

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: November 14, 2019

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

TIME: 6:30 p.m.

Urbana, IL 61802

MEMBERS PRESENT: Tom Anderson, Frank DiNovo, Ryan Elwell, Marilyn Lee, Larry Wood

MEMBERS ABSENT: Jim Randol

STAFF PRESENT: Connie Berry, Susan Burgstrom, John Hall

OTHERS PRESENT: Gordon Deck, Shaun Deck, Eric Billman, William Shafer

1. Call to Order

The meeting was called to order at 6:30 p.m.

2. Roll Call and Declaration of Quorum

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

Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register, they are signing an oath.

3. Correspondence - None

4. Approval of Minutes: October 17, 2019

Mr. Elwell asked the Board if there were any additions or corrections to the October 17, 2019, minutes.

Mr. DiNovo moved, seconded by Mr. Wood, to approve the October 17, 2019, minutes, as submitted. The motion carried by voice vote.

Mr. Elwell entertained a motion to re-arrange the agenda and hear Cases 961-V-19 and 963-V-19 prior to Cases 947-AT-19 and 948-AT-19.

Mr. DiNovo moved, seconded by Mr. Wood, to re-arrange the agenda and hear Cases 961-V-19 and 963-V-19 prior to Cases 947-AT-19 and 948-AT-19. The motion carried by voice vote.

Mr. Tom Anderson, ZBA Board member, arrived at 6.42 p.m.

1 **5. Continued Public Hearing**
2

3 **Case 947-AT-19** Petitioner: **Zoning Administrator** Request: **Amend the Champaign County Zoning**
4 **Ordinance by amending the requirements for PV solar farms by deleting Section 6.1.5 B.(2)b. that**
5 **requires a 0.5 mile separation between a proposed PV solar farm and the CR Conservation Recreation**
6 **Zoning District and amend the requirements in Section 6.1.5. Q.(4)3. To add requirements for**
7 **financial assurance provided by financial institutions headquartered in Champaign County.**
8

9 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the
10 witness register for that public hearing. He reminded the audience that when they sign the witness register,
11 they are signing an oath. He asked the audience if anyone desired to sign the witness register and there was
12 no one.
13

14 Mr. Elwell asked John Hall, Zoning Administrator, if he would like to make a statement regarding the
15 request.
16

17 Mr. John Hall stated that staff distributed a Supplemental Memorandum dated November 13, 2019, to the
18 Board for review, and noted that the same version of this memorandum was emailed to the Board on
19 November 12th. He said that Mr. DiNovo's fears were well founded and the State's Attorney had the same
20 fears. He said that in order to change the minimum financial ratings such that banks headquartered in
21 Champaign County would be able to provide financial assurance for a solar farm, the financial rating must
22 be lowered in general, and the question is whether or not it is reasonable. He said that staff provided an
23 attached table, Attachment C, titled Long Term Credit Ratings that tries to compare in a very simple way the
24 Standard & Poor's ratings, Moody's rating and Kroll ratings. He said that the table is not an exact
25 comparison, and he does not know if anyone could actually do an exact comparison across all the ratings
26 companies, but these companies do have a general structure that appears to be the same, and they have
27 upward to 20 ratings that are divided into 9 or 10 groupings. He said that all of those groupings start off
28 with highest investment grade and then a second tier of investment grade and a third tier of investment grade,
29 the tier that is at issue in this case. He said that each tier has a high range, a mid-range, and a lower range of
30 risk, and the higher range is at less risk and the lower range is at more risk, but the requirements are for that
31 mid-range. He said that the table provides the description that each rating company provides for that range
32 and the memorandum includes his summary of what this is actually about, and it reads as follows: "The
33 review of the general rating categories does not identify the exact risk resulting from such a change, but it
34 suggests that the risk is identifiable and not negligible. However, any issuer with a rating in this third tier
35 should be considered to be high quality with a small risk of loss due to credit-related events. Issuers in this
36 third tier will be somewhat more susceptible to the adverse effects of changes in circumstances and
37 economic conditions than obligations in higher-rated categories, especially issuers with a higher risk level
38 within this broader category." He said that all of these ratings are in the same broad category and going to
39 this lower level does add somewhat more risk, but it does not change the fact that they are in the same broad
40 category, and even though he cannot put a number on that, it is identifiable, and these ratings companies
41 believe that there is a difference. He said that the question is, if accepting this added level of risk is a
42 reasonable risk or opportunity for banks headquartered in Champaign County to provide financial assurance,
43 and if the Board does not believe that this is worth the trade off, then the Board should recommend denial of
44 the case as it is currently structured because we could not move ahead with it. He said that the case could be
45 restructured to this new level and if the Board believes that would be worth denying and not recommending
46 that, he would certainly like hear what the Board has to say tonight, but if the Board thinks that it is worth
47 pursuing and might be inclined to recommend approval of this revised case, then the case needs to be re-

1 advertised because we are talking about a more significant change than what was originally advertised. He
2 said that the re-advertisement would indicate lowering the general minimum financial ratings required for
3 any bank to the lowered level of this third tier and that needs to be advertised, and staff is willing to do that if
4 the Board believes that they could recommend approval.
5

6 Ms. Lee stated that she has a question that does not pertain to the merits of the case, because in her mind,
7 there are two different issues involved in Case 947-AT-19. She said that one issue eliminates the one-half
8 mile requirement, and the second issue is regarding financing, and she believes that these two separate issues
9 should be separated and have their own cases.
10

