr. Harshbarger submitted  
3 at tonight's meeting it may be okay therefore the permit could be issued once the variances are completed.  
4 He said that the permits for the pool and the garage have been applied for but cannot be approved until the  
5 variances are addressed.

6  
7 Mr. Courson stated that he would like to review some cost estimates to move the pool house and have the  
8 Petitioner make a good faith effort to contact adjacent property owners to see if any property is available for  
9 purchase.

10  
11 Mr. Bluhm stated that the Board will have to address that issue in the finding and at this point it is unknown  
12 if any additional land is available.

13  
14 Mr. Thorsland stated that he would assume that the cost to move the playhouse would be low but it would be  
15 nice to have that information.

16  
17 Mr. Bluhm asked the Board if there was anything else that staff needs to investigate or that the Petitioner  
18 should submit before the continuance date.

19  
20 Mr. Palmgren asked when the aerial photograph was shot.

21  
22 Mr. Hall stated 2008.

23  
24 Mr. Thorsland clarified that the truck and trailer should be stored inside the storage shed.

25  
26 Mr. Hall stated that Mr. Harshbarger can have one vehicle outside but everything else has to be inside.

27  
28 Mr. Thorsland stated that if the property was located in a residential district the setback for the accessory  
29 structures would be five foot but vehicles would have to be inside.

30  
31 Mr. Hall stated that in a residential zoning district there would be an absolute limit to how many vehicles  
32 could be had.

33  
34 Mr. Thorsland stated that in the CR District there is a 10 foot setback for an accessory structure but the  
35 vehicles can be outside.

36  
37 Mr. Hall stated yes but no more than one vehicle could be stored outside.

38  
39 Mr. Bluhm requested clarification as to if only the truck could be outside or could the truck and trailer be  
40 stored outside.

41  
42 Mr. Hall stated that his interpretation is that a trailer could be attached to the vehicle but the trailer itself  
43 could not be outside. He said the trailer could not sit outside by itself because it would be considered

1 outdoor storage unless it is attached to the vehicle.

2  
3 Mr. Bluhm requested a continuance date.

4  
5 Mr. Hall stated that the May 28<sup>th</sup> hearing is going to be exclusively for Casey’s General Store. Cases 611-  
6 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  
7 take two hearings to complete. He said that the public hearing for June 11<sup>th</sup> is for Case 634-AM-08, Part B,  
8 and one additional case. He recommended that Case 637-V-08 be continued to the June 25, 2009, public  
9 hearing.

10  
11 **Mr. Thorsland moved, seconded by Mr. Schroeder to continue Case 637-V-08 to the June 25, 2009,**  
12 **public hearing. The motion carried by voice vote.**

13  
14 Mr. Hall informed Mr. Harshbarger that he can contact the office at anytime regarding any questions that he  
15 may have and recommended that he obtain the requested information as soon as possible so that it can be  
16 ready for the June 25, 2009, public hearing.

17  
18 **Case 644-V-09 Petitioner: Michael Wood Request: Authorize the creation and use of a lot that is 5.5**  
19 **acres in area on best prime farmland in lieu of the maximum allowed three acres on best prime**  
20 **farmland. Location: A 5.5 acre tract in the West half of the West half of the Southwest quarter of the**  
21 **Southwest Quarter of Section 19 of Pesotum Township and commonly known as the house at 202 CR**  
22 **600E, Pesotum.**

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

32  
33 Mr. Bluhm asked the Board if there were any questions for Mr. Hall and there were none.

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

1 Mr. Bluhm called Mr. Merle Ingersoll to testify.  
2

3 Mr. Merle Ingersoll, Engineer for HDC Engineering, stated that he is representing Michael Wood who is  
4 requesting a variance so that he can extend his property boundaries to what is shown on the exhibit before  
5 the Board. He said that the land Mr. Wood owns currently and all of the land adjacent to him has been  
6 owned by his immediate family and his parents have lived in the farmstead, directly south of his home, and  
7 they own all of the land which surrounds Mr. Wood's homestead. Mr. Ingersoll stated that Mr. Wood's  
8 parents deeded one acre to Tom Wood, Michael's brother, in 1977 and 1.16 acres to Michael in 1984. He  
9 said that all of the improvements which have been completed on Michael's land and the adjacent land were  
10 done between 1984 and 2004, with his parent's permission. He said that the original thought was that as  
11 Michael could afford it he could expand his property.  
12

13 Mr. Ingersoll stated that approximately 3.87 acres of the land is not being used for agriculture and all  
14 improvements were completed before 2004. He said that approximately the 1.34 acres of land that has been  
15 requested in the variance has an existing drainage way and during the rainy season a majority of the land  
16 does pond because the swale to the west is not low enough to drain it properly and until they cut the swale a  
17 little deeper it will not drain well. He said that Michael envisions planting grass, trees and possibly an  
18 orchard and a constructing a storage shed on the high ground. Mr. Ingersoll stated that he contacted the  
19 Champaign County Highway Department for right-of-way information and Mr. John Cooper reported that  
20 the recorded right-of-way easement for township road 600E was 40 feet wide. Mr. Ingersoll stated that  
21 originally he thought that the pond may be an issue but it has been measured and calculated to be  
22 approximately 29,000 square feet or 0.67 acres. He said that he is available to answer any technical  
23 questions that the Board may have but he believes that most of the information has been included in the  
24 memorandum.  
25

