

AS APPROVED MAY 26, 2011

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: April 28, 2011

**PLACE: Lyle Shields Meeting Room
1776 East Washington Street**

TIME: 7:00 p.m.

Urbana, IL 61802

MEMBERS PRESENT: Catherine Capel, Thomas Courson, Roger Miller, Melvin Schroeder, Eric Thorsland, Paul Palmgren

MEMBERS ABSENT : None

STAFF PRESENT : Lori Busboom, John Hall, Susan Monte

OTHERS PRESENT : Mick Harshbarger. Sherry Schildt, Herb Schildt

1. Call to Order

The meeting was called to order at 7:07 p.m.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

3. Correspondence

There was none.

4. Approval of Minutes (March 24, 2011)

Mr. Miller moved, seconded by Ms. Capel to approve the March 24, 2011 minutes as submitted. The motion carried by voice vote.

5. Continued Public Hearing

Case 677-V-10 Petitioner: Mick and Leah Harshbarger Request: Authorize the occupancy and use of an existing detached accessory structure with a setback of 47 feet and 6 inches from CR 2545, a minor street, in lieu of the minimum required setback of 55 feet and a front yard of 17 feet and 6 inches from the front property line in lieu of the minimum required front yard of 25 feet and located in the AG-1 district. 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. Thorsland informed those present 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 stated that a new memorandum had been distributed. He said that attached to that memorandum is a letter from staff to the Ogden Township Highway Road Commissioner. Mr. Hall stated that he had a meeting with the Ogden Township Highway Commissioner who stated that he was comfortable with the proposed special conditions which also means he is comfortable with the garage staying where it is. Mr. Hall noted that the Ogden Township Highway Commissioner had written 'OK' and signed his name at the bottom of the letter.

Mr. Hall said that he had an opportunity to discuss the proposed special conditions prior to the public hearing with Mr. Harshbarger. He noted that Mr. Harshbarger indicated to him that he had not received a copy of the letter to the Ogden Township Road Commission outlining the proposed conditions prior to the public hearing.

Mr. Hall stated that the proposed conditions are not substantially different from what had been discussed at the previous hearing.

Mr. Hall said that he had asked the Assistant State's Attorney to be in attendance at the public hearing, however, she was not able to attend. Mr. Hall said that he asked her several questions that the Board may have had if she had been in attendance. That discussion has been summarized in the new memorandum, starting off with the duty of the Zoning Board of Appeals is to assure compliance with the Champaign County Zoning Ordinance. He said that the Board can only approve a variance if a positive finding can be made on all required criteria. If a positive finding is made on all but one of the criteria, the variance cannot be approved. He noted that approval of a variance takes four affirmative votes. As Board members move to adopt the Findings of Fact, if the Findings are affirmative and the Board members as individuals, then you, as individual Board members, should not vote to approve the Findings if you cannot support approval of the variance. This will ensure the Final Determination is consistent with the Findings.

Mr. Hall said that denial of a variance should only occur when denial is the only determination consistent with the evidence and the required Findings, which means it's the only way to achieve harmony with the general intent and purpose of the Zoning Ordinance and the only way to ensure no

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1 resulting injury to the neighborhood, or other detriment to the public health, safety and welfare. Mr. Hall
2 said that if the Board denies the request based on good faith evaluation of the evidence, they should not
3 worry about any subsequent penalties to the County or court action.
4

5 Mr. Hall reiterated that the Board's task is to make a good faith evaluation of the evidence and vote as
6 they see fit.
7

8 Mr. Hall said that after the discussion with the Assistant State's Attorney, not all relevant evidence had
9 been included with the Summary of Evidence. He noted that he drafted new evidence for the Board's
10 consideration. This evidence need only be included if the Board believes it to be relevant. Mr. Hall
11 continued by saying if it is not relevant, the new evidence will only be added as a Document of Record.
12

13 Mr. Hall said, regarding Item 7 on the Summary of Evidence which is required Finding #1, regarding the
14 special conditions and circumstances which are peculiar to the land or structure which are not applicable
15 to similarly situated land or structures, staff has evidence that talks about special conditions and
16 circumstances. He said that in fact the same conditions and circumstances to apply to other lots,
17 however, those are still special conditions and circumstances. Mr. Hall continued by saying that even
18 though that is the case, those things have existed all of the time that lot has existed, therefore, the
19 purchaser of this lot should be well aware of those conditions and circumstances. He said that possible
20 new evidence for Item 7 would be Item E which would read 'Site plan for Zoning Use Permit 266-08-09
21 indicated an adequate front yard but the subject building was not built in conformance with the site plan
22 due to an error by the builder.'
23

24 Mr. Hall noted that if the site plan had been received prior to construction, staff would have based their
25 site plan review and approval on that measurement, however, the garage would have still been
26 constructed in the same location, which would still require a variance.
27

28 Mr. Hall stated that he did not believe there was any new evidence required for Item 8. The existing
29 evidence supports any possible determination the Board may make.
30

31 Mr. Hall said that possible new evidence relevant to Item 9, which is Finding #3, which is whether or not
32 special conditions result from actions of the applicant. Mr. Hall noted that a new Item 9.D. could read
33 'The petitioner was familiar with all of the peculiarities of the subject property and still indicated an
34 adequate front yard on the site plan for Zoning Use Permit 266-08-09.
35

36 Mr. Hall said that possible new evidence for Item 10, which is Finding #4, regarding whether granting of
37 the Variance would be in harmony with the general purpose and intent of the Zoning Ordinance, would
38 be new Item 10.H and would read as follows, 'Equipment for the Home Occupation is in the subject
39 building and parking related to the Home Occupation is likely to occur at the subject building even
40 though there is inadequate space between the building and the street right-of-way. Special conditions
41 have been proposed to mitigate parking encroachment into the right-of-way but those conditions rely on