11 Mr. Hall stated that if the two cases should be separated because some part of it may be recommended for
12 approval and some part not recommended for approval, then when it is re-advertised the two issues would be
13 advertised as two separate cases so that they could be moved forward with clear recommendations.
14

15 Ms. Lee stated that she does not know how the other Board members feel, but these are two separate issues
16 that only have one common element and that is a solar farm. She said that the issues are so different, and it
17 doesn't seem right for them to be included under the same case.
18

19 Mr. Wood stated that would only apply if there is a disagreement with one or the other. He said that the
20 standards, or ratings, in his mind do not represent a significant risk and it allows all of the banks, including
21 the one located in Champaign County, to participate on a level playing ground. He said that when we talk
22 about local banks, there are many branches in Champaign County that do not have headquarters in
23 Champaign County and are located in either surrounding counties or states. He said that providing a local
24 bank with the opportunity since they serve the community is a fair option.
25

26 Mr. DiNovo asked staff to indicate comparable requirements for wind farms.
27

28 Mr. Hall stated that the requirements are not comparable because for a wind farm, the County requires the
29 Letter of Credit to be converted to an escrow, which is much more expensive to begin with and we do not
30 require that for solar farms.
31

32 Mr. DiNovo stated that they are not really comparable.
33

34 Mr. Wood stated that there is a larger issue in removing wind farms.
35

36 Mr. DiNovo stated that he does not believe that the risk of decommissioning solar farms is that substantial
37 and he is not concerned about changing the standard. He said that the risk, conceivably, of a weaker
38 guarantee is probably going to fall more on the landowner than anyone else because at the end of the day, he
39 doubts that Champaign County is going to make the taxpayers pick up the tab and let the landowner off the
40 hook. He said that the landowner will collect lease payments for years and years and by that point everyone
41 will expect the landowner to pick up part of the tab for decommissioning. He said that the risk to the County
42 is truly negligible. He said as to the two distinct elements, he could see moving forward with them both in
43 one case because they are distinct enough that they could be separated into Parts A. and B. under one case
44 with separate sets of findings. He said that he suspects that it would be cheaper to advertise the two parts
45 under one case than it would be to advertise two separate cases, but the two parts being under one case
46 number is a non-issue as long as there is a way to make the findings of fact document reflect different

1 recommendations with respect to each of those two parts, and that could be done without running two
2 separate cases. He said that he does believe that the case needs to be republished.

3
4 **Mr. DiNovo moved, seconded by Mr. Wood, that action for Case 947-AT-19 be deferred until the**
5 **language could be revised to make it apply equally to any financial institution. The motion carried by**
6 **voice vote with one opposing vote.**

7
8 Mr. Hall stated that staff will re-advertise Case 947-AT-19 and will fit into the docket as soon as possible.

9
10 Mr. Wood asked if there would be two separate cases addressing each of the issues in Case 947-AT-19
11 currently.

12
13 Mr. Hall stated that staff could revise Case 947-AT-19 to simply be the separation from the CR zoning
14 district and that would not have to be re-advertised, and then the issue regarding the financial ratings would
15 be re-advertised under a new case number. He said that it would be much easier to deal with any differences
16 in opinion.

17
18 **Case 948-AT-19 Petitioner: Zoning Administrator Request: Amend the Champaign County Zoning**
19 **Ordinance by amending Section 8.3.2 to authorize a variance to rebuild a nonconforming structure**
20 **before the structure is damaged.**

21
22 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the
23 witness register for that public hearing. He reminded the audience that when they sign the witness register,
24 they are signing an oath. He asked the audience if anyone desired to sign the witness register and there was
25 no one.

26
27 Mr. Elwell asked the Board and staff if there were any comments or concerns regarding Case 948-AT-19,
28 and there were none.

29
30 **Mr. DiNovo moved, seconded by Ms. Lee, to adopt the Findings of Fact, Summary Finding of Fact,**
31 **and Documents of Record as presented. The motion carried by voice vote.**

32
33 Mr. Elwell entertained a motion to move to the Final Determination for Case 948-AT-19.

34
35 **Ms. Lee moved, seconded by Mr. Wood, to move to the Final Determination for Case 948-AT-19. The**
36 **motion carried by voice vote.**

37
38 **Final Determination for Case 948-AT-19:**

39
40 **Mr. DiNovo moved, seconded by Ms. Lee, that pursuant to the authority granted by Section 9.2 of the**
41 **Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County**
42 **recommends that the Zoning Ordinance Amendment requested in Case 948-AT-19 should BE**
43 **ENACTED by the County Board.**

44
45 Mr. Elwell requested a roll call vote.

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1 The roll was called as follows:

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Anderson – yes	DiNovo – yes	Lee – yes
Randol – absent	Wood – yes	Elwell – yes

6. **New Public Hearings**

8 **Case 961-V-19 Petitioner: William Shafer Request to authorize the following Variance in the AG-1**
9 **Agricultural Zoning District: Part A: Variance for a lot area of 0.7 acre (0.6222 acre exclusive of**
10 **right-of-way) in lieu of the minimum required 1 acre, per Section 5.3 of the Zoning Ordinance; and**
11 **Part B: Variance for an average lot width of 169 feet in lieu of the minimum required 200 feet, per**
12 **Section 5.3 of the Zoning Ordinance. Location: A 0.7 acre tract in the Southwest Quarter of Section**
13 **17, Township 17 North, Range 9 East of the Third Principal Meridian in Crittenden Township and**
14 **commonly known as the residence with an address of 1382 CR 300N, Tolono.**

15
16 Mr. Elwell informed the audience that Case 961-V-19 is an Administrative Case and as such, the County
17 allows anyone the opportunity to cross-examine any witness. He said that at the proper time, he will ask for
18 a show of hands for those who would like to cross-examine, and each person will be called upon. He
19 requested that anyone called to cross-examine go to the cross-examination microphone to ask any questions.
20 He said that those who desire to cross-examine are not required to sign the witness register but are requested
21 to clearly state their name before asking any questions. He noted that no new testimony is to be given during
22 the cross-examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are
23 exempt from cross-examination.