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

28 Mr. Bluhm asked if staff had any questions for Mr. Ingersoll and there were none.  
29

30 Mr. Bluhm asked the audience if there were any questions for Mr. Ingersoll and there was no one.  
31

32 Mr. Bluhm asked the Board if there was any further discussion regarding this case and there was none.  
33

34 Mr. Bluhm asked the audience if anyone desired to present testimony regarding Case 644-V-08, and there  
35 was no one.  
36

37 Mr. Bluhm closed the witness register for Case 644-V-08.  
38

39 **Summary of Evidence for Case 644-V-08:**  
40

41 Mr. Hall stated that Item #7.D should be revised to indicate the following: The northern approximately 1.7  
42 acres of land which is currently in use a farmland is problematic for modern farm equipment and is adjacent  
43 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

new Item #10.F. should be added as follows: Merle Ingersoll testified at the public hearing on April 30, 2009, that the surface area of the pond is .67 acres which is less than one acre and is fully conforming.

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

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 644-V-09 held on April 30, 2009, the Zoning Board of Appeals of Champaign County finds that:

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

Mr. Palmgren stated that special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because the land is not farmable because it is too wet. He said that the land is family owned and with the improvements the land is no longer suitable for agriculture.

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

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

Mr. Miller stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or construction because the improvements, such as the pond, have already occurred as well as other landscape items.

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

Mr. Thorsland stated that the special conditions, circumstances, hardships or practical difficulties DO NOT result from actions of the applicant because the existing and proposed expansion is all under the same ownership by one family. He said that a minimum amount of farmland will be removed from production.

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

Mr. Thorsland stated that the requested variance IS in harmony with the general purpose and intent of the Ordinance because the variance will include all of the improvements that were made before 2004 before the maximum lot size requirement was adopted.

1 Mr. Miller stated that the surrounding property to the north and the south of the subject property are also  
2 residential type uses.

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

7 Mr. Palmgren stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise  
8 detrimental to the public health, safety or welfare because there are residences to the north and south of the  
9 subject property and the ground is poor for agriculture and is family owned.

10  
11 Mr. Thorsland stated that no additional dwellings are proposed therefore no additional traffic will be created.

12  
13 **6. The requested variance IS the minimum variation that will make possible the**  
14 **reasonable use of the land or structure.**  
15

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

19  
20 **Mr. Thorsland moved, seconded by Mr. Palmgren to adopt the Summary of Evidence, Documents of**  
21 **Record and Finding of Fact as amended. The motion carried by voice vote.**  
22

23 **Mr. Schroeder moved, seconded by Mr. Miller to close the public hearing for Case 644-V-09. The**  
24 **motion carried by voice vote.**  
25

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

30  
31 Mr. Ingersoll requested that the present Board continue to the Final Determination.  
32

33 **Final Determination:**  
34

35 **Mr. Thorsland moved, seconded by Mr. Palmgren that the Champaign County Zoning Board of**  
36 **Appeals finds that, based upon the application, testimony and other evidence received in this case,**  
37 **that the requirements of Section 9.1.9.C., HAVE been met and pursuant to the authority granted by**  
38 **Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of**  
39 **Champaign County determines that the variance requested in Case 644-V-09 is hereby GRANTED to**  
40 **the petitioner, Michael Wood, to authorize the creation and use of a lot that is 5.5 acres in area on best**  
41 **prime farmland in lieu of the maximum allowed three acres on best prime farmland.**  
42

43 The roll was called:

4-30-09

DRAFT

SUBJECT TO APPROVAL

DRAFT

ZBA

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Capel-absent  
Palmgren-yes  
Bluhm-yes

Courson-yes  
Schroeder-yes

Miller-yes  
Thorsland-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.

**7. Staff Report**

None

**8. Other Business**

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

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.

**ZBA**

**DRAFT**

**SUBJECT TO APPROVAL**

**DRAFT**

**4-30-09**

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Respectfully submitted

Secretary of Zoning Board of Appeals

# CASE NOS. 611-AM-08 & 648-S-09

SUPPLEMENTAL MEMORANDUM

June 19, 2009

Champaign  
County  
Department of



Petitioners: **Casey's Retail Company  
and Henri Merkelo**

Request: **Amend the Zoning Map to  
change the zoning district  
designation from the R-5  
Manufactured Home Park Zoning  
District to the B-2 Neighborhood  
Business Zoning District.**

Site Area: **approx. 1.04 acres**

Time Schedule for Development:  
**Immediate**

Prepared by: **J.R. Knight**  
Associate Planner  
**John Hall**  
Zoning Administrator

Location: **A 1.04 acre tract in the  
Southwest Quarter of the Southwest  
Quarter of the Southwest Quarter of  
Section 10 of Urbana Township and  
commonly known as the vacant  
house at 2218 East University  
Avenue, Urbana.**

**Brookens  
Administrative Center**  
1776 E. Washington Street  
Urbana, Illinois 61802

(217) 384-3708  
FAX (217) 328-2426

---

## STATUS

This case was continued from the May 14, 2009, public hearing. This is the third meeting for this case. Staff was notified by Pat Fitzgerald, local attorney for the petitioner, that Casey's would be withdrawing their requests for rezoning and a Special Use Permit. On June 18, 2009, the City of Urbana received email notice from Casey's that they were withdrawing their requests. A copy of that email is attached.