1 enforcement by the Department of Planning and Zoning and place an unusual and unreasonable burden
2 on the Department.’ Mr. Hall noted that he would feel more comfortable to saying ‘place an unusual
3 burden on the Department’ and leave out the word ‘unreasonable.’ He noted that the Board could make
4 the determination whether it may be an unreasonable burden on the Department.
5

6 Mr. Hall said that whenever the Board places a special condition on a variance, there is the possibility of
7 additional work for the Department. He said that if the Board believes the condition to be reasonable,
8 then it should be imposed. He said that he believes the conditions to be feasible, otherwise he said that
9 he would not have suggested them to be imposed.
10

11 Mr. Hall noted that there is new evidence for Item 11, which is Finding #5, regarding whether the
12 granting of the variance would be injurious to the neighborhood or otherwise detrimental. He said that
13 the same evidence for Item 10 is relevant for Item 11. He pointed out that a special condition such as
14 the one suggested, requires enforcement. In this instance, there is a trigger mechanism so if the
15 condition is violated three times, the case must come before the Board, however, some of the issues are
16 how likely is it to be followed, the strain on the Department and if the conditions are not being followed,
17 then there is a result on the neighborhood. Mr. Hall said that he believed those statements to be true
18 whether the case is approved or not. Mr. Hall said that he looks at this evidence as valid, however, if the
19 Board feels that this information is not relevant, then it does not have to be added to the Summary of
20 Evidence.
21

22 Mr. Hall said that, regarding Finding #6, regarding the minimum variance to make possible the
23 reasonable use of the structure, there is no new evidence. The variance requested is the minimum
24 required to make the structure conform to the Zoning Ordinance.
25

26 Mr. Hall stated that since the memorandum was distributed at the meeting, Mr. Harshbarger had not had
27 a chance to review the additional evidence. Mr. Hall said that it was his understanding that Mr.
28 Harshbarger had not seen the revised Summary of Evidence that was sent in the mailing.
29

30 Mr. Courson asked Mr. Hall to review the procedures the Department uses when receiving a complaint
31 and enforcement of the requirements. Mr. Hall said that a valid complaint must be received by the
32 office that is documented. He said that if the Department only receives telephone calls without
33 supporting documentation or direct physical evidence, nothing can be done.
34

35 Mr. Hall said that once the Department receives a complaint, a site visit is made to obtain photographic
36 evidence. If a complainant submits dated photographs to the Department it is enough evidence to begin
37 the notification process, however, it may not be enough evidence should the case end up in court.
38

39 Mr. Courson asked how many man hours are used when conducting a nuisance investigation. Mr. Hall
40 said that if three dated photographs are received within a short period of time, a notice can be sent out.
41 The time for something like that is minimal. Mr. Hall said that a lot of time is consumed in visiting the

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1 site, taking and processing photographs and sending out written notices.
2
3 Ms. Capel said that if there is a bona fide safety issue every time a vehicle is parked there, however, it
4 may not seem like an issue that triggers a complaint from a neighbor.
5
6 Mr. Hall pointed out that the petitioner testified at the last public hearing that the vehicle used in the
7 Home Occupation is parked at the other driveway off of the east – west road. Mr. Hall said that the
8 reason that he drafted the condition is so that the petitioner’s testimony regarding where the vehicle is
9 parked becomes a requirement. Mr. Hall noted that the building where the Home Occupation occurs is
10 the building which requires a variance. He said that in weighing these items, it becomes a question of
11 whether parking the vehicle on the east – west road will happen one hundred percent of the time.
12
13 Mr. Thorsland asked whether the conditions that are in the memorandum are the same ones that the
14 Township Road Commissioner reviewed. Mr. Hall said that that is correct.
15
16 Mr. Hall noted that in Condition 12.D. which refers to the condition above, that should refer to ‘C’ not
17 ‘D.’
18
19 Mr. Harshbarger asked for a few moments to review the memorandum and conditions.
20
21 Mr. Courson asked whether it was correct that the garage was constructed prior to applying for a Zoning
22 Use Permit and submitting a site plan. Mr. Hall said that that was correct.
23
24 Mr. Courson asked whether the variance that was previously issued would become invalid because this
25 structure is not in compliance with the Zoning Ordinance provisions. Mr. Hall said that that was a
26 separate issue.
27
28 Mr. Hall noted that even though the Board approved one part of that previous variance for special
29 conditions, in that instance staff was aware of the need for a variance because the site plan indicated
30 insufficient yards. In this instance, staff had no idea that a variance was required because the site plan
31 indicated that the detached garage was in conformance.
32
33 Mr. Harshbarger stated that the conditions are acceptable to him.
34
35 Mr. Courson asked Mr. Harshbarger if he built the subject garage. Mr. Harshbarger stated that he was
36 the builder.
37
38 Mr. Courson asked Mr. Harshbarger if he drew the site plan. Mr. Harshbarger stated that he drew the site
39 plan that was submitted with the Zoning Use Permit for the detached garage.
40
41 Mr. Thorsland asked whether there was anyone in the audience who wished to cross-examine Mr.

1 Harshbarger or provide additional testimony. He noted that there was no one.

2
3 **Mr. Palmgren moved, seconded by Mr. Courson to close the witness register. The motion carried**
4 **by voice vote.**

5
6 Mr. Thorsland noted that Mr. Hall had pointed out several items that could be added to the Summary of
7 Evidence if the Board desired to have them added.

8
9 Mr. Thorsland said that the first item that could be added is in reference to the site plan submitted with
10 the Zoning Use Permit which indicated the front setbacks, however, the building was not built in
11 conformance to the requirements of the Zoning Ordinance. Mr. Hall noted that if this item is added, it
12 should be added as Item 7F.

13
14 Mr. Hall noted that under Item 7.C.1., it would help to add the word ‘subject’ after the word ‘the’ so
15 there would be no doubt which garage was being discussed.

16
17 Mr. Thorsland asked whether there was anyone on the Board who would not want this added as Item F.
18 There was no objection from the Board.