24
25 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the
26 witness register for that public hearing. He reminded the audience that when they sign the witness register,
27 they are signing an oath. He asked the audience if anyone desired to sign the witness register and there was
28 no one.

29
30 Mr. Elwell asked the petitioner if he would like to make a statement regarding his request.

31
32 Mr. William Shafer, who resides at 1382 CR 300N, Tolono, stated that he purchased the property
33 approximately 21 years ago and since he was a veteran, he received a Veteran’s Administration loan. He
34 said that at the time of purchase he had hired an appraiser and an attorney, and still somehow the property
35 fell through the cracks. He said that he had no idea that the property was illegal until recently when he hired
36 an appraiser so that he could attempt to have his property taxes lowered. He said that during this process he
37 found out that his house was still worth the price that he paid for it 21 years ago, which is not a good feeling
38 at all, and the County is losing tax dollars. He said that he does not plan to sell the house but at some point
39 if he does decide to sell, he would like to receive a fair market value for it, but the only way to do that at this
40 time is to request the variance so that the property is actually a viable property. He said that he spoke with
41 Eric Billman, adjoining landowner to the north, regarding the possibility of purchasing additional land and
42 Mr. Billman indicated that he was not interested, so Mr. Shafer is requesting relief from the current situation
43 with his property.

44
45 Mr. Elwell asked the Board if there were any questions for Mr. Shafer.

46

1 Mr. DiNovo asked Mr. Shafer when his home was constructed.

2

3 Mr. Shafer stated that he believes that the house was constructed in 1973.

4

5 Mr. DiNovo noted that the footprint of the home indicated in the 1973 aerial is different than the footprint of
6 the house that is on the property currently.

7

8 Mr. Shafer stated that there used to be a smaller house behind where his current home is located.

9

10 Mr. DiNovo stated that the current home is indicated on the 1988 aerial. He asked if the current home was
11 constructed shortly after the lot was created.

12

13 Mr. Shafer stated that he could not answer Mr. DiNovo's question. He said that he purchased the property in
14 1998 or 1999, and he was not the first purchaser after the property was divided. He said that the property
15 was sold after it was divided in 1994 and he purchased the home four or five years later.

16

17 Ms. Burgstrom stated that the property record card from the Supervisor of Assessment's office indicates that
18 the current house was 60% complete in 1974 and the old house was removed in 1975. She said that the
19 house was being built either before or during the time of adoption of the Zoning Ordinance.

20

21 Ms. Lee stated that the same information is indicated in item 5.A(1) of the Summary of Evidence.

22

23 Mr. Wood asked Ms. Burgstrom if the lot size was larger prior to 1993 when it was originally conjoined with
24 the property to the north.

25

26 Mr. Elwell asked Mr. Wood if he is discussing the 1.35 acre.

27

28 Mr. Wood stated yes. He asked if the original split, which was prior to the adoption of the Zoning
29 Ordinance, consisted of a lot size larger than it is today.

30

31 Ms. Burgstrom stated that at one time it did include the agricultural land around it as well, and then it
32 became the homestead area, and then the current house was separated from the farm buildings.

33

34 Mr. DiNovo stated that occurred prior to the adoption on October 10, 1973.

35

36 Mr. Burgstrom stated yes.

37

38 Mr. Wood asked if in September of 1973 when the original split off of the total acreage occurred, was it
39 larger than .7 acres.

40

41 Ms. Burgstrom stated that once she sees that something was created prior to 1973, she stops her research.

42

43 Mr. DiNovo stated that the subject property was created before October 10, 1973, so what transpired before
44 that date is not relevant.

45

46 Mr. Elwell asked the Board and staff if there were additional questions for Mr. Shafer, and there were none.

1
2 Mr. Elwell asked the audience if anyone desired to cross-examine Mr. Shafer, and there was no one.

3
4 Mr. Elwell called Eric Billman to testify.

5
6 Mr. Eric Billman, who resides at 608 Barbara, Tolono, stated that he was raised on the subject property and
7 it has been in his family for over 100 years. He said that when his dad passed away, he gave Eric Billman the
8 tool shed and the property behind Mr. Shafer's property. He said that the subject property was sold to Eric
9 Watkins prior to Mr. Shafer's purchase and the lot size has remained the same since Mr. Shafer's purchase.

10
11 Ms. Burgstrom stated that Mr. Billman submitted a signed letter indicating that he was not interested in
12 selling any portion of his property to Mr. Shafer.

13
14 Mr. Billman indicated that he indeed submitted a letter indicating that he was not interested in selling any
15 portion of his property.

16
17 Mr. Elwell asked the Board and staff if there were any questions for Mr. Billman, and there were none.

18
19 Mr. Elwell asked the audience if anyone desired to cross-examine Mr. Billman, and there was no one.

20
21 Mr. Elwell closed the witness register.