---

## ATTACHMENT

- A Email from Doug Beech, Casey's Retail Company, to Rebecca Bird, City of Urbana, received on June 18, 2009

**James R. Knight**

**From:** James R. Knight  
**Sent:** Friday, June 19, 2009 8:35 AM  
**To:** James R. Knight  
**Subject:** FW: Casey's

**From:** doug.beech@caseys.com [mailto:doug.beech@caseys.com]  
**Sent:** Thursday, June 18, 2009 8:19 AM  
**To:** Bird, Rebecca  
**Cc:** kelly.read@caseys.com; stacie.coomes@caseys.com  
**Subject:** RE:

Rebecca: Pat is correct. Casey's is no longer proposing to develop the property at 2218 E. University Ave.  
Thanks. Doug Beech

**From:** Bird, Rebecca [mailto:rlbird@city.urbana.il.us]  
**Sent:** Wednesday, June 17, 2009 4:05 PM  
**To:** Beech, Doug  
**Cc:** Read, Kelly  
**Subject:**

Hi, Doug--

I heard from Pat Fitzgerald that Casey's is no longer interested in developing 2218 E University Avenue. I am planning to cancel the public hearing on the annexation agreement between Casey's and the City, but need something official stating that Casey's is withdrawing their rezoning application and therefore will not be developing the site at 2218 E University Avenue and will not be entering into an annexation agreement with the City.

Can you send me something, even just a reply to this email would suffice?  
Regards,

*~Rebecca*

Rebecca Bird, Planner  
City of Urbana  
400 S. Vine St.  
Urbana, IL 61801

Phone: 217.384.2440 | Fax: 217.384.2367 | Email: [rlbird@city.urbana.il.us](mailto:rlbird@city.urbana.il.us) | [www.city.urbana.il.us](http://www.city.urbana.il.us)

# CASE NO. 637-V-08

SUPPLEMENTAL MEMORANDUM

June 19, 2009

Petitioners: **Mick & Leah Harshbarger**

Champaign  
County  
Department of



**Brookens**  
Administrative Center  
1776 E. Washington Street  
Urbana, Illinois 61802

(217) 384-3708  
FAX (217) 328-2426

Site Area: **approx. 1.0 acre**

Time Schedule for Development: **N/A**

Prepared by: **J.R. Knight**  
Associate Planner  
**John Hall**  
Zoning Administrator

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;**

**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.**

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.**

---

## *STATUS*

This is the second meeting for this case, it was continued from the April 30, 2009, ZBA meeting. Since that time the petitioner has obtained estimates for relocating the subject buildings in both Parts of this case, and those estimates are attached. The petitioner also told staff that there was no land available for purchase to mitigate the variance. The minutes of the last meeting are included separately for approval.

---

## **NEW EVIDENCE FOR SUMMARY OF EVIDENCE**

Please see the attached Revised Draft for the following changes:

1. New Item 7.F. on page 6 of 14
2. Deleted Item 8.B.(3) on page 6 of 14
3. Deleted Item 8.C.(3) on page 7 of 14
4. New Items 8.D., 8.E., and 8.F. on page 7 of 14
5. New Item 10.H. on page 9 of 14
6. Updated Documents of Record on pages 11 of 14 & 12 of 14

## **ATTACHMENTS**

- A Estimates for relocation of subject buildings, submitted by Mick Harshbarger on June 15, 2009
- B Letter from Michael and Renee Gabbard, received on April 30, 2009
- C Revised Summary of Evidence, Finding of Fact, and Final Determination for Case 637-V-08

## D & D Construction

37 Coachman Dr.  
Monticello, Il 61856  
217-762-2660  
217-530-1450 ( Cell )

**For: Mick Harshbarger**  
2545 County Rd 1375 N  
Ogden, Il 61859  
217-202-5550 ( Cell )  
217-582-2676 ( Fax )

### **WORK TO BE PERFORMED**

( ESTIMATE: Good for 30 days )

**Date: May 12<sup>th</sup>, 2009**

- Remove all landscape rock
- Remove propane tank and line
- Remove existing building
- Demo concrete slab
- Demo all plumbing supply
- Remove pump and filter housing
- Bring in new fill to match existing elevation
- Form up and tamp in area for building pad
- Run new plumbing
- Bring in new elec. supply
- Sleeve all lines
- Pour new building pad
- Set building back in place
- Reinstall landscaping
- Set propane tank back and run new line
- Lull Rental ( not included )

**Labor & Material: \$7,293.00**

RECEIVED

JUN 15 2009

CHAMPAIGN CO. P & Z DEPARTMENT

D & D CONSTRUCTION

37 Coachman Dr. • Monticello, IL. 61856

CONTRACTOR INVOICE #1112

- ▶ GENERAL CARPENTRY
- ▶ NEW CONSTRUCTION
- ▶ REMODELING

CELL: (217) 530-1450  
FAX: (217) 762-2660

INSURED/OWNER  
Darrell A. Miller

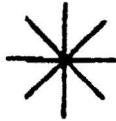
TO: MICHA Harshbarger  
ADDRESS: 2545 CO. Rd. 1375N.  
Ogden IL. 61859.  
ATTENTION:

JOB START DATE: APON Request  
PHONE NO.: 1-217(202)-5550  
JOB LOCATION: Ogden IL. 61859.  
TERMS:

QTY	MATERIAL	AMOUNT	DISCRIPTION WORK
4	6X6 X10'		Disassemble Building (Play House) From Existing post
1	yd CONCRETE.		dig & set New 6X6X10' Post let set & cure. Lift Building (Play House) Relocate to New Post Mount ..
1	Post hole digger - Rental		
1	LULL (Fork Lift) - Rental		
	Fasteners. 1 carton.		
			LABOR    HRS.    RATE    AMOUNT
			1        1\$
			1        1\$
TOTAL LABOR = \$			\$1050
TOTAL MATERIALS = \$			\$650.00
SUBTOTAL = \$			\$1,700.00
TAX = \$			
GRAND TOTAL = \$			\$1,700.00
CUSTOMER APPROVAL SIGNATURE <i>Michael Harshbarger</i>		CONTRACTOR SIGNATURE <i>Darrell A. Miller</i>	

THIS IS A: PARTIAL FULL INVOICE DUE AND PAYABLE BY: MONTH DAY YEAR

IN ACCORDANCE WITH OUR: AGREEMENT X PROPOSAL NO. 1 DATED: 6 10 2009.  
MONTH DAY YEAR



# MATTOON SPARKLE POOLS

P. O. BOX 893 • 612 SOUTH 17th STREET • MATTOON, IL. 61838

(217) 234-2054

DATE May 5, 2009

Mick Harshbarger

2545 Country Rd. 1375 N.

Ogden, IL. 61859

QTY	DESCRIPTION	AMOUNT
	c-202-5550	
	fax-582-2676	
	<b>**ESTIMATE**</b>	
	LABOR= time and materials	\$7,500.00
	**Tear out existing pump/filter housing and relocate	
	**Tear out existing plumbing and reroute to new housing location	
	**Tear out existing concrete housing currently located on and repair at new location	
	<b>**ESTIMATE GOOD FOR 30 DAYS**</b>	

PROBLEM SOLVING IS OUR  
 POLICY - THEREFORE  
 DUE UPON RECEIPT  
 OR  
 CREDIT COULD BE REFUSED!

TAX  
 TOTAL  
 DUE

THIS  
 IS NOT  
 A BILL

2% INTEREST PER MONTH AFTER 30 DAYS  
 YOU ARE SUBJECT TO PAY ANY/ALL COLLECTION DEBTS.

## RECEIVED

JUN 15 2009

CHAMPAIGN CO. P & Z DEPARTMENT

4/28/09

Gabbard

1379 County Road 2545 E  
Ogden, Illinois 61859  
217.582.2753

April 28, 2009

Champaign County Department of Planning and Zoning  
Brookens Administrative Center  
1776 East Washington Street  
Urbana, Illinois 61802

**RE: Case No. 643-V-08**  
**Petitioners: Mick & Leah Harshbarger**

To Whom It May Concern:

**Neighborhood Layout and Background**

We reside on the north end of County Road (CR) 2545 East, in a cul-de-sac with three (3) other homes. The middle of CR 2545E, where it intersects with CR 1375N, contains four (4) residences. Each residence is situated on approximately an acre or more respectively. The south end of CR 2545E currently has two (2) residences, each situated on an exponentially larger five (5) or more acre plot.

The neighborhood was developed with extra-large property lots, one of the reasons we selected this area and built our home here over four (4) years ago. No one home is too close to another with sizable distance between each dwelling, especially on the south end of CR 2545E, near the property in question. We believed peaceful, friendly living was the model, as the neighborhood used to assemble each fall for a social gathering, and that property concerns could be handled personally and amicably.

**Regarding Item C – Neighborhood Home Occupations – vehicles and business**

We were living here when Mick and Leah Harshbarger moved into their home at 2545 CR 1375N. Early on in their residence in the neighborhood, we may have seen more equipment and vehicles associated with Pickle Construction, a pre-existing business owned and operated by Mick Harshbarger, as he worked out how to juggle his equipment from work site to site. However, **for over a year now**, we have not seen a single piece of construction equipment or extra work-related vehicle at his residence, as he has worked out how to balance the storage issues of the past.

Therefore, we do not consider his business or his construction equipment to be a nuisance, safety issue for our small children, or problem to the neighborhood, given its imperceptible existence. We are pleased that Item C has been removed from the petition because of a zoning issue, since neighbors' previous concerns are no longer valid anyway.

**Regarding Items A and B – Property Variances on Two Structures**

Recent improvements upon the Harshbarger property at 2545 CR 1375N include a large, stunning in-ground swimming pool, extensive landscaping, attractive fencing, and picturesque lighting. Each addition has furthered the aesthetics of the home, property, and neighborhood.

The detached garage, referenced in item A of aforementioned variance request, is a beautiful addition to the property with windows, shutters, and siding to perfectly match the house. The pump house, referenced in item B of aforementioned variance request, is also an attractive match to the house and property setting, and a necessary part of an in-ground pool.

As we understand the matter of property setbacks, we believe this should apply more when the structure is encroaching upon another's residence, structures, or living space. Since the property immediately to the south of the Harshbarger property and the one sharing a property line with the two structures is on five (5) + acres of land, we fail to appreciate the importance of denying the variance request. The owners of the 5 acres to the south, Pamela and Douglas Wendt, have a dwelling positioned in the back southwest corner of their 5 acres. The Harshbarger's additional structures in question are near the Wendt's opposite northeast corner, a substantial distance from the Wendt's actual living space. The Wendts fail to mow and maintain their entire 5 acres, often ignoring the majority of the northeast portion of their property and letting it grow to non-residential heights throughout the summer, in an obvious non-utilization of this area. Also, the Wendts planted infant sapling pine trees along their northeast property line, adjacent to the structures in question, for privacy that they will appreciate in 20 years when the trees reach a mature size for such desired privacy from their considerable distance away.