19
20 Mr. Thorsland asked whether Item 3D, with respect to the petitioner being aware of all of the
21 peculiarities of the subject property and still indicated an inadequate front yard on the site plan for
22 Zoning Use Permit 266-08-09, should be added to the Finding of Fact. There was no objection from the
23 Board.

24
25 Mr. Thorsland asked whether Item 10, under Finding 4, there is a suggested Item H that would also go
26 under Item 11.E., Finding 5, with respect to the equipment used in the Home Occupation being stored in
27 the subject building and parking related to the Home Occupation is likely to occur at the subject building
28 even though there is inadequate space between the subject building and the front yard. He noted that the
29 words ‘too much’ and the words ‘and unreasonable’ were deleted from the last sentence. There was no
30 objection from the Board.

31
32 Mr. Thorsland said that there were several conditions that could be imposed. He noted that the petitioner
33 and the Township Highway Commissioner have deemed the proposed conditions acceptable.

34
35 Mr. Thorsland noted that on Page 11, 12 and 13, one correction was made in reference to ‘condition C
36 above’ which should be condition ‘D.’

37
38 Mr. Miller asked whether there was an outcome of the discussion at the previous public hearing
39 regarding the placement of ‘no parking’ signs in the driveway at the point where the public right-of-way
40 begins to ensure that vehicles did not protrude into the right-of-way. Mr. Miller said that the signs
41 would alert guests and the general public that parking beyond a certain point is a violation. Mr. Hall

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1 agreed with Mr. Miller and said that he previously mentioned the signs mainly as a heads up to future
2 purchasers of the property also.
3
4 Mr. Miller noted that the responsibility to ensure the parking requirements are adhered to still falls on
5 the property owner.
6
7 Mr. Thorsland asked whether Mr. Miller wanted to make a condition regarding the installation of ‘no
8 parking’ signs.
9
10 Mr. Miller said that the condition could be as simple as stating ‘The petitioner shall be required to post
11 “No Parking Signs” on the property at the end of the concrete approach to the garage.
12
13 Mr. Hall said that this adds a complication. He asked what exactly was the Board’s intentions with the
14 installation of “No Parking” signs.
15
16 Mr. Harshbarger asked what would be the maximum length of vehicle that could be parked in front of
17 the garage. Mr. Hall said that he could park a vehicle no longer than 17 feet 6 inches, or as long as the
18 existing concrete pad. Mr. Hall noted that the Zoning Ordinance requires parking spaces to be a
19 minimum of 20 feet in length.
20
21 Mr. Miller said that he wanted to make it clear that the petitioner was aware that parking beyond the
22 existing concrete pad would be a violation of the variance case and would be ultimately the petitioner or
23 future property owner’s responsibility to make sure that the conditions imposed in this case are adhered
24 to.
25
26 Mr. Harshbarger asked whether letters could be sent to the neighbors alerting them to the parking
27 requirements on his property and also the complaint process should he or someone visiting his home
28 violate the requirements. Mr. Thorsland said that Mr. Harshbarger could send letters, however, staff or
29 the Board would not send those letters.
30
31 Mr. Hall said that the space in front of the garage is not legally a parking space. He said you could park
32 a vehicle that is 16 feet long, however, you would be within 18 inches of the garage for the vehicle to not
33 encroach into the right-of-way. He added that no matter the size of the vehicle, if it encroaches into the
34 right-of-way, it is a violation.
35
36 Ms. Capel asked whether the driveway was paved. Mr. Harshbarger said that half of the drive is paved.
37
38 Mr. Harshbarger asked what would happen if the garage met the 25 feet front yard and a vehicle that was
39 24 feet long was parked two feet away from the garage. Mr. Hall said the vehicle would still encroach
40 into the right-of-way, however, the Board would not be condoning the vehicle parking in a variance case.
41

1 Mr. Thorsland asked the Board whether they wanted to consider imposing a condition with respect to
2 placement of 'no parking' signs. Mr. Miller said that he would withdraw the request.

3
4 Mr. Harshbarger stated that he believed the concrete pad was poured out to the edge of the property line,
5 which was 17 feet 6 inches. He said that he could install a sign that says 'no parking beyond concrete.'
6 Mr. Hall said that a safe sign like that would ensure that anyone could follow the requirements. He
7 added that the petitioner taking the initiative to install a conservative sign is a good idea. Installing a
8 sign to the Board's exact specifications makes it more complicated.

9
10 Mr. Hall said that if the Department receives three dated photographs of vehicles in Mr. Harshbarger's
11 driveway which violated the variance conditions, and ultimately discover that those vehicles were not
12 there at Mr. Harshbarger's invitation, in other words were a set up, then that is an entirely different
13 matter which would not be prosecuted.

14
15 Mr. Courson said that he could see where placing too many conditions on variance cases could
16 potentially take up a large portion of the Department's time in investigating complaints. He added that
17 if people continuously continue to build structures in the County and then ask for a variance after the fact
18 it puts undue hardship upon the County government because property owners are not taking a
19 responsibility to ensure that the regulations are adhered to. Mr. Courson said that it is really upsetting
20 when builders are the ones who come before the Board to request a variance after the fact. He noted that
21 Mr. Harshbarger was not the only builder that has been in front of the Board, however, that as a builder,
22 there is an added layer of responsibility for finding out what are the requirements are before
23 construction.

24
25 Mr. Hall added that this is one of the few variances that have come before the Board when there has
26 been a need to address the parking.

27
28 Mr. Thorsland said that this case has a few unique situations. He said that in the previous variance case
29 Mr. Harshbarger testified that the garage was 25 feet from the property line. He added that the township
30 received Motor Fuel Tax dollars for the maintenance of the road, therefore, it requires closer scrutiny.
31 Mr. Thorsland stated that variance cases are not decided because too many builders failed to adhere to
32 the regulations, however, the Board does like to see a little more following of the letter of the law.