22
23 Mr. Elwell read the special condition as follows:

24
25 **A. Within 30 days of Final Action of Case 961-V-19, the petitioner shall file a**
26 **miscellaneous document with the Champaign County Recorder of Deeds that**
27 **documents the following:**

28 **(1) A Variance was granted in Zoning Case 961-V-19 to authorize a lot less than**
29 **one acre in area with an average lot width of 169 feet.**

30
31 **(2) Because of the size of the lot, there is a concern whether a replacement**
32 **wastewater (septic) system can be installed on the lot in the future.**

33
34 **(3) Any new wastewater (septic) system will need to be authorized by the**
35 **Champaign County Health Department.**

36
37 **(4) For further information, interested parties should contact the Champaign**
38 **County Department of Planning and Zoning.**

39
40 The special condition stated above is required to ensure the following:

41 **That potential buyers of the property are aware of the possible limitations**
42 **regarding the replacement of wastewater systems on the property.**

43
44 Mr. Elwell asked Mr. Shafer if he agreed to the special condition.

45
46 Mr. Shafer agreed to the special condition.

1
2 Mr. Elwell entertained a motion to approve the special condition.

3
4 **Mr. DiNovo moved, seconded by Mr. Wood, to approve the special condition. The motion carried by**
5 **voice vote.**

6
7
8 **FINDINGS OF FACT FOR CASE 961-V-19:**

9
10 **From the documents of record and the testimony and exhibits received at the public hearing for zoning**
11 **case 961-V-19 held on November 14, 2019, the Zoning Board of Appeals of Champaign County finds**
12 **that:**

13
14 **1. Special conditions and circumstances DO exist which are peculiar to the land or structure**
15 **involved, which are not applicable to other similarly situated land and structures elsewhere in**
16 **the same district.**

17
18 Mr. Wood stated that special conditions and circumstances DO exist which are peculiar to the land or
19 structure involved, which are not applicable to other similarly situated land and structures elsewhere in the
20 same district because the 0.7 acre lot was created prior to the adoption of the Zoning Ordinance.

21
22 **2. Practical difficulties or hardships created by carrying out the strict letter of the regulations**
23 **sought to be varied WILL prevent reasonable or otherwise permitted use of the land or**
24 **structure or construction.**

25
26 Mr. DiNovo stated that practical difficulties or hardships created by carrying out the strict letter of the
27 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
28 or construction because the current status impairs the title of the property and potentially prevents
29 reconstruction of a house that was built lawfully and has been in existence for over 45 years.

30
31 **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT result from**
32 **actions of the applicant.**

33
34 Mr. DiNovo stated that the special conditions, circumstances, hardships, or practical difficulties DO
35 NOT result from actions of the applicant because the petitioner was not party to the prior transactions that
36 created the problem, and the petitioner made a good faith effort in purchasing the property to determine if
37 there were any inefficiencies in the title, but conventional title searches do not reveal these kinds of zoning
38 difficulties.

39
40 **4. The requested variance, SUBJECT TO THE PROPOSED CONDITION, IS in harmony with**
41 **the general purpose and intent of the Ordinance.**

42
43 Mr. Wood stated that the requested variance, SUBJECT TO THE PROPOSED CONDITION, IS in harmony
44 with the general purpose and intent of the Ordinance because there is no impact to surrounding farm ground.

45
46 **5. The requested variance, SUBJECT TO THE PROPOSED CONDITION, WILL NOT be**
47 **injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.**

1
2 Mr. DiNovo stated that the requested variance, SUBJECT TO THE PROPOSED CONDITION, WILL
3 NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare
4 because the property has been used in this configuration since 1973, except for one 14-month period, and in
5 that time, there have been no reported or observed problems.
6

7 **6. The requested variance, SUBJECT TO THE PROPOSED CONDITION, IS the minimum**
8 **variation that will make possible the reasonable use of the land/structure.**
9

10 Mr. Wood stated that the requested variance, SUBJECT TO THE PROPOSED CONDITION, IS the
11 minimum variation that will make possible the reasonable use of the land/structure because no land is
12 available for purchase to meet the standard zoning requirement.
13

14 **7. THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE**
15 **PARTICULAR PURPOSES DESCRIBED BELOW:**
16

17 **A. Within 30 days of Final Action of Case 961-V-19, the petitioner shall file a**
18 **miscellaneous document with the Champaign County Recorder of Deeds that**
19 **documents the following:**

20 (1) **A Variance was granted in Zoning Case 961-V-19 to authorize a lot less than**
21 **one acre in area with an average lot width of 169 feet.**

22
23 (2) **Because of the size of the lot, there is a concern whether a replacement**
24 **wastewater (septic) system can be installed on the lot in the future.**

25
26 (3) **Any new wastewater (septic) system will need to be authorized by the**
27 **Champaign County Health Department.**

28
29 (4) **For further information, interested parties should contact the Champaign**
30 **County Department of Planning and Zoning.**
31

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

33 **That potential buyers of the property are aware of the possible limitations**
34 **regarding the replacement of wastewater systems on the property.**
35

36 Mr. Elwell noted that there are no new Documents of Record.
37

38 Mr. Elwell entertained a motion to adopt the Summary of Evidence, Documents of Record, and Findings of
39 Fact for Case 961-V-19.
40

41 **Mr. Wood moved, seconded by Ms. Lee, to adopt the Summary of Evidence, Documents of Record,**
42 **and Findings of Fact for Case 961-V-19. The motion carried by voice vote.**
43

44 Mr. Elwell entertained a motion to move to the Final Determination for Case 961-V-19.
45

46 **Ms. Lee moved, seconded by Mr. Wood, to move to the Final Determination for Case 961-V-19. The**
47 **motion carried by voice vote.**