**Summary**

The Harshbargers have been cordially willing to oblige the neighbors' requests within their abilities. Landscape was altered and storage issues were resolved. Everything was done by the Harshbargers to accommodate any inconveniences to others. The remaining property variances will not adversely affect the neighbors or neighborhood in any way.

We strongly agree with **approval of the property variances** as requested and would attend the meeting on Thursday, April 30 in support if we were not out of town on business. Should you need clarification or more information, please do not hesitate to contact us.

Respectfully,

  
Michael Troy Gabbard

  
Renee P. Gabbard

*REVISED DRAFT for June 19, 2009*

637-V-08

**FINDING OF FACT  
AND FINAL DETERMINATION  
of  
Champaign County Zoning Board of Appeals**

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Final Determination: *{GRANTED / GRANTED WITH SPECIAL CONDITIONS / DENIED}*

Date: June 25, 2009

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;
- 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.

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**SUMMARY OF EVIDENCE**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **April 30, 2009, and June 25, 2009**, the Zoning Board of Appeals of Champaign County finds that:

- 1. The petitioners, Mick and Leah Harshbarger, own the subject property.
- 2. The subject property is 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.
- 3. The subject property is not located within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning.

***GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY***

- 4. Regarding land use and zoning on the subject property and adjacent to it:
  - A. The subject property is zoned CR Conservation-Recreation and is in use as a single family dwelling. A Neighborhood Home Occupation is an accessory use on the subject property, and the petitioner has applied for a permit for the business.
  - B. Land south, east, and west of the subject property is zoned CR Conservation-Recreation and is in use as single family dwellings.

ITEM 4. CONTINUED

- C. Land to the north of the subject property is zoned AG-1 Agriculture and is in use as single family dwellings.

**GENERALLY REGARDING THE PROPOSED SITE PLAN**

5. Generally regarding the proposed site plan, there are several existing buildings and structures on the subject property, some of which were constructed without permits; however, the petitioner has submitted a Zoning Use Permit Application (ZUPA) for the unpermitted structures. Some of the buildings on the subject property require variances, as follows:
- A. The original house was constructed in 1997 under ZUPA 164-97-05. The house was permitted correctly and does not require a variance. The petitioner operates an office for his Neighborhood Home Occupation (NHO) out of his home.
- B. A large storage garage that was built without a permit, but does not appear to require any variances. The petitioner operates a NHO out of this garage.
- C. A swimming pool was constructed south of the house without a permit, but does not require any variances. The pool pump house is the detached accessory building in Part B of this case and is only three feet, six inches from the south lot line instead of the required 10 feet. The pool house is eight feet by 10 feet and is located between the pool and the storage garage.
- D. The detached accessory structure in Part A of this case is a play house that was constructed without a permit in the southwest corner of the subject property only four feet, two inches from the west lot line and only four feet from the south lot line instead of the required 10 feet in both instances. It is eight feet by eight feet and is four feet, six inches off the ground on treated posts.
- E. The petitioner's NHO is described on the application for a permit and in a written statement submitted with the site plan, as follows:
- (1) The business is named Pickle Construction. It is a construction business, apparently focusing on carpentry. As part of the NHO, the petitioner also does snow removal.
  - (2) The business is operated from an office in the single family dwelling and the large storage garage.
  - (3) The petitioner keeps one truck for use in the construction business and one truck for snow removal. An extra truck appears to be stored in the large storage garage, but is not used regularly. A trailer may be parked with the work truck outside the garage on the south side.
  - (4) The petitioner does not indicate any activities other than storage that take place on the subject property and indicates that no employees meet at the subject property for work.

**GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES**

6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variance (capitalized words are defined in the Ordinance):
- (1) "ACCESSORY BUILDING" is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE or the main or principal USE, either detached from or attached to the MAIN OR PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN OR PRINCIPAL STRUCTURE, or the main or principal USE.
  - (2) "ACCESSORY STRUCTURE" is a STRUCTURE on the same LOT with the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either DETACHED from or ATTACHED to the MAIN or PRINCIPAL STRUCTURE, subordinate to and USED for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
  - (3) "BUILDING, MAIN or PRINCIPAL" is the BUILDING in which is conducted the main or principal USE of the LOT on which it is located.
  - (4) "BUILDING RESTRICTION LINE" is a line usually parallel to the FRONT, side, or REAR LOT LINE set so as to provide the required YARDS for a BUILDING or STRUCTURE.
  - (5) "LOT" is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
  - (6) "LOT, CORNER" is a LOT located:
    - (a) At the junction of and abutting two or more intersecting STREETS; or
    - (b) At the junction of and abutting a STREET and the nearest shoreline or high water line of a storm or floodwater runoff channel or basin; or
    - (c) At and abutting the point of abrupt change of a single STREET where the interior angle is less than 135 degrees and the radius of the STREET is less than 100 feet.
  - (7) "LOT LINES" are the lines bounding a LOT.
  - (8) "LOT LINE, FRONT" is a line dividing a LOT from a STREET or easement of ACCESS. On a CORNER LOT or a LOT otherwise abutting more than one STREET or easement of ACCESS only one such LOT LINE shall be deemed the FRONT LOT LINE.