33
34 Mr. Thorsland asked Mr. Harshbarger whether he received the case memorandum in time to review the
35 proposed conditions. Mr. Harshbarger said that he received the memorandum at the beginning of the
36 public hearing.

37
38 Mr. Thorsland asked Mr. Harshbarger whether he received the Summary of Evidence for review. Mr.
39 Harshbarger said that he received a letter approximately a month ago stating that he would receive a
40 packet of information a week before the public hearing.

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1 Mr. Hall noted that that was the letter that was supposed to include the proposed conditions. Mr.
2 Harshbarger said that he received two pieces of paper. Mr. Hall said that that would have been the letter
3 and the proposed conditions. He added that apparently Mr. Harshbarger did not receive the Summary of
4 Evidence. Mr. Harshbarger stated that he did not receive any of the above mentioned documents.

5
6 Mr. Miller asked Ms. Busboom whether there is a fine assessed when staff discovers construction
7 without a permit. Ms. Busboom replied that there used to be a small fine in place, but it was ineffective
8 because it wasn't a hardship to the larger construction companies who, for the most part, knew that a
9 permit was required but wanted to get their projects underway without waiting for the permit approval
10 process. Ms. Busboom said that currently, if someone fails to obtain a Zoning Use Permit after being
11 notified that one is needed, they could be subject to a fine of \$100 to \$500 per day for each day the
12 violation exists if the case goes before a judge.

13
14 Mr. Hall noted that he has discussed the letter issue with Mr. Harshbarger who agreed that he did receive
15 the letter with the conditions. Mr. Hall noted that Mr. Harshbarger apparently did not receive the
16 Summary of Evidence. He said that he does have a concern with Mr. Harshbarger not having enough
17 time to review and absorb the information in the memorandum.

18
19 Mr. Thorsland asked Mr. Harshbarger if he would like to request a continuance of the public hearing to
20 allow time to read the Summary of Evidence. Mr. Harshbarger said that he would be comfortable
21 moving ahead with a decision this evening.

22
23 **Ms. Capel moved, seconded by Mr. Schroeder to approve the Special Conditions as described in**
24 **the Summary of Evidence submitted on April 28, 2011. The motion carried by voice vote.**

25
26 Mr. Thorsland said that the letter to the Township Highway Commissioner, Greg Frerichs, and his
27 response, should be added as Item 5 of the Documents of Record.

28
29 Mr. Thorsland said that the Supplemental Memorandum dated April 28, 2011 should be added as Item 6
30 of the Documents of Record.

31
32 Mr. Hall said that new evidence should be added to Page 11 under Item 11C., with respect to the
33 Township Highway Commissioner, and revise as follows: 'The Township Highway Commissioner has
34 also received notice of this variance. The Township Highway Commissioner reviewed the case and the
35 proposed special conditions and indicated that he was O.K. with the special conditions on the April 1,
36 2011 letter from the Zoning Administrator that was included as an attachment to the Supplemental
37 Memorandum dated April 28, 2011.

38
39 **FINDINGS OF FACT**

40 **From the documents of record and the testimony and exhibits received at the public hearing for**
41 **zoning Case 677-V-10 held on March 24 and April 28, 2011, the Zoning Board of Appeals of**

1 **Champaign County finds that:**

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

5 Mr. Palmgren said “DO” because this is a corner lot so you’ve got issues on two sides instead of one;
6 and there is a possible traffic situation on the road going to the south on a road that is receiving tax
7 money; and a 50 feet wide drainage easement in the southwest corner of the lot.

8 **2. Practical difficulties or hardships created by carrying out the strict letter of the regulations**
9 **sought to be varied WILL/WILL NOT prevent reasonable or otherwise permitted use of the land**
10 **or structure or construction because:**

11 Mr. Palmgren said “WILL NOT” because the building in question was built by the applicant and he has
12 testified that removing eight feet from that building to make it comply would be somewhat difficult but
13 he could still do that and move the furniture around.

14 **3. The special conditions, circumstances, hardships, or practical difficulties DO/DO NOT**
15 **result from actions of the applicant because:**

16 Mr. Courson said “DO” because the applicant indicated in the evidence that it was his mistake that
17 created this problem.

18 Ms. Caple added that the site plan submitted by the applicant with the permit application indicated
19 adequate space for the building to be built in compliance with the Zoning Ordinance and it was indicated
20 as such on the site plan.

21 **4. The requested variance SUBJECT TO THE PROPOSED CONDITIONS IS/IS NOT in**
22 **harmony with the general purpose and intent of the *Ordinance* because:**

23 Mr. Courson said “SUBJECT TO THE PROPOSED CONDITIONS IS” because it protects people with
24 any potential traffic issues in front of the building and the road commissioner stated he had no problems
25 with it in the letter that he signed.

26 Mr. Thorsland added that “SUBJECT TO THE PROPOSED CONDITIONS IS” because if it were a side
27 yard it would be adequate but it is a front yard.

28 **5. The requested variance SUBJECT TO THE PROPOSED CONDITIONS WILL/WILL**
29 **NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or**
30 **welfare because:**

31
32 Mr. Thorsland said “SUBJECT TO THE PROPOSED CONDITIONS WILL NOT” because the Fire

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1 Protection District had no response and the road commissioner responded and is comfortable with the
2 special conditions.