1
 2 Mr. Elwell informed Mr. Shafer that currently the Board has one member absent; therefore, it is at the
 3 petitioner’s discretion to either continue Case 961-V-19 until a full Board is present or request that the
 4 present Board move to the Final Determination. He informed the petitioner that four affirmative votes are
 5 required for approval.
 6

7 Mr. Shafer requested that the present Board move to the Final Determination for Case 961-V-19.
 8
 9

10 **FINAL DETERMINATION FOR CASE 961-V-19:**
 11

12 **Mr. DiNovo moved, seconded by Ms. Lee, that the Champaign County Zoning Board of Appeals finds**
 13 **that, based upon the application, testimony, and other evidence received in this case, that the**
 14 **requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority granted**
 15 **by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of**
 16 **Champaign County determines that:**
 17

18 **The Variance requested in Case 961-V-19 is hereby GRANTED WITH CONDITIONS to the**
 19 **petitioner, William Shafer, to authorize the following variance in the AG-1 Agriculture Zoning**
 20 **District:**
 21

22 **Part A: Variance for a lot area of 0.7 acre (0.622 acre exclusive of right-of-way) in lieu of the**
 23 **minimum required 1 acre, per Section 5.3 of the Zoning Ordinance.**
 24

25 **Part B: Variance for an average lot width of 169 feet in lieu of the minimum required 200**
 26 **feet, per Section 5.3 of the Zoning Ordinance.**
 27

28 ***SUBJECT TO THE FOLLOWING CONDITION(S):***
 29

- 30 **A. Within 30 days of Final Action of Case 961-V-19, the petitioner shall file a miscellaneous**
 31 **document with the Champaign County Recorder of Deeds that documents the following:**
 32 **(1) A Variance was granted in Zoning Case 961-V-19 to authorize a lot less than**
 33 **one acre in area with an average lot width of 169 feet.**
 34
 35 **(2) Because of the size of the lot, there is a concern whether a replacement**
 36 **wastewater (septic) system can be installed on the lot in the future.**
 37
 38 **(3) Any new wastewater (septic) system will need to be authorized by the**
 39 **Champaign County Health Department.**
 40
 41 **(4) For further information, interested parties should contact the Champaign**
 42 **County Department of Planning and Zoning.**
 43

44 Mr. Elwell requested a roll call vote.
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46 The roll call vote was called as follows:

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Anderson – yes	DiNovo – yes	Lee – yes
Randol – absent	Wood – yes	Elwell - yes

Case 963-V-19 Petitioner: Gordon Deck Request to authorize a variance for the construction and use of an accessory structure with an average height of 18.75 feet in lieu of the maximum allowed average height of 15 feet in the R-3 Two Family Residence Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance. Location: A 0.46 acre lot that is the South of Half of Lot 55 in Fred C. Carroll’s Subdivision of the East Half of the Northwest Quarter of the East Half of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian in Urbana Township, commonly known as the residence with an address of 1109 Carroll Avenue, Urbana.

Mr. Elwell informed the audience that Case 963-V-19 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 7.6 of the ZBA By-Laws are exempt from cross-examination.

Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register, they are signing an oath. He asked the audience if anyone desired to sign the witness register and there was no one.

Mr. Elwell asked the petitioner if he would like to make a statement regarding his request.

Mr. Gordon Deck, who resides at 1907 Country Squire, Urbana, stated that his son Shaun would be speaking on his behalf during this hearing.

Mr. Shaun Deck, who resides at 401 N. Harrison, Philo, stated that his father ordered a building with his contractor and when he applied for the permit for the building, he was informed that the building could only be at a certain height. He said that his father contacted the contractor informing them that the building could not be over that certain height and somewhere between that conversation, the time of delivery, and the construction, the information got crossed somehow. He said that they had no idea until the building was constructed that the height of the building exceeded the allowed height. He said that the building is 3.75 feet taller than what is allowed by the Zoning Ordinance, and if they had known that this was occurring during construction, they would have corrected the issue, but it was too late.

Mr. Elwell asked the Board if there were any questions for Mr. Shaun Deck.

Mr. Anderson stated that he does not understand how this could have occurred. He said that he visited the site and a casual reading of the information makes it appear that since Mr. Hall had already approved the Administrative Variance for a certain height, Mr. Deck should have known that the building was considerably above the approved height. He said that the testimony makes it sound like the construction

1 company was at fault.

2
3 Mr. Shaun Deck stated that there was a miscommunication between the time when they ordered the building
4 and when they contacted the contractor to inform them that the height needed to be lowered to meet what
5 was approved in the Administrative Variance.

6
7 Mr. Anderson stated that he was surprised to see that the building was already constructed and being used
8 without the approval of this request.

9
10 Mr. Shaun Deck stated that the building was constructed within three days and has existed on the property
11 for approximately one month.

12
13 Mr. DiNovo stated that the information indicates that Mr. Hall completed the compliance inspection. He
14 asked if Mr. Hall completed the compliance inspection because it was during the time period when the
15 Zoning Officer position was vacant.

16
17 Ms. Burgstrom stated that Mr. Hall completed the compliance inspection in September and the new Zoning
18 Officer started in late August, but Mr. Hall wanted to do the inspection himself.