ITEM 6.A. CONTINUED

- (9) "LOT LINE, REAR" is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE or to a tangent to the midpoint of the FRONT LOT LINE. In the case of a triangular or gore shaped LOT or where the LOT comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at the maximum distance from the FRONT LOT LINE or said tangent.
- (10) "STORAGE" is the presence of equipment, or raw materials or finished goods (packaged or bulk) including goods to be salvaged and items awaiting maintenance or repair and excluding the parking of operable vehicles.
- (11) "VARIANCE" is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning Board of Appeals are permitted to grant.
- (12) "YARD" is an OPEN SPACE, other than a COURT, of uniform depth on the same LOT with a STRUCTURE, lying between the STRUCTURE and the nearest LOT LINE and which is unoccupied and unobstructed from the surface of the ground upward except as may be specifically provided by the regulations and standards herein.
- (13) "YARD, REAR" is a YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
- (14) "YARD, SIDE" is a YARD situated between a side LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT and extending from the rear line of the required FRONT YARD to the front line of the required REAR YARD.

B. Section 7.2.1, paragraphs B and C specify the required minimum side and rear yards for detached accessory buildings or structures in the AG-1, AG-2, and CR Districts as follows:

(1) SIDE YARD

No DETACHED ACCESSORY BUILDING or STRUCTURE shall be located less than 10 feet from any side LOT LINE.

(2) REAR YARD

No DETACHED ACCESSORY BUILDING or STRUCTURE shall be located less than 10 feet from any REAR LOT LINE.

C. The Department of Planning and Zoning measures yards and setbacks to the nearest wall line of a building or structure and the nearest wall line is interpreted to include overhanging balconies, projecting window and fireplace bulkheads, and similar irregularities in the building footprint. A roof overhang is only considered if it overhangs a property line.

ITEM 6. CONTINUED

- D. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
    - (a) That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
    - (b) That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
    - (c) That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
    - (d) That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.
    - (e) That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
  - (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9D.2.
- G. Paragraph 9.1.9.E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

**GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT**

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
- A. The Petitioner has testified on the application that, **“Pool Pump House.”**
  - B. Regarding the play house in Part A, it is located well away from any other structures on the subject property or neighboring lots. It is 64 square feet in area and is located across a drainage way from the rest of the subject property.
  - C. Regarding the pool pump house in Part B, it is located between the pool and the storage garage on the subject property, but there are no structures on the lot to the south within 350 feet of the pool pump house.

ITEM 7. CONTINUED

- D. Both structures in Parts A & B are less than 150 square feet in area and would not require a permit on their own. However, the pool pump house would presumably have been done at the same time as the pool, which did require a permit and the improper yard for the pump house could have been caught on the site plan for the pool.
- E. A 50 feet wide drainage easement crosses the southwest corner of the subject property and limits the location of structures along the south lot line as follows:
- (1) The play house 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.
  - (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.
- F. At the April 30, 2009, public hearing, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified to the following:
- (1) He was not aware that he needed a building permit for a detached garage or a play house.
  - (2) He has built these types of structures for many people in Champaign without obtaining a permit.
- G. At the April 30, 2009, public hearing, co-petitioner Mick Harshbarger, owner and operator of Pickle Construction, testified that there was no particular reason why the pool was located so far from the house on the subject property.

**GENERALLY REGARDING ANY PRACTICAL DIFFICULTIES OR HARDSHIPS RELATED TO CARRYING OUT THE STRICT LETTER OF THE ORDINANCE**

8. Generally regarding the Zoning Ordinance requirement of a finding that practical difficulties or hardships related to carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot:
- A. The Petitioner has testified on the application that, **“Power, plumbing, heater, gas line.”**
- B. Regarding Part A of the proposed variance:
- (1) The drainage way that cuts across the south west corner of the subject property somewhat restricts the placement of the play house in that area, but there appears to be sufficient area to relocate the play house so that it conforms to the minimum required yards.
  - (2) It appears the play house would be less difficult to move than the pool pump house because it is off the ground on treated posts.
  - (3) ~~The lot to the south has excess area that, if available at a reasonable price, could obviate the need for the variance.~~

C. Regarding Part B of the proposed variance:

- (1) The pool pump house is located adjacent to the deepest part of the pool.

ITEM 8.C. CONTINUED

- (2) The pool pump house is located on a concrete foundation and is connected to several utilities that serve the pool which would make relocating the pump house expensive.

- (3) ~~The lot to the south has excess area that, if available at a reasonable price, could obviate the need for the variance.~~

- (3) There appears to be adequate area on the subject property for relocation of the pump house.

D. At the April 30, 2009, public hearing, Pamela Wendt, the neighbor who owns the property adjacent to the pump house, testified to the following:

- (1) Mr. Harshbarger utilized [her] property to obtain access to and to build his pool and pool house causing damage to [her] property on three occasions.

- (2) Mr. Harshbarger installed landscaping around his pool and pool house on [her] property.

- (3) In an attempt to address the above issues she went to speak with Mr. Harshbarger and he replied in an aggressive and assaultive manner stating that she wasn't using her property therefore she should not be concerned.

E. The petitioner has asserted to staff that there is no land available for purchase from the Wendts to mitigate the amount of variance.

F. If the variance is not granted the structures in Parts A & B will have to be torn down or relocated, since there is no land available. The petitioners have submitted estimates from two contractors for relocation of the pool pump house and the play house, as follows:

- (1) D&D Construction provided an estimate for both the pool pump house and the play house, as follows:

- (a) The pool pump house would cost \$7,293 to relocate.