3 **6. The requested variance SUBJECT TO THE PROPOSED CONDITIONS IS/IS NOT the**
4 **minimum variation that will make possible the reasonable use of the land/structure because:**
5

6 Ms. Capel said “SUBJECT TO THE PROPOSED CONDITIONS IS” because that variance is what is
7 required to bring the building into compliance with *Zoning Ordinance*.
8

9 **7. THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE**
10 **COMPLIANCE WITH THE CRITERIA FOR SPECIAL USE PERMITS AN FOR THE**
11 **PARTICULAR PURPOSES DESCRIBED BELOW:**
12

- 13 A. Encroachment of parked vehicles into the right of way shall be limited:
14
- 15 1. At no time shall a parked or standing vehicle (ie. parked while attended) located on the
16 gravel base of the pavement on either side of the driveway.
17
 - 18 2. Unless otherwise directed by the Township Highway Commissioner, no parked or
19 standing vehicle (ie. parked while attended) located on the subject property shall extend
20 past the line of the right of way during times of anticipated street maintenance (and it
21 shall be the petitioner’s responsibility to anticipate street maintenance) or at other times
22 as requested by the Township Highway Commissioner.
23
 - 24 3. Unless otherwise directed by the Township Highway Commissioner, at no time from
25 dusk to dawn shall a parked vehicle located on the subject property extend past the
26 centerline of the roadside ditch in front of the subject garage.
27
 - 28 4. Three documented violations of the special conditions of approval regarding
29 encroachment of parked vehicles into the street right of way between the garage and the
30 street shall void this approval and a new variance shall be required.
31
- 32 B. If the subject garage is damaged or destroyed to more than 50% of the replacement value it shall
33 be reconstructed in full compliance with the Champaign County Zoning Ordinance.
34
- 35 C. The petitioner shall file an original copy of the signed Final Determination in this variance case
36 as a Miscellaneous Document with the Champaign County Recorder of Deeds as soon as
37 possible after receiving the signed Final Determination.
38
- 39 D. The Zoning Administrator shall not issue any additional Zoning Compliance Certificates
40 authorizing the use of buildings on the subject property unless the petitioner submits a copy of
41 the recorded document required by condition D. above.

1
2 Mr. Hall stated that the proposed Finding of Fact cannot result in approval because the Findings were
3 not all positive.
4

5 **Ms. Capel moved, seconded by Mr. Courson to adopt the Summary of Evidence, Finding of Fact**
6 **and Documents of Record as amended. The motion carried by voice vote.**
7

8 **Mr. Palmgren moved, seconded by Ms. Capel to close the public hearing in Case 677-V-10. The**
9 **motion carried by voice vote.**
10

11 Mr. Thorsland noted that there is out of the seven member Zoning Board, six members are present and
12 one seat is vacant and has not been filled. He asked Mr. Harshbarger whether he would like to continue
13 the public hearing to allow for a seven member Board to be present. Mr. Harshbarger said that he
14 would like to proceed with the decision.
15

16 **Final Determination**
17

18 **Ms. Capel moved, seconded by Mr. Courson that the Champaign County Zoning Board of**
19 **Appeals finds that, based upon the application, testimony, and other evidence received in this case,**
20 **that the requirements of Section 9.1.9.C HAVE NOT been met, and pursuant to the authority**
21 **granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of**
22 **Appeals of Champaign County determines that the Variance requested in Case 677-V-10 is hereby**
23 **DENIED to the petitioners, Mick and Leah Harshbarger to authorize the occupancy and use of an**
24 **existing detached accessory structure with a setback of 47 feet and 6 inches from CR 2545, a**
25 **minor street, in lieu of the minimum required setback of 55 feet and front yard of 17 feet 6 inches**
26 **from the front property line in lieu of the minimum required front yard of 25 feet and located in**
27 **the AG-1, Agriculture, Zoning District.**
28

29 **The vote was:**
30

31	Capel – yes	Courson – yes	Miller – yes
32	Palmgren – yes	Schroeder – yes	Thorsland – yes

33

34 **The Board recessed at 8:15 p.m., resuming at 8:23 p.m.**
35

36 **6. New Public Hearings**
37

38 **Case 683-AT-11. Petitioner: Champaign County Zoning Administrator. Request to amend the**
39 **Champaign County Zoning Ordinance as follows: (1) add definitions for ‘parcel,’ ‘best prime**
40 **farmland,’ ‘suited overall’ and, ‘well suited overall;’ (2) revise paragraph 5.4.3C.2. as follows: (a)**
41 **in item a., add ‘an infrastructure to support the development’ and give examples of relevant**

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1 **infrastructure; (b) in item h., replace ‘emergency’ with ‘public’ and add ‘to support the proposed**
2 **development’ and give examples of relevant services; (c) in item j., delete ‘effects on’ and replace**
3 **with ‘the amount of disturbance to;’ (3) revise paragraph 9.1.11.B. by addition criteria that apply**
4 **to special use permits in the AG-1, AG-2, and CR zoning districts in addition to the existing**
5 **criteria for any special use permit as follows: (a) the property is either best prime farmland and**
6 **the property with proposed improvements is well suited overall or the property is not best prime**
7 **farmland and the property with proposed improvement is suited overall; (b) the existing public**
8 **services are available to support the proposed special use effectively and safely without undue**
9 **public expense; (c) the existing public infrastructure together with proposed improvements is**
10 **adequate to support the proposed development effectively and safely without undue public**
11 **expense.**

12
13 Mr. Hall said that these text amendments are the first text amendments based on the new goals and
14 policies in the Land Resource Management Plan or LRMP. He said that Ms. Monte’s memorandum
15 included the memorandum that the Committee of the Whole reviewed and approved for staff to proceed.
16 He noted that there was one difference in the memorandums which pertains to the criteria that applies to
17 all Special Use Permits. He said that since the criteria are found under Goal 4 which pertains to
18 agriculture, the criteria is intended to apply to Special Use Permits in the CR, AG-1, and AG-2 districts
19 only.

20
21 Mr. Hall said that Special Use Permits are not like a Map Amendment because special conditions can be
22 applied. The County has had policies in place for a long time under the Land Use Regulatory Policies,
23 however, this is the first time that those policies will be incorporated into the Zoning Ordinance.

24
25 Mr. Hall noted that the higher standards related to Land Use Regulatory Policies have been applied to
26 rural residential overlays. Once incorporated into the Zoning Ordinance these regulations will apply to
27 any Special Use Permits in the CR, AG-1 and AG-2 zoning districts such as churches, schools, self-
28 storage warehouses without heat or utilities, grain elevators and major rural specialty businesses.

29
30 Ms. Monte said that the Text Amendments before the Board this evening will be described in greater
31 detail than what is in the memorandum. She added that any questions, concerns or requests of additional
32 information can be either answered at this hearing or by the next time the cases are before the Board.

33
34 Ms. Monte said that this case focuses on Goal 4 from the LRMP which is intended to protect the long
35 term viability of agriculture. More specifically, the proposed amendment relates to Objective 4.3 which
36 states that ‘Champaign County will require that each discretionary review development will be located
37 on a suitable site.’

38
39 Ms. Monte noted that the Text Amendment proposes to add definitions for ‘Best Prime Farmland,’
40 ‘Parcel,’ ‘Suited Overall,’ and ‘Well Suited Overall’ to the Zoning Ordinance.

41

1 Ms. Monte said that the word ‘Parcel’ is used frequently and is sometimes interchanged with the word
2 lot.’ The proposed definition is for clarification purposes.
3
4 Ms. Monte said that the term ‘Best Prime Farmland’ has been used for several years and has been
5 described as a footnote in the Schedule of Height, Area and Placement section of the Zoning Ordinance.
6 There are no changes proposed in the description but it is consistent with the criteria of the LRMP.
7
8 Ms. Monte said the definitions for ‘Suited Overall’ and ‘Well Suited Overall’ are proposed to also be
9 consistent with the LRMP criteria. She noted that both of these terms are currently used as defining
10 criteria for rural development that is being proposed in the CR, AG-1 and AG-2 zoning districts.
11
12 Ms. Monte noted that the Board may have some concerns regarding the definitions with respect to their
13 clarity and ease of understanding. She asked the Board members to think about whether the definitions
14 as proposed need to be amended.
15
16 Ms. Monte said that there are currently factors in the Zoning Ordinance that must be applied when
17 reviewing Rural Residential Overlay proposals. She noted that those factors have been tweaked and
18 revised to reflect the four policies that occur in Objective 4.3 which is what this Text Amendment
19 focuses on.
20
21 Ms. Monte said that Section 5.4.3C2 which deals with the public services and infrastructure which will
22 more closely conform to LRMP Policies 4.3.3 and 4.3.4.
23
24 Ms. Monte stated that there will be three new screening criteria proposed that will affect paragraph
25 9.1.11B which applies to Special Use Permits. Ms. Monte noted that three new items would be added to
26 this paragraph to implement LRMP Policies 4.3.1, 4.3.2, 4.3.3 and 4.3.4.
27
28 Ms. Monte noted that staff will provide a Supplemental Memorandum at the next public hearing which
29 will address the Board’s concerns.
30
31 Ms. Capel asked whether discretionary review would take the place of by right development. Ms. Monte
32 said that perhaps the Board would like to have discretionary review added as a proposed definition.
33
34 Mr. Hall said that there should be clarification or a definition of discretionary review. Ms. Monte noted
35 that there was such a definition in the LRMP so this is not an unreasonable request.
36
37 Ms. Capel asked whether the term ‘by right’ is defined. Mr. Hall said that it is not defined, it is
38 assumed. He noted that in Section 5.2, ‘by right’ is used, but is not defined.
39
40 Ms. Capel asked for clarification or a definition of the terms ‘by right’ and ‘discretionary review.’
41

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1 Mr. Hall said that the actual proposed amendment is Attachment B which consists of three pages. All of
2 the new language is underlined.

3
4 Mr. Thorsland asked whether a development that meets the criteria of ‘well suited overall’ also meets the
5 criteria of ‘suited overall.’ Ms. Monte said that she believed it was implied.

6
7 Mr. Thorsland asked whether it would change the Text Amendment to where it would be more than an
8 implication. Ms. Monte said that she would work on that revision.

9
10 **Case 684-AT-11. Petitioner: Champaign County Zoning Administrator. Request to amend the**
11 **Champaign County Zoning Ordinance as follows: (1) revise Section 5.2 by indicating that a**
12 **subdivision in the CR, AG-1, or AG-2 zoning districts that totals more than three lots or with new**
13 **streets or private access ways requires a County Board approved special use permit for Rural**
14 **Residential Development in addition to the Rural Residential Overlay District; (2) revise Section**
15 **5.4.3 as follows: (a) add a requirement for a County Board approved special use permit for Rural**
16 **Residential Development in accordance with Section 9.1.11.; (b) add a requirement that the public**
17 **hearing for a map amendment for a Rural Residential Overlay and the public hearing for the**
18 **related special use permit for Rural Residential Development must be concurrent.**

19
20 Ms. Monte said that this case will add the Special Use Permit process with the discretionary review
21 process for a Rural Residential Overlay. She said that the proposed Text Amendment will not only
22 make a Rural Residential Overlay proposal fall under a Special Use Permit approval, that Special Use
23 Permit will be a County Board Special Use Permit that must be approved by the County Board. This is
24 only the second type of Special Use Permit that must be approved by the County Board.

25
26 Ms. Monte said that the Text Amendment proposes that the Special Use Permit must be run concurrently
27 with a Map Amendment for Rural Residential Overlay requests. This will ensure that more site specific
28 impacts on adjacent properties and impacts from adjacent properties on the proposed Rural Residential
29 Overlay are examined more carefully.

30
31 Ms. Monte noted that the Assistant State’s Attorney’s Office has recommended this change. She noted
32 that there has been no adverse public reaction received from this proposed change.

33
34 Ms. Monte reviewed how the proposed amendments would alter the Zoning Ordinance. She noted that
35 in Section 5.2, Table of Authorized Uses, instead of a just a footnote in the ‘Subdivision’ category, there
36 would be a letter ‘B’ which would indicate a County Board Special Use.

37
38 Ms. Monte noted that the other change would be located in Subsection 5.4.3 under the requirements in
39 the Zoning Ordinance for Rural Residential Overlay requirements, which adds the requirement to obtain
40 a County Board Special Use Permit and to have it run concurrently with the Map Amendment.