19
20 Mr. Anderson stated that on the positive side, Carroll Addition does have other buildings and Attachment D.
21 of the Preliminary Memorandum dated November 7, 2019, includes photographs that indicate that the roof
22 of the subject building is actually lower than the two or three floor apartment building behind it. He said that
23 even though the petitioner's building is 3.75 feet above the required maximum height, in that community, it
24 is not the tallest building. He said that housing development behind the subject property has very tall
25 buildings and part of the problem of meeting the standard is that you don't want to be ugly and the tallest
26 building in the community, and that is certainly not the case in this situation. He said that he still does not
27 understand how the building was constructed at its current height, but he does not see a major issue with it.

28
29 Mr. Wood asked Mr. Deck to indicate the type of vehicles that would be stored in the subject building.

30
31 Mr. Shaun Deck stated that currently they are bringing in dirt to the property, and the dirt only comes in
32 every so often. He said that when the dirt is delivered, they might park the truck in the building at night and
33 unload it the next day and place it around the building. He said that they actually have a storage unit on
34 Glover Street in Urbana and that is where they keep their equipment when they are not using it at the subject
35 property. He said that they occasionally park the loaded truck in the building so that it is not an eyesore to
36 the neighbors.

37
38 Mr. Elwell stated that it is his understanding that if the Board decides to be heavy handed and required the
39 building height to be lowered to meet the standard that it would cost approximately \$20,000.

40
41 Mr. Shaun Deck stated that it would cost close to \$35,000 to lower the height of the building.

42
43 Ms. Burgstrom asked Mr. Deck to indicate what type of vehicles will be stored in the building when the dirt
44 trucks are not parked in the shed.

45
46 Mr. Shaun Deck stated that they have a few personal car trailers that would be parked in the shed.

- 1
2 Mr. Elwell asked Mr. Shaun Deck if those car trailers were considered commercial trailers.
3
4 Mr. Shaun Deck stated no.
5
6 Ms. Lee asked Mr. Shaun Deck to indicate the dimensions of the building.
7
8 Mr. Shaun Deck stated that the building dimensions are 50' x 80'.
9
10 Mr. Wood asked Mr. Shaun Deck if the original plan was for a 50' x 80' building.
11
12 Mr. Shaun Deck stated yes.
13
14 Mr. Wood stated that it would be impossible to achieve a 15' height on a 50' x 80' building with a 4/12
15 pitch.
16
17 Ms. Lee stated that it is hard to believe that a manufacturer or contractor would put that much more into it
18 than what they believed the original height was supposed to be.
19
20 Mr. Elwell asked if the petitioner is liable for that error.
21
22 Ms. Lee stated that from an economic point of view, she cannot see why they would have made the walls
23 that much higher than what they had anticipated, because that would have cost the manufacturer and
24 contractor a lot more money. She said that what is before the Board does not make a lot of sense to her.
25
26 Mr. Elwell stated that they did make an error with the size of the building, and if it is on the part of the
27 petitioner, the Board could require that they lower the height of the building by 3.75 feet.
28
29 Ms. Lee stated that it is a problem, because to change something after it is already constructed is a disaster.
30
31 Mr. Wood stated that the picture of the doors on the building are a good indication that if the building was
32 required to be made lower, the doors would not fit the new configuration and new doors would need to be
33 ordered.
34
35 Mr. DiNovo asked Mr. Gordon Deck to indicate his line of business.
36
37 Mr. Shaun Deck stated that his father is not in any line of business, but his mother owns a sewer business.
38
39 Mr. Gordon Deck stated that anything that will be stored in the building are his own personal items and
40 nothing from his wife's business will be stored in the building.
41
42 Mr. Shaun Deck stated that 50% of the building is for his father's use and 50% of the building is for use by
43 the tenant of the home on the subject property. He repeated that the vehicles owned by the sewer business
44 are stored on Glover Street in Urbana.
45
46 Mr. DiNovo asked Mr. Hall if there had been any discussion of the fate of the Carroll Addition

- 1 neighborhood, because it is similar to the Wilber Heights neighborhood, and shares similar problems with
2 the mix of land uses.
3
- 4 Mr. Hall stated no.
5
- 6 Mr. DiNovo stated that at one time there was an idea that the southern portion of Carroll Addition should
7 gradually be rezoned to a commercial designation.
8
- 9 Mr. Elwell asked staff why the proposed special condition is necessary.
10
- 11 Mr. Hall stated that he is not sure that it is needed, but it is a special condition that staff wanted the Board to
12 consider. He said that it isn't actually required by the ordinance, but staff thought that the Board might want
13 to consider it since Mr. Gordon Deck does not live at the subject property and was it right to allow him to
14 use 100% of the accessory building.
15
- 16 Ms. Burgstrom stated that the special condition was a holdover from the Land Disturbance and Zoning Use
17 Permit, and there was nothing that struck staff why the special condition should not be included in the
18 variance. She said that the special condition exists with the building permit and perhaps it should be part of
19 this variance case as well, or at least for consideration by the Board.
20
- 21 Mr. Hall stated that it is not his intent to do inspections to verify the 50% use.
22
- 23 Mr. Wood asked staff if they could indicate what type of complaint was received on the property regarding a
24 business operation on the site.
25
- 26 Mr. Hall stated that there is no business present on the property, except to bring in the dirt and regrade the
27 property. He said that Mr. Deck has testified that no business operations are occurring at the subject
28 property and staff has not received any complaints that there is a business operation occurring, although
29 every time staff visits the site, there are business trucks there. He noted that every time staff has been at the
30 property there has been construction.
31
- 32 Ms. Burgstrom stated that a community member did voice a complaint indicating that a business is occurring
33 at the property because they have seen business vehicles coming in and out of the property. She said that
34 while completing inspection of the property, staff has also seen business trucks there.
35
- 36 Mr. Elwell asked Mr. Deck to describe any business vehicles that might be at the property during any given
37 time.
38
- 39 Mr. Shaun Deck stated that there is a dump truck with an excavator trailer and an excavator to move the dirt
40 around on the property, and one other vehicle which stores their shovels, rakes, etc.
41
- 42 Mr. Elwell asked the Board how they would like to proceed with the proposed special conditions.
43
- 44 Mr. DiNovo stated that the proposed special conditions would not be the first belt and suspenders special
45 conditions that the Board has imposed.
46

1 Mr. DiNovo moved, seconded by Ms. Lee, to include the proposed special conditions as written. The
2 motion carried by voice vote, with one opposing vote.