- (b) The play house would cost \$1,700 to relocate.

- (2) Mattoon Sparkle Pools only provided an estimate for relocating the pool pump house for \$7,500.

**GENERALLY PERTAINING TO WHETHER OR NOT THE PRACTICAL DIFFICULTIES OR HARDSHIPS RESULT FROM THE ACTIONS OF THE APPLICANT**

9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:

- A. The Petitioner has testified on the application that, **“I built pool pump house and did not know there was a 10 foot setback.”**
- B. The location of the drainage way on the subject property was determined when the subject property was platted as part of Ingram’s Third Subdivision.

***GENERALLY PERTAINING TO WHETHER OR NOT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE***

- 10. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance is in harmony with the general purpose and intent of the Ordinance:
  - A. The Petitioner has testified on the application that, **“Looks great with house and garage and pool.”**
  - B. The Zoning Ordinance does not clearly state the considerations that underlay the side and rear yard requirements. In general, the side yard is presumably intended to ensure the following:
    - (1) Adequate light and air: The structures in question are accessory structures which do not noticeably affect the amount of light and air available on the large lots in this neighborhood.
    - (2) Separation of structures to prevent conflagration: Structures in the rural zoning districts are generally located farther from fire protection stations than structures in the urban districts and the level of fire protection service is generally somewhat lower given the slower response time. The subject property is within the Ogden/Royal Fire Protection District and the station is approximately four road miles from the subject property.
    - (3) Aesthetics may also play a part in minimum yard requirements.
  - C. The subject property conforms to all other *Zoning Ordinance* requirements. The case was advertised with a variance from the Neighborhood Home Occupation regulations for number of vehicles and outdoor storage, but those variances no longer appear to be necessary, as follows:
    - (1) While preparing the Preliminary Memorandum, staff reviewed the requirements for NHO’s and realized that their limit on the number of commercial vehicles only applies in a residential zoning district (see Subsection 7.1.1, attached to the Preliminary Memorandum), and the subject property is zoned Conservation-Recreation which is not a residential district.
    - (2) Staff also realized that the definition of STORAGE specifically excludes parking of operable vehicles, and it is the petitioner’s testimony that he only parks his work vehicle and a trailer outdoors (see Item 5.E. above)
  - D. The proposed site plan indicates the following required amounts of variance:
    - (1) In Part A of the proposed variance, the proposed side yard of four feet is 40% of the required 10 feet for a variance of 60%, and the proposed rear yard of four feet, two inches is 41.7% of the required 10 feet for a variance of 58.3%.

(2) In Part B of the proposed variance, the proposed side yard of three feet, six inches is 35% of the required 10 feet for a variance of 65%.

F. The requested variance is not prohibited by the *Zoning Ordinance*.

ITEM 10. CONTINUED

G. If the subject property were in a residential zoning district the minimum required side yard for detached accessory buildings would be only five feet. The subject property is in a residential subdivision but not in a residential zoning district ~~and there are no agricultural activities occurring on the adjacent property.~~

H. The petitioner in this case is the owner and operator of a construction business and has asserted in the public hearing that he has constructed buildings in the City of Champaign without obtaining permits, so he was unaware of the need for permits in the County.

I. Staff requested Mr. Harshbarger measure the distance from the centerline of the road to the detached garage and that information has not been submitted to date.

J. At the April 30, 2009, public hearing, Pamela Wendt, neighbor to the south of the subject property testified that the reason Mr. Harshbarger gave on his application, "looks great with house and garage and pool," is not a reason to grant the variance.

**GENERALLY PERTAINING TO THE EFFECTS OF THE REQUESTED VARIANCE ON THE NEIGHBORHOOD AND THE PUBLIC HEALTH, SAFETY, AND WELFARE**

11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:

A. The Petitioner has testified on the application that, **"The closest house is 2.5 acres away."**

B. The Fire Protection District has received notice of this variance, but no comments have been received.

C. The Township Highway Commissioner has also received notice of this variance, but no comments have been received.

D. A number of neighbors have submitted letters of opposition to the requested variance:

(1) In a letter dated April 21, 2009, Pamela and Doug Wendt who reside at 1365 CR2545E, Ogden, bordering the subject property on the south, testified that they knew to get a zoning use permit when they built a garage and they are opposed to granting the requested variance for the play house and the garage.

(2) In a letter dated April 22, 2009, John and Michelle Johlas who reside at 1375 CR2545E, Ogden, testified that they knew to get a zoning use permit when they built a garage and they are opposed to granting the requested variance for the play house and the garage.

- (3) In a letter dated April 23, 2009, Duane and Nicole Setterdahl who reside at 1376 CR2545E, Ogden testified that they are opposed granting the requested variance for the play house and the garage.
- (4) In a letter dated April 20, 2009, Jim and Terri Rein who reside at 1361 CR2545E, Ogden testified that they are opposed to the requested variance.
- (5) In a letter dated April 22, 2009, Jim and Nada Cagle who reside at 2547 CR1375N, Ogden testified that they are opposed to the requested variance.

ITEM 11.D. CONTINUED

- (6) In a letter dated April 28, 2009, Geoff and Jannah Coon who reside at 1374 CR2545E, Ogden testified that they are opposed to the requested variance.