1 Ms. Capel asked whether the purpose of the proposed requirement to add the Special Use Permit
2 requirement was to enable the Board to impose special conditions. Ms. Monte said that it ensures a
3 better platform to examine the site specific impacts of the proposed development on adjacent properties
4 and the impacts the adjacent properties might have on the proposed development.

5
6 Mr. Thorsland noted that the item requiring 600 feet between driveways in the same rural residential
7 development caused a rather lively discussion at the County Board meeting. Ms. Monte said that that
8 will be discussed in Case 685-AT-11.

9
10 Mr. Hall pointed out that the Rural Residential Overlay is currently the only Map Amendment that is
11 specific to a plan.

12 **Case 685-AT-11. Petitioner: Champaign County Zoning Administrator. Request to amend the**
13 **Champaign County Zoning Ordinance by revising Section 6.1 by adding standard conditions**
14 **required for any County Board approved special use permit for a Rural Residential Development**
15 **in the Rural Residential Overlay district as follows: (1) require that each proposed residential lot**
16 **shall have an area equal to the minimum required lot area in the zoning district that is not in the**
17 **Special Flood Hazard Area; (2) require a new public street to serve the proposed lots in any**
18 **proposed RRO with more than two proposed lots that are each less than five acres in area or any**
19 **RRO that does not comply with the standard condition for minimum driveway separation; (3)**
20 **require a minimum driveway separation between driveways in the same development; (4) require**
21 **minimum driveway standards for any residential lot on which a dwelling may be more than 140**
22 **feet from a public street; (5) require for any proposed residential lot not served by a public water**
23 **supply system and that is located in an area of limited groundwater availability or over a shallow**
24 **sand and gravel aquifer other than the Mahomet Aquifer, that the petitioner shall conduct**
25 **groundwater investigations and contract the services of the Illinois State Water Survey (ISWS) to**
26 **conduct or provide a review of the results; (6) require for any proposed RRO in a high probability**
27 **area as defined in the Illinois State Agency Historic Preservation Agency (ISHPA) about the**
28 **proposed RRO development undertaking and provide a copy of the ISHPA response; (7) require**
29 **that for any proposed RRO that the petitioner shall contact the Endangered Species Program of**
30 **the Illinois Department of Natural Resources and provide a copy of the agency response.**

31
32 Ms. Monte said that Case 685-AT-11 and Case 684-AT-11 are specifically written to update the County
33 regulations that pertain to Rural Residential Discretionary Review developments as intended by the
34 LRMP by 2010. She noted that the time table for implementation is running a little behind.

35
36 Ms. Monte noted that there are seven standard conditions proposed. Some of the conditions are
37 expanded versions of Section 5.4.5 which pertains to the Rural Residential Overlay requirements.

38
39 Ms. Monte said that staff is working on examples of each of the seven proposed standard conditions
40 which will be provided in a Supplemental Memorandum that will be provided at the next public hearing.

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1 Ms. Monte noted that proposed Standard Condition 1, which would require each proposed residential lot
2 have an area equal to the minimum required lot area located outside of the Special Flood Hazard Area, is
3 already addressed in the Subdivision Regulations and also in the Special Area Flood Hazard Ordinance,
4 however, it is not part of the Zoning Ordinance.

5
6 Ms. Monte noted that proposed Standard Condition 2, which would require a new public street to serve
7 the proposed lots in any proposed Rural Residential Overlay with more than two proposed lots that are
8 each less than five acres in area or any Rural Residential Overlay that does not comply with the standard
9 condition for minimum driveway separation, has been identified as a necessary amendment by the
10 Zoning Administrator based on his experience with Rural Residential Overlay requests that have come
11 before the County.

12
13 Ms. Monte noted that proposed Standard Condition 3, which proposes to require a proposed RRO
14 residential lot that fronts onto an existing public street to have the driveway adjacent to another driveway
15 if more than one lot is proposed, and required each pair of driveways or individual driveways to be at
16 least 600 feet from any driveway for any other lot in the same development, was discussed heavily at the
17 County Board level. She said that once a diagram has been prepared, the Board would have a better
18 understanding of the purpose of this portion of the proposed amendment. She said that the proposal is to
19 limit the number of individual driveways in rural residential lots, reducing congestion on township
20 roads.

21
22 Ms. Monte said that proposed Standard Condition 4 addresses specific standards for driveway pavement,
23 vertical clearance and a turn-around for driveways that are more than 140 feet from a public road.

24
25 Ms. Monte said that proposed Standard Condition 5, which proposes to require that for any proposed
26 RRO residential lot not served by a public water supply system and that is located in an area of limited
27 groundwater availability or over a shallow sand and gravel aquifer other than the Mahomet Aquifer, that
28 the petitioner shall contract the services of the Illinois State Water Survey (ISWS) to conduct or provide
29 a review of the results of a recent groundwater investigation to determine if adequate groundwater
30 resources exist on the site for the proposed RRO, without endangering groundwater availability for the
31 existing neighboring land uses, will ensure that there is suitable water supply for residences.

32
33 Ms. Monte said that proposed Standard Condition 6, which proposes to require for any proposed RRO in
34 a high probability area as defined in the Illinois State Agency Historic Resources Preservation Act that
35 the petitioner shall contact the Illinois Historic Preservation Agency about the proposed RRO
36 development undertaking and provide a copy of the response, will ensure that the LRMP policies are
37 consistent with the Champaign County Subdivision Regulations and Zoning Ordinance.

38
39 Ms. Monte said that proposed Standard Condition 7, which proposes to require for any proposed RRO
40 that the petitioner shall contact the Endangered Species Program of the Illinois Department of Natural
41 Resources and provide a copy of the agency response, to add a clarifying statement to the regulations

1 already in place in the Champaign County Zoning Ordinance.

2
3 Ms. Monte noted that an applicant can request any of these proposed standard conditions to be waived in
4 a proposed Rural Residential Overlay case.

5
6 Mr. Hall pointed out that staff is reviewing approved Rural Residential Overlay developments to see
7 how the proposed conditions would have affected or altered them, if they would have been altered at all.

8
9 Mr. Hall noted that when this case comes before the Board again, a table of RRO rezoning cases will be
10 listed with a column indicating whether the proposed conditions would have changed anything. He said
11 that is a chance to compare the proposed standards to the cases that have previously come before the
12 Board to see if they are reasonable or if they are too stringent or inadequate.

13
14 Mr. Hall said that eventually the submittals currently required for a Rural Residential Overlay will
15 become standard conditions under a Special Use Permit, however the requirement for a Special Use
16 Permit must be adopted first.

17
18 Mr. Hall commented that more conditions are likely to be discovered indefinitely as staff becomes more
19 familiar with the process and gets more insight from the County Board.

20
21 Mr. Courson asked whether the Historical studies and Endangered Species studies are necessary on tilled
22 land. He said that land that is being farmed for many years never has to go through examination,
23 however, once someone decides to develop the same land into a Rural Residential Overlay, then the
24 studies are required which increases cost and make it harder, if not impossible, to obtain approval.

25
26 Ms. Monte said that in most cases no additional studies are required once the initial request is made.

27
28 Mr. Hall noted that in the Summerfield RRO case which involved a forty acre field that had been tilled
29 every year and was being proposed to be developed into one acre lots, it was discovered that there were
30 three sites that were found to have a high enough density of pieces of artifacts to warrant a Phase II study
31 of the property. The end result was that the developer amended his plans to do a twelve lot development
32 leaving the areas of concern untouched.

33
34 Mr. Hall noted that the endangered species are generally not in a field that has been farmed for numerous
35 years, however, it may reside in an area adjacent to the farm field that we don't want to disturb in the
36 development process. He noted that there are not that many endangered species left in the County.
37 Contacting the agencies is merely a formality for the most part. All this proposed amendment does is to
38 give the County Board a chance to take it into consideration.

39
40 Mr. Thorsland noted that farming operations don't go deep enough to disturb old home sites or Indian
41 burial grounds, however, when developing a site for home construction, the ground is disturbed at a level

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1 that may uncover historical artifacts.

2
3 Ms. Monte noted that she discovered information regarding what procedures to follow if you discover
4 human remains on your property and would bring that information to the next meeting.

5
6 **Mr. Miller moved, seconded by Mr. Palmgren to close the Witness Register for Zoning Cases 683-
7 AT-11, 684-AT-11 and 695-AT-11. The motion carried by voice vote.**

8
9 **Ms. Capel moved, seconded by Mr. Courson to continue Zoning Cases 683-AT-11, 684-AT-11 and
10 685-AT-11 to May 26, 2011. The motion carried by voice vote.**

11
12 **Mr. Schroeder moved, seconded by Mr. Courson to cancel the May 12, 2011 Zoning Board of
13 Appeals meeting. The motion carried by voice vote**

14
15
16 **7. Staff Report**

17
18 Mr. Hall noted that Ms. Berry is at home recuperating from a planned surgery and hopefully she will be
19 back at work on or before June 2.

20
21 Mr. Hall said that he has been working on a procedure for post-decision wrap-up for zoning cases. He
22 said that it has been a big problem for the Department because once a decision has been made by the
23 Zoning Board of Appeals, that becomes secondary to the next petitioner and what he wants to get from
24 the Board and so on.

25
26 Mr. Hall said that getting cases in front of the Zoning Board and getting a decision is the most important
27 thing in Current Planning, however, doing the wrap-up has never been critical and it should be. He said
28 that he would like to formalize reporting to the Board the status of cases that have received a final
29 decision. Mr. Hall said that he would need to discuss the proper procedure for reporting this to the
30 Board.

31
32 Mr. Hall noted that petitioners have been benefiting from this lack of finalizing cases because the
33 deadline for abiding by the Board's decision doesn't start until the petitioner receives the Findings from
34 the case.

35
36 Mr. Thorsland said that Mr. Hall has asked whether an update on zoning cases that have received a final
37 decision should be placed on the agenda. Mr. Hall said that the Board should always feel free to ask
38 how the post-decision wrap-up on zoning cases is progressing.

39
40 **8. Other Business**

1 Mr. Thorsland said that the Zoning Board of Appeals By-laws are still in the process of being updated.
2 He asked the Board if they had any comments or concerns that staff should be made aware of. Mr.
3 Thorsland said that staff would like to have an updated version finalized by fall.

4
5 Mr. Miller asked what would be the procedure to initiate a text amendment to require a fine for
6 construction without a permit.

7
8 Mr. Hall said that he has tossed around the idea of imposing a higher fee for permitting after the
9 construction has taken place. He said that staff could toss around some ideas and also discuss this
10 proposal with the State's Attorney.

11
12 Mr. Hall said that a text amendment for fee increase is supposed to be initiated later this year after more
13 information is gathered for the County Board. Mr. Hall said that if after discussing this with the State's
14 Attorney, the Zoning Board could initiate the text amendment without first seeking County Board
15 approval or the changes could be included in the fee amendment that staff has already been directed to
16 do, or County Board approval could be sought first. Mr. Hall noted that without County Board approval
17 of the proposal beforehand, it may not go very well.

18
19 Mr. Thorsland said that he was in favor of obtaining County Board approval of the proposal first.

20
21 Mr. Courson said that he liked the term 'post construction fee' instead of a penalty or fine. He noted that
22 if it is a penalty or fine people will tend to be more disgruntled.

23
24 Mr. Hall said that he would discuss this matter with the State's Attorney and include an item on the next
25 agenda.

26
27 **9. Audience Participation with respect to matters other than cases pending before the Board**

28
29 There was none.

30
31 **10. Adjournment**

32
33
34 The meeting adjourned at 9:28 p.m.

35
36 Respectfully submitted,

37
38
39
40 Secretary of Zoning Board of Appeals