3
4 Mr. Elwell read special condition A.

5
6 A. The tenant of the home shall have the use of at least 50% of the area of the building for
7 personal storage only. The owner of the property shall be able to use the remaining
8 portion of the building for personal storage only. No business activities including
9 storage of materials or parking of vehicles related to a business either inside or outside
10 of the building shall take place without the proper approvals from the Champaign
11 County Department of Planning & Zoning.

12
13 The above special condition is required to ensure the following:
14 No unauthorized business use can establish on the subject property.

15
16 Mr. Elwell asked Mr. Deck if he agreed to the special condition.

17
18
19 Mr. Deck agreed to the special condition.

20
21 Mr. Elwell entertained a motion to approve the special condition.

22
23 Ms. Lee moved, seconded by Mr. Wood, to approve the special condition. The motion carried by voice
24 vote.

25
26 Mr. Elwell entertained a motion to move to the Findings of Fact for Case 963-V-19.

27
28 Ms. Lee moved, seconded by Mr. DiNovo, to move to the Findings of Fact for Case 963-V-19. The
29 motion carried by voice vote.

30
31 Mr. Elwell noted that there are no new Documents of Record for Case 963-V-19.

32
33 **FINDINGS OF FACT FOR CASE 963-V-19:**

34
35 From the documents of record and the testimony and exhibits received at the public hearing for
36 zoning case 963-V-19 held on November 14, 2019, the Zoning Board of Appeals of Champaign County
37 finds that:

- 38
39 1. Special conditions and circumstances DO exist which are peculiar to the land or structure
40 involved, which are not applicable to other similarly situated land and structures elsewhere in
41 the same district.

42
43 Mr. Elwell stated that special conditions and circumstances DO exist which are peculiar to the land or
44 structure involved, which are not applicable to other similarly situated land and structures elsewhere in the
45 same district because there was an error in the construction of the building that raised the height of the
46 building's height 3.75 feet higher than what the Zoning Ordinance allows in the R-3 Zoning District for

1 accessory buildings.
2

3 **2. Practical difficulties or hardships created by carrying out the strict letter of the regulations**
4 **sought to be varied WILL prevent reasonable or otherwise permitted use of the land or**
5 **structure or construction.**
6

7 Mr. Wood stated that practical difficulties or hardships created by carrying out the strict letter of the
8 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
9 or construction because the cost to change the existing height is significant.
10

11 Mr. Elwell stated that the cost would be upwards to tens of thousands of dollars.
12

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

16 Mr. Elwell stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT
17 result from actions of the applicant because it would be a great hardship on the petitioner to correct the
18 height so that it complies with the requirements of the Zoning Ordinance, and per testimony received at the
19 public hearing, the error was committed on the part of the contractor.
20

21 Mr. DiNovo stated that the second part of Mr. Elwell's testimony should be stricken from the finding
22 because the Board is not confident that the testimony is credible.
23

24 Ms. Lee stated that she mentioned that she had a hard time understanding how this situation could have
25 occurred, although she does understand that mistakes do happen, because she and her husband had ordered
26 materials for an addition to their shed that was supposed to be yellow and ended up with a green color
27 instead.
28

29 Mr. DiNovo stated that he still believes that the second part of Mr. Elwell's finding should be stricken
30 because the Board is not prepared to stand by Mr. Deck's testimony.
31

32 Mr. Elwell agreed with Mr. DiNovo's suggestion and revised his finding as follows: Special conditions,
33 circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant because it
34 would be a great hardship on the petitioner to correct the height so that it complies with the requirements of
35 the Zoning Ordinance.
36

37 **4. The requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS in harmony with**
38 **the general purpose and intent of the Ordinance.**
39

40 Ms. Lee stated that the requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS in harmony
41 with the general purpose and intent of the Ordinance because previous variances have been approved with a
42 greater percentage of variance.
43

44 Mr. DiNovo stated that this is a neighborhood with mixed land uses and ensuring the maximum economical
45 use of the properties is difficult if the Board adheres to the strict requirements of the Zoning Ordinance.
46

1 Mr. Elwell asked Mr. DiNovo if this is the highest and best use of the property.

2
3 Mr. DiNovo stated that it is the best approximation that the Board can achieve given the reality of the
4 situation.

5
6 **5. The requested variance, SUBJECT TO THE PROPOSED CONDITIONS, WILL NOT be**
7 **injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.**
8

9 Ms. Lee stated that the requested variance, SUBJECT TO THE PROPOSED CONDITIONS, WILL NOT be
10 injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the
11 building is more than 50 feet from an adjacent building and there are taller apartment buildings adjacent to
12 the subject property.

13
14 Mr. DiNovo stated that the subject property is bordered on the south and west sides of the property by R-4
15 zoning, which allows multi-story buildings.