E. At the April 30, 2009, public hearing, Angela Stammer, neighbor to the north of the subject property, testified as follows:

- (1) The Harshbargers are asking for three feet, six inches, but what happens when the next person wants three feet, and then two feet, six inches, where will it stop.
- (2) Aesthetics are to play a part in minimum yard requirements and the Harshbargers' property is not aesthetically pleasing. The property appears overly crowded and this is in detriment to the property values of all 12 houses in the subdivision as well as those along CR 2550E.
- (3) If variances are granted because it is more convenient for one person to ignore [the rules] then why do we have rules at all and why should those who follow the rules be made to suffer. She has seen other neighbors who built additional structures follow the rules by getting permits first and following the rules regarding setbacks. If these variances are granted where is the incentive for others to do the same.
- (4) She asked the Board to maintain the integrity of the place her family and other families have chosen to call home and not reward those who thumb their nose at the rules.

F. At the April 30, 2009, public hearing, Steven Stammer, neighbor to the north of the subject property, testified that the Board should ensure this contractor learns his lesson and researches local ordinances before building structures by making him move his structures into compliance.

12. Elsewhere on the application the Petitioner has stated, **"It is on concrete and the plumbing and power is coming up in the center of pump house."**

**DOCUMENTS OF RECORD**

1. Variance application from Mick and Leah Harshbarger, received on September 23, 2008, with attachments:
2. Supplemental information from Mick Harshbarger received on February 3, 2009:
  - A Site plan
  - B Floor plan of pool pump house
  - C Diagram of pool
  - D Elevation drawing of storage garage
  - E Floor plan of storage garage
  - F Floor plan of play house
  - G Written statement regarding NHO operations
3. Letter of opposition from neighbors Pamela and Doug Wendt, received on April 23, 2009, with attachments:
  - A Photographs of subject property
  - B Excerpt of the Covenants of Deer Ridge Subdivision
4. Letter of opposition from neighbors John and Michelle Johlas, received on April 23, 2009
5. Letter of opposition from neighbors Duane and Nicole Setterdahl, received on April 23, 2009
6. Letter of opposition from neighbors Jim and Terri Rein, received on April 23, 2009
7. Letter of opposition from neighbors James and Nada Cagle, received on April 23, 2009
8. Preliminary Memorandum for Case 598-V-07, with attachments:
  - A Case Maps (Location, Land Use, Zoning)
  - B Site plan received on February 3, 2009
  - C Floor plan of pool pump house received on February 3, 2009
  - D Diagram of pool received on February 3, 2009
  - E Elevation drawing of storage garage received on February 3, 2009
  - F Floor plan of storage garage received on February 3, 2009
  - G Floor plan of play house received on February 3, 2009
  - H Written statement regarding NHO operations received on February 3, 2009
  - I Neighborhood Home Occupation Permit Application for Pickle Construction
  - J GIS 2008 aerial photograph of subject property
  - K Subsection 7.1.1 of *Zoning Ordinance*
  - L Letters from neighbors Pamela & Doug Wendt, John & Michelle Johlas, Duane & Nicole Setterdahl, Jim & Terri Rein, and James & Nada Cagle (attached separately)
9. Supplemental Memorandum for Case 637-V-08, dated April 30, 2009, with attachments:
  - A Letter from J.R. Knight to Mick & Leah Harshbarger, dated January 21, 2009
  - B Excerpt of Site Plans for Ingram's Third Subdivision

- C     Letters from neighbors Geoff and Jannah Coon, & Nathan and Melinda Roberts
  
- 10.    Written statement from neighbor Angela Stammer, read April 30, 2009
  
- 11.    Written statement from neighbor Steve Stammer, read April 30, 2009
  
- 12.    Written statement from neighbor Pamela Wendt, read April 30, 2009
  
- 13.    Estimates for relocation of subject buildings, submitted by Mick Harshbarger on June 15, 2009
  
- 14.    Supplemental Memorandum for Case 637-V-08, dated June 19, 2009, with attachments:
  - A     Estimates for relocation of subject buildings, submitted by Mick Harshbarger on June 15, 2009
  - B     Letter from Michael and Renee Gabbard, received on April 30, 2009
  - C     Revised Summary of Evidence, Finding of Fact, and Final Determination for Case 637-V-08

**FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **637-V-08** held on **April 30, 2009**, the Zoning Board of Appeals of Champaign County finds that:

1. Special conditions and circumstances *{DO / DO NOT}* exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied *{WILL / WILL NOT}* prevent reasonable or otherwise permitted use of the land or structure or construction because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. The special conditions, circumstances, hardships, or practical difficulties *{DO / DO NOT}* result from actions of the applicant because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. The requested variance *{SUBJECT TO THE PROPOSED CONDITION}* *{IS / IS NOT}* in harmony with the general purpose and intent of the *Ordinance* because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. The requested variance *{SUBJECT TO THE PROPOSED CONDITION}* *{WILL / WILL NOT}* be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
6. The requested variance *{SUBJECT TO THE PROPOSED CONDITION}* *{IS / IS NOT}* the minimum variation that will make possible the reasonable use of the land/structure because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
7. ***{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE COMPLIANCE WITH THE CRITERIA FOR SPECIAL USE PERMITS AND FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}***

**FINAL DETERMINATION**

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/HAVE NOT}* 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 **637-V-08** is hereby *{GRANTED/GRANTED WITH CONDITIONS/DENIED}* to the petitioners, **Mick and Leah Harshbarger**, to authorize **the following in the CR Conservation-Recreation 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.**

*{SUBJECT TO THE FOLLOWING CONDITION(S):}*

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Doug Bluhm, Chair  
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date