16
17 **6. The requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS the minimum**
18 **variation that will make possible the reasonable use of the land/structure.**
19

20 Mr. DiNovo stated that the requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS the
21 minimum variation that will make possible the reasonable use of the land/structure because part of the logic
22 of the variance is the cost required for reducing the height of the building and reducing the height of the
23 building by less than 3.75 feet would cost almost as much as reducing the building by the entire amount. He
24 said that a smaller variance would not achieve anything.

25
26 **7. THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE**
27 **PARTICULAR PURPOSES DESCRIBED BELOW:**
28

29 A. **The tenant of the home shall have the use of at least 50% of the area of the building for**
30 **personal storage only. The owner of the property shall be able to use the remaining**
31 **portion of the building for personal storage only. No business activities including**
32 **storage of materials or parking of vehicles related to a business either inside or outside**
33 **of the building shall take place without the proper approvals from the Champaign**
34 **County Department of Planning & Zoning.**
35

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

37 **No unauthorized business use can establish on the subject property.**
38

39 Mr. Elwell entertained a motion to adopt the Summary of Evidence, Documents of Record, and Findings of
40 Fact, as amended.

41
42 **Mr. DiNovo moved, seconded by Ms. Lee, to adopt the Summary of Evidence, Documents of Record,**
43 **and Findings of Fact, as amended. The motion carried by voice vote.**
44

45 Mr. Elwell entertained a motion to move to the Final Determination for Case 963-V-19.
46

1 Ms. Lee moved, seconded by Mr. DiNovo, to move to the Final Determination for Case 963-V-19. The
2 motion carried by voice vote.

3
4 Mr. Elwell informed Mr. Deck that currently the Board has one member absent; therefore, it is at the
5 petitioner’s discretion to either continue Case 963-V-19 until a full Board is present or request that the
6 present Board move to the Final Determination. He informed the petitioner that four affirmative votes are
7 required for approval.

8
9 Mr. Deck requested that the present Board move to the Final Determination for Case 963-V-19.

10
11 **FINAL DETERMINATION FOR CASE 963-V-19:**

12
13 Mr. DiNovo moved, seconded by Ms. Lee, that the Champaign County Zoning Board of Appeals finds
14 that, based upon the application, testimony, and other evidence received in this case, that the
15 requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority granted
16 by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of
17 Champaign County determines that:

18
19 The Variance requested in Case 963-V-19 is hereby GRANTED WITH CONDITIONS to the
20 petitioner, Gordon Deck, to authorize the following variance in the R-3 Single Family Residence
21 Zoning District:

22
23 Authorize a variance for the construction and use of an accessory structure with an average
24 height of 18.75 feet in lieu of the maximum allowed average height of 15 feet in the R-3 Two
25 Family Residence Zoning District, per Section 5.3 of the Champaign County Zoning
26 Ordinance.

27
28 **SUBJECT TO THE FOLLOWING CONDITION:**

- 29
30 A. The tenant of the home shall have the use of at least 50% of the area of the building for
31 personal storage only. The owner of the property shall be able to use the remaining
32 portion of the building for personal storage only. No business activities including
33 storage of materials or parking of vehicles related to a business either inside or outside
34 of the building shall take place without the proper approvals from the Champaign
35 County Department of Planning & Zoning.

36
37 Mr. Elwell requested a roll call vote.

38
39 The roll call vote was called as follows:

40
41 Anderson – yes DiNovo – yes Lee – yes
42 Randol – absent Wood – yes Elwell – yes

43
44 Mr. Elwell stated that the Board would now hear Case 947-AT-19.

45
46 **7. Staff Report**

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None

8. Other Business

A. Review of Docket

Mr. Hall stated that he is not sure if the Board would like to see those text amendment cases added to the December 12th meeting, but currently the December 12th meeting is a full meeting already. He recommended that revised Case 947-AT-19 and the new text amendment case be scheduled for the tentative January 16th meeting.

Ms. Lee moved, seconded by Mr. DiNovo, to schedule revised Case 947-AT-19 and the new text amendment case be scheduled for the tentative January 16th meeting. The motion carried by voice vote.

Mr. Elwell asked the Board if there were any known absences for future ZBA meetings, and there were none at this time.

Mr. Anderson asked if Mr. Lee Roberts, newly appointed ZBA member, would begin his term at that December 12th meeting.

Mr. Hall stated yes.

B. OMA and FOIA Training Certification for ZBA Members

Mr. Hall reminded the Board that they are required to complete the yearly Open Meetings Act (OMA) and Freedom of Information Act (FOIA) Training Certification, and copies of the Certificate of Completion should be submitted to staff.

C. Farewell to ZBA Board Member: Frank DiNovo

Mr. Hall noted that the November 14, 2019, ZBA meeting is the last meeting for Mr. DiNovo's term. He thanked Mr. DiNovo for his service on the Board.

Ms. Burgstrom stated that she appreciates Mr. DiNovo's institutional knowledge and his willingness to be very thorough in completing the findings and making sure that the Board has a very good basis for what is determined or recommended by this Board.

Ms. Berry thanked Mr. DiNovo for graciously hiring her in 2001 as a team member for the Champaign County Planning and Zoning Department, and for his service on the ZBA.

Mr. Elwell stated that Mr. DiNovo's service to this Board is truly appreciated and he will be truly missed.

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

None

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10. Adjournment

Mr. Elwell entertained a motion to adjourn the meeting.

Ms. Lee moved, seconded by Mr. Wood, to adjourn the meeting. The motion carried by voice vote.

The meeting adjourned at 7:57 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals