STATE OF ILLINOIS)
)SS
COUNTY OF OGLE)

In the Matter of the Petition
of
William D. and Dawn M. Schumaker,
Mt. Morris Township

Ogle County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 28th day
of May A.D. 2009
before the Ogle County
Zoning Board of Appeals

Present:
Maurice Bronkema
Randall Anderson
John Finfrock
Jason Sword
Bruce McKinney, Chairman
Michael Reibel, Zoning Administrator

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MR. McKINNEY: Next order of business.
MR. REIBEL: Next order of business is to consider the request filed April 28th, 2009 of William D. and Dawn M. Schumaker, 6073 Townline Road, Leaf River, Illinois for Variation to allow the construction of an additional accessory building on a site that currently exceeds the maximum allowable accessory building area pursuant to Section 6.06 (D) of the Ogle County Amendatory Zoning Ordinance on property described as follows and owned by the Petitioners:
Part E1/2 G.L.2 of the NE1/4 Fractional Section 4 and part W1/2 G.L. 2 NW 1/4 Fractional Section 3 Mt. Morris Township 24N, R9E or the 4th P.M., Ogle County, IL, 7.81 acres, more or less.
Property Identification Number: 08-04-200-004.
Common Location: 6073 Townline Road.

For the record, a sign was posted along the frontage of the premises indicating that a zoning hearing is to be held. All adjoining property owners to the petition have been notified by certified mail of the hearing this evening and the specifics of the petition, and a legal notice was published in the Monday, May

4th edition of the Ogle County Life again notifying the public of the hearing this evening and the specifics of the petition.
Under the Staff Report, a copy of which is on file and the Board Members have received, I will point out under general information, the site is 7.81 acres. Existing land use, the site is zoned AG-1 and is in non-farm residential use. It's a former farmstead with farm buildings. The surrounding area is in agricultural use and zoned AG-1 Agricultural District. Zoning history, no previous zoning history for this site.
Special information, public utilities, none. Transportation, West Townline Road is a seal coat surfaced, Mt. Morris Township maintained road. Physical characteristics, the site is in an area of gently rolling terrain. The site is on a side slope that transitions to a stream bottom, with slopes ranging from 6 to 12 percent in the eastern portions of the site, to zero to 2 percent in the western portions of the site. The site contains a former farm dwelling, three existing accessory buildings and

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a detached garage under construction that is the subject of the petition for variation.

That's all I have.

MR. McKINNEY: Going to a public hearing, does someone want to make a motion?

MR. FINFROCK: So moved.

MR. McKINNEY: Is there a second?

MR. BRONKEMA: Second.

MR. McKINNEY: Moved and seconded to go into a pubic hearing. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say no.

Motion passed. We're in a public hearing.

Mr. Schumaker, do you want to --

MR. SCHUMAKER: Sure.

WILLIAM SCHUMAKER, being first duly sworn, testified as follows:

MR. McKINNEY: Give her your name and address.

MR. SCHUMAKER: William Schumaker, S-C-H-U-M-A-K-E-R, 6073 Townline Road, Leaf River, Illinois.

MR. McKINNEY: Tell us about your petition.

MR. SCHUMAKER: Well, we -- my wife and I are requesting an opportunity to erect a detached garage on this property. And that's a picture from the north looking southeast and kind of down, it's an aerial view. I brought that to kind of show the lay of the buildings. These buildings are a little bit -- as the description of the property goes, a little bit downhill. So when we bought this place we had figured that we could park in any number of these units, but because of the slope and the winter weather and storms it's become kind of hazardous to try to traverse that hundred feet or so between the house and the existing buildings. So we're here trying to seek a reasonable resolution to violation of 6.06 of the Zoning Code.

The physical -- particular physical issue we're having with this project is the size of the land being the acreage is 7.81 acres, and using the math to calculate how many accessory building square feet you can have we don't have

enough acreage to go along with the size of the buildings that we're using here. So at this time there's no additional land for sale near -- around us or -- or available at a reasonable price.

So one of the things I kind of wanted to point out with this picture is this little building here, it doesn't exist anymore and it was there when they sold off the buildings from the farm about 25 years ago. So this -- if we substituted the number of square feet here for this detached garage, we pretty much have the same amount of square footage that existed on this property when they split it off from the 160 or so acres that it originally was.

Our -- our garage is intended to be a safe, near to the house, everyday area to park our transportation vehicles. The garage would be centralized between the house and the barn, so it's not going to -- the outline, the building's set as it is now won't really be changed because this new building will be stuck down inside between the existing ones. This will not affect -- or detrimentally affect any

of the adjacent property owners since most of it is farmland anyway and their view won't be obstructed because I'm not coming out in this area anyway and the air and the light won't be obviously affecting any changing -- any changes in that, won't be affecting any of our neighbors.

So my wife and I are requesting a variance to accommodate the construction of another building.

MR. McKINNEY: Was this small building -- you said it's already demolished?

MR. SCHUMAKER: Yeah, this grain bin was removed maybe 10 or 15 years ago.

MR. McKINNEY: So that building wasn't in the configuration?

MR. SCHUMAKER: No, it's not in the calculation that we came up with.

MR. McKINNEY: My understand is you're already over the limit --

MR. SCHUMAKER: Right.

MR. McKINNEY: -- without the garage?

MR. SCHUMAKER: Right.

MR. McKINNEY: And without that small

building?
MR. SCHUMAKER: Right.
MR. McKINNEY: Is there any other buildings on your property that is not being used that can be taken down to kind of help get this back into --
MR. SCHUMAKER: Well, unfortunately the reason we bought this was I had recently sold a farm up in Wisconsin and I had several pieces of farm equipment that I needed to store someplace, so it was a readymade conversion from having that land up there. I would have ideally liked to have more land but that wasn't what was available at the time. And I have a camper and a boat and firewood, it's nice to keep that stuff stored someplace inside so it's not exposed to the weather.
MR. McKINNEY: Do you do any farming around here?
MR. SCHUMAKER: I don't do any farming presently, but my desire is that I could get some more farmland and substitute what I had up in Wisconsin for down here.
MR. SWORD: How long have you lived there?

MR. SCHUMAKER: 13 years.
MR. BRONKEMA: The new building you got there, you want to put a garage in between that?
MR. SCHUMAKER: Yeah, it's kind of --
MR. McKINNEY: Well, you already have got the cart before the horse, you have already got the garage almost completely built.
MR. SCHUMAKER: That is true.
MR. SWORD: Did you have a contractor build it?
MR. SCHUMAKER: No.
MR. SWORD: So you built it yourself?
MR. SCHUMAKER: (Nods head.)
MR. SWORD: And you didn't think you had to have a permit?
MR. SCHUMAKER: For some reason, I don't know where I got this idea, but I thought if you had an old farm set of buildings you could build an accessory building without having a permit, so that's obviously an error.
MR. McKINNEY: What is the height, width and length of this new garage?
MR. SCHUMAKER: It's 28 feet deep, 38 feet wide, 10 feet at the eave and 17 feet at the top

of the peak.
MR. McKINNEY: What about's the height of your house?
MR. SCHUMAKER: Oh, it's a two-story so it's, I'm guessing 28, 30 feet. It's got a pretty steep -- this is a picture of -- or it's kind of an image of what the garage would look like finished.
MR. McKINNEY: And you said the height of the garage at the peak would be approximately --
MR. SCHUMAKER: 17 feet.
MR. McKINNEY: 17. My concern is that the garage would be taller or as tall as the house and therefore it would be out of proportion.
MR. SCHUMAKER: Yeah, it's actually -- the barn is close to 30 feet and the house is maybe 28 feet, so it's actually lower than the house. They all have the same pitch of the roof, so whatever the number stories is you have got that roof line even on top of that more. So the two-story buildings like this barn or the house obviously are going to be taller than the garage.
MR. McKINNEY: You're not planning on

selling this property soon where this garage would help bring a better value to your property, are you?
MR. SCHUMAKER: Nope, because I -- we really like that place. We have done a lot of work on it. I have replaced -- every single roof here has been replaced and I have no intention of doing all that work and then leaving right away.
MR. BRONKEMA: That outbuilding there, is that on the other property?
MR. SCHUMAKER: This one here, yeah. There's a fence. When they split off the 160 they put a fence like right 2 feet from the edge of the building there, so that's not on mine.
MR. BRONKEMA: I see there's a fence in there. I just figured that wasn't on yours.
MR. SCHUMAKER: Yeah.
MR. McKINNEY: Is there any other questions right now?
Do you have anything else?
MR. SCHUMAKER: (Shakes head.)
MR. McKINNEY: Okay. Nobody's filed a letter of appearance?

MR. REIBEL: No.
MR. McKINNEY: At this time is there anybody here that wishes to either testify for or against the petition? Seeing none, need to go back into open session.
MR. BRONKEMA: So moved.
MR. SWORD: Second.
MR. McKINNEY: Been moved and seconded to go back into open session. All those in favor signify by saying aye.
(All those simultaneously responded.)
MR. McKINNEY: Any opposed say no.
Motion passed. Back into open session. Let's go through our finding of facts.
MR. REIBEL: In determining whether the strict application of the Zoning Ordinance creates impractical difficulties for or imposes a particular hardship on an application -- applicant for a variation, the Board shall consider the extent to which the following facts have been established by the evidence: A) The particular physical surroundings, shape or topographical condition of the specific property

involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.
MR. ANDERSON: The site is located in a predominantly agriculture area, farmland adjoins the site. All the buildings on the site with the exception of the 12 by 18 garden shed are original farm buildings and there is no garage to serve the house. These factors result in a particular hardship as opposed to just a mere inconvenience if the strict letter of the regulation were carried out. Other than obviously the misunderstanding I guess you could say of not getting the building permit and the understanding a little more of that before we started this, I guess I find that standard's met.
MR. McKINNEY: I agree. Mr. Schumaker's testimony sounds like most of the buildings are being used for storage and future use. Therefore, it would be a hardship if he had to tear something down just to get within the qualifications.

(All those simultaneously agreed.)
MR. REIBEL: B) The conditions upon which the petition for a variation are based are unique and would not be applicable generally to other property within the same zoning classification.
MR. BRONKEMA: The conditions upon which the petition for the variation are based are unique and are not applicable generally to other properties in the AG-1 District due to the site location in an agriculture area, the presence and origin -- original large buildings and absence of a garage designed to serve the house, and it's nice to have a big barn to put stuff in but not very convenient for your own car and your house, so I feel that standard's met.
(All those simultaneously agreed.)
MR. REIBEL: C) The purpose of the variation is not based exclusively on a desire to obtain a higher financial return on the property.
MR. SWORD: Evidence indicates that the

purpose of the variation is not based exclusively on a desire to obtain a higher financial return on the property but rather to provide a garage for the occupants of the dwelling. I feel that standard's met.
(All those simultaneously agreed.)
MR. REIBEL: D) The alleged difficulty or hardship has not been created by any person presently having an interest in the property.
MR. FINFROCK: The alleged difficulty or hardship has not been created by Mr. and Mrs. Schumaker, as the existing farm buildings onsite are original to the site, would have existed when they acquired the property and are in reasonably good condition. I think the standard's been met.
(All those simultaneously agreed.)
MR. REIBEL: E) The granting of the variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

MR. SWORD: No evidence has been submitted that would indicate the granting of the variation will in any way be materially detrimental to the public welfare, injurious to other property or improvements in the neighborhood in which the property is located. I feel that standard's met.

(All those simultaneously agreed.)

MR. REIBEL: F) The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood.

MR. BRONKEMA: No evidence has been submitted that would indicate that the variance will impair an adequate supply of light or air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood. And the

building's set back off the road, pretty well hidden with all the rest of the buildings, so feel that standard's met.

(All those simultaneously agreed.)

MR. REIBEL: The Zoning Board of Appeals should not vary the regulations of this ordinance unless it shall make findings based upon the evidence present to it in each specific case that: A) The plight of the owner is due to unique circumstances.

MR. BRONKEMA: The circumstances are unique due to the presence of a large original farm building which he testified was really not too handy for his -- to store his automobiles other than machinery. The site is -- and the buildings are in reasonably good condition, so the standard's met.

(All those simultaneously agreed.)

MR. REIBEL: B) The variation, if granted, will not alter the essential character of the locality.

MR. SWORD: The variation will not alter

the essential character of the locality, as the site is located in an agriculture area. Standard is met.

(All those simultaneously agreed.)

MR. REIBEL: In addition to the required findings of facts pursuant to Section 6.06 (D)1 of the Zoning Ordinance, the Board is also required to find that the area of all accessory buildings will be compatible with the neighborhood in design, location and size and there is proportionality between the size of the principal building, parcel, street frontage and the size of the accessory structures.

MR. FINFROCK: The Board finds the area of the accessory buildings will be compatible with the neighborhood, design, location, size, and the proposed accessory building is proportional to the existing dwelling partial size from what I have seen. Standard met.

(All those simultaneously agreed.)

MR. BRONKEMA: I feel it's set back in there, and I bet a lot of people won't even know

the garage is there with the amount of frontage or foliage he has got there, you have to look. I had to drive in there.

MR. McKINNEY: Going through the finding of facts we have found that all standards have been met, so I will entertain a motion.

MR. ANDERSON: I'll make a motion that we approve the Variation No. 6-09 of William and Dawn Schumaker to allow them to build a garage next to the residence, finding that all the facts are met.

MR. McKINNEY: Is there a second?

MR. FINFROCK: Second.

MR. McKINNEY: Randy's moved, John seconded to approve the Variation No. 6-09 for William D. and Dawn M. Schumaker. Roll call.

MR. REIBEL: Bronkema?

MR. BRONKEMA: Yes.

MR. REIBEL: Sword?

MR. SWORD: Yes.

MR. REIBEL: Finfrock?

MR. FINFROCK: Yes.

MR. REIBEL: Anderson?

MR. ANDERSON: Yes.

MR. REIBEL: McKinney?
MR. McKINNEY: Yes.
(By voice vote five ayes.)
MR. REIBEL: Five voted yes.
MR. McKINNEY: Motion passed.
Come in and see Mr. Reibel tomorrow or whenever and get your building permit.
MR. SCHUMAKER: Thank you very much, gentlemen.
MR. BRONKEMA: You want to wait and I'll tell you a little story after we get done here.
MR. McKINNEY: Any other order of business?
MR. REIBEL: No further business.
MR. McKINNEY: This meeting is adjourned.
(The hearing was concluded at 7:52 p.m.)

Now on this 28th day of May, A.D. 2009, I do signify that the foregoing testimony was given before the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman

Michael Reibel,
Zoning Administrator

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STATE OF ILLINOIS)
)SS
COUNTY OF OGLE)

In the Matter of the Petition
of
David and Lisa Shaw, Rockvale Township
Ogle County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 28th day
of May A.D. 2009
before the Ogle County
Zoning Board of Appeals

Present:
Maurice Bronkema
Randall Anderson
John Finfrock
Jason Sword
Bruce McKinney, Chairman
Michael Reibel, Zoning Administrator

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MR. McKINNEY: Call this meeting to order. Please stand for the Pledge of Allegiance.

(The Pledge of Allegiance was cited.)

MR. McKINNEY: You may be seated. Roll call, please.

(Roll call was taken and all were present.)

MR. REIBEL: Five present.

MR. McKINNEY: We do have a quorum.

Verbatim transcripts serving as minutes from the last meeting are on file and those will not be read at this time. I'll entertain a motion to approve minutes of the last ZBA meeting.

MR. ANDERSON: I'll make a motion.

MR. BRONKEMA: Second.

MR. McKINNEY: Randy's moved, Maury's seconded. Any questions on the minutes?

All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say no. Motion passed.

All the testimony will be taken under oath. Please come forward to testify and state your name and address to the recording secretary. Please spell your last name. When testifying, please speak clearly and loud enough to be heard. This hearing is the only opportunity to place testimony and evidence on the record. There will not be another opportunity beyond tonight's hearing to submit additional evidence or testimony for consideration. Please turn off all cell phones and pagers.

The procedure on hearings will be -- that will be followed tonight is as found in the ZBA Rules of Procedures and the Citizens Guide to the Zoning Board of Appeals, which are available right here in front of Mr. Reibel.

If anyone has trouble hearing, please let us know. I want to welcome John Finfrock. I think this is your first meeting?

MR. FINFROCK: Second.

MR. McKINNEY: Second, okay.

Mr. Reibel, the first order of business.

MR. REIBEL: First order of business is to

consider the request filed April 22nd, 2009 of David and Lisa Shaw, 6021 North CL Myers Drive, Byron, Illinois for a variation to allow an above-ground pool and deck to be constructed 27 feet from the right-of-way line of North River Road in lieu of 50 feet as required pursuant to the Ogle County Amendatory Zoning Ordinance on property described as follows and owned by the Petitioners:

Lot 2 River Oaks Subdivision, part of the W1/2 SE1/4 Section 2 Rockvale Township 24N, R10E of the 4th P.M., Ogle County, Illinois.

Property Identification Number: 09-02-452-002.

Common Location: 6021 North CL Myers Drive.

Under the Staff Report, copy of which is on file and the Board Members have received, I will point out under general information that the size of the parcel is 2.05 acres, more or less. Existing land use, site is zoned R-2 single-family residence district and is in residential use. Surrounding land use and zoning, the site is located within a residential area. All surrounding land is zoned R-2 single-family residence district. The site was

zoned R-2 in 1979 under Petition No. 2-79A. River Oaks Subdivision was approved by the Ogle County Board on January -- June 11th, 1979. The dwelling on-site was constructed in 1995 under Zoning Certificate No. 169-9NA. Applicable regulations, the subdivision plat of River Oaks Subdivision indicates a setback of 50 feet from River Road and CL Myers Drive.

Special information, public utilities, the site is served by public water from the City of Byron. Transportation, North River Road is a hot mix surfaced Ogle County highway. North CL Myers Drive is a hot mix surfaced road under the jurisdiction of Rockvale Township. Physical characteristics, the site is located in an elevated stream terrace, with slopes ranging from 2 to 5 percent on the site. The site is elevated approximately 6 to 8 feet above River Road.

I have a letter on file from the Ogle County Highway Department dated May 6, 2009 which states:

This office has completed its review of the variation request and offers the following

comment, due to the proximity of the proposed improvements to the right-of-way of River Road this office strenuously objects to the issuance of the requested variance. The close proximity of the improvements to the existing River Road roadway could lead to unintentional damage by required snow and ice removal operations.

Signed by Curtis D. Cook, P.E., County Engineer.

And for the record, a sign was posted along the frontage of the premises indicating that a public hearing was to be held. All adjoining property owners to this petition have been notified by certified mail of the hearing this evening and the specifics of the petition, and a legal notice was published in the Monday, May 4th edition of the Ogle County Life notifying the public of the hearing this evening and the specifics of the petition.

That's all I have, Mr. Chairman.

MR. McKINNEY: Okay. Thank you. This is a public hearing, so I'll entertain a motion to go into a public hearing.

MR. BRONKEMA: So moved.

MR. SWORD: I'll second.

MR. McKINNEY: Maury's moved, Jason seconded to go into the public hearing. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say no. Motion passed. We're in a public hearing.

Mrs. Shaw, if you want to come to the roll pit, I guess. Please raise your right hand.

LISA SHAW,

being first duly sworn, testified as follows:

MR. McKINNEY: Give Callie your name and address.

MS. SHAW: Lisa Shaw, S-H-A-W, 6021 North CL Myers Drive, Byron, Illinois.

MR. McKINNEY: Tell us about your petition.

MS. SHAW: Uhm, due to my own stupidity I had a pool put up in October, I didn't realize I had to have a permit for that pool. I went to the Zoning Board to get a permit for a deck for the pool because I knew that it would be cemented in the ground and be a permanent

structure, and that's when I was told that I had to have a permit for the pool and that's why I'm here.

Uhm, where we have our pool set in our yard at and the size of the deck that we would like to put on there we would only be 7 feet from our leech fields and we're more than 25 feet away from our neighbor's property -- that's the deck. And the 50 feet off the county road, we're only 27 from the edge of the pool, uhm, but we do have almost a 10 foot -- 8, 10 foot drop-off that goes completely down, there's really not a slope.

And with the shrubs and the trees and the two fences, uhm, my concern would be if we were level with that road then I guess I would understand if there was an accident, because it is a 55 mile an hour road that there would be a problem with cars coming into the yard but we are so high up and there's so many shrubs and brush and two fence lines running in front of the pool that I don't see how something like that would happen. We have lived there like almost 15 years, 14 years.

MR. McKINNEY: Well, I think Mr. Cook -- Curtis Cook, his biggest concern is like snowplowing, going down the road, you know, if they can get going at 50 miles an hour they'll toss the snow and ice -- could toss it up over that hill and could damage your pool, that that's his biggest concern. I don't think it -- unless a car is really traveling could get up there.

MS. SHAW: That's what I --

MR. McKINNEY: The biggest concern is snow, ice, rocks being flung into the air by snowplows or something.

MS. SHAW: Well, I can understand that, but also we have never had rocks in our yard at that end or anything thrown up in our yard that we have ever seen or noticed like when the plows go by, it's always down in the ditch.

MR. McKINNEY: There's always that one time.

MS. SHAW: I understand.

MR. McKINNEY: Yeah. You don't have to be nervous, we're not going to bite.

Anything else right now?

MS. SHAW: No.

MR. McKINNEY: Okay. A few questions.

MR. BRONKEMA: I guess you can't come up with another area for it, right?

MS. SHAW: The largest area that we have open, as you can see on that map, is our front yard. I don't really know how our neighbors would feel about putting a pool in our front yard.

MR. SWORD: What about between the leech field and the house, right in here?

MR. ANDERSON: If this is drawn to scale.

MR. FINFROCK: Here's your pool, here's your leech field, here's your house.

MS. SHAW: There's not enough room.

MR. ANDERSON: Is this drawn to scale?

MR. REIBEL: Yes.

MR. McKINNEY: Mr. Shaw explained to me that the tanks for the septic is closer to the house and then the runs go out to where it's indicated on the map.

MR. BRONKEMA: In the order they show.

MR. McKINNEY: Most of that area between the house and where it shows leech field is

actually it's septic field.

MR. SWORD: What about right east of the house?

MS. SHAW: That's all trees. And this part of our yard right here, this is all fenced in up to that garage.

MR. McKINNEY: Which part are you pointing to just so we can get it on the record?

MS. SHAW: This coming from --

MR. McKINNEY: You're talking about the north side of the house?

MS. SHAW: Yeah. This is all fenced in, you know, up to a couple feet away from there, because it comes up to the corner of the house.

MR. McKINNEY: So you're talking about from the north side all the way to the west side and around the chain link fence?

MS. SHAW: Yeah, that's what we have, chain link. And that's our backyard, that's where we utilize our space with our kids and entertaining. We don't ever walk in our front yard I don't think except to mow it.

MR. ANDERSON: If the Board agrees to this, if there was any stipulations put in here,

and the Board would have to agree to the stipulations, that if it -- comes down to that River Road was to be widened or something was done and it was required by the County that you move that pool --

MS. SHAW: That we move the pool.

MR. ANDERSON: -- you would have to move the pool at your own expense and you would be responsible for any damages to your own pool.

MS. SHAW: I would agree with that, yes.

MR. ANDERSON: Well, that would be up to the Board if they'll accept those stipulations too.

MR. BRONKEMA: I really feel that the -- I don't think there's any way the County would ever get the snow up there. I have pushed a lot of snow, pushed a lot of snow, and it would take an awful big machine to get it up on top of the fence, that bank there. I'm not saying it couldn't be done.

MR. ANDERSON: Mike, would you have any problems with the verbiage being put in in regards to the stipulation of if it's required by Curtis to have it moved because of whatever

reason for River Road or that, that she would have to move it at her own expense?

MR. REIBEL: No, that's fine, and actually we do have drafted a waiver of liability document that I talked to Curtis about we have used before that Mr. and Mrs. Shaw could be required to sign and record that just says that they can't hold the County responsible, liable for any damages due to the operations of the highway. I don't think Curtis' concern is the widening of the highway so much as just the general operations maintenance.

MR. FINFROCK: And you're willing to do that?

MS. SHAW: Yes.

MR. SWORD: Does something like that transfer if they sell the property?

MR. REIBEL: That's why they have them record it against the deed, and it does say it applies to subsequent owners, etcetera.

MR. BRONKEMA: It would take a lot of pushing with a snowplow to get it up that yard.

MR. REIBEL: I told Curtis that.

MR. McKINNEY: But just in case, there's

always that one time.

MR. BRONKEMA: Right.

MR. McKINNEY: We're going to be going through some finding of facts, so I'd like to ask some question just so we get it on the record -- your answers.

You're not planning -- because your constructing this pool is not because you're planning on selling the property here real soon to gain a bigger return?

MS. SHAW: Honestly I have two cousins that work for brokers and 90 percent of homes do not sell because they have pools.

MR. SWORD: Yeah, all the liability.

MS. FARMER: It's a liability.

MS. SHAW: So I would not be going through all this trouble just for resell.

MR. McKINNEY: You and your husband built this house in 1995?

MS. SHAW: Yes.

MR. McKINNEY: At that time were you contemplating ever having a swimming pool?

MS. SHAW: No. And, you know, if we had -- that's what we were talking about before with

the leech fields and the septic being so close that, you know, it just wasn't something you think about if you have never had a house built or had a pool built, because it is kind of silly having our leech fields where they are at.

MR. McKINNEY: Just trying to determine if the hardship is --

MS. SHAW: I would like it closer to the house by the deck that's off the patio doors, that would be more convenient for me, but because those fields are there --

MR. McKINNEY: Right. That's all the questions I have.

Anybody else have any questions right now?

MR. ANDERSON: No, she already answered what I had.

MR. McKINNEY: And you are willing -- you and your husband would be willing to sign this waiver of liability --

MS. SHAW: Yes.

MR. McKINNEY: -- if that is a requirement of the Board if this passes?

MS. SHAW: Yes.

MR. McKINNEY: Okay. I believe we have

a -- do you have anything else right now?
MS. SHAW: No.
MR. McKINNEY: We do have a letter on file for -- who's the person?
MR. REIBEL: Rosemary Farmer.
MR. McKINNEY: Rosemary Farmer to ask questions. She cannot testify at this time. She'll have some questions, I believe, of you.
MS. FARMER: Oh, I didn't really have questions --
MR. McKINNEY: Oh, okay.
MS. FARMER: -- other than, you know -- I really don't have questions for you. We -- we're -- I'm her immediate neighbor, her only immediate neighbor, and she's my only immediate neighbor. I think we have talked --
MR. McKINNEY: I'm going to be asking for --
MS. FARMER: Okay.
MR. McKINNEY: -- anybody to be sworn in and testify as either opponent or -- either for or against the petition, so we'll -- if you don't have any questions on what they're doing then we'll --

MS. FARMER: No, I just was kind of wondering what these squiggly lines are. What are these?
MR. McKINNEY: Squiggly lines.
MR. BRONKEMA: Probably the leech fields.
MS. FARMER: No, no, they run all over the place.
MR. REIBEL: Those are the contour lines, the lines of topography or elevation.
MR. McKINNEY: How high it is.
AUDIENCE MEMBER: Yeah, that's the way the topography map would show the land slopes.
MR. McKINNEY: That's how water would flow.
MS. FARMER: Oh, okay.
MR. McKINNEY: Do you have any other questions?
MS. FARMER: No.
MR. McKINNEY: Okay. You can sit down then.
At this time is there anybody here that wishes to be sworn in and testify in favor of the petition?
MS. FARMER: Yes.

MR. McKINNEY: Please come forward.
ROSEMARY FARMER,
being first duly sworn, testified as follows:
MR. McKINNEY: Give her your name.
MS. FARMER: Rosemary Farmer, F-A-R-M-E-R, 6001 North CL Myers Drive, Byron, Illinois.
MR. McKINNEY: The floor is yours.
MS. FARMER: Okay. I did -- boy, oh boy, that snow thing really threw me, that's pretty bizarre, and I just want you guys to consider that, which obviously you have. I didn't expect that one. I did expect somebody saying something about possibly if somebody went off the road, you know, which if you physically come out there and look -- I measured it today -- from the edge of River Road to where the hill, the incline up to the property is 27 feet, okay. Then you got another I guessed -- I measured but then I guessed, because I'm short and I'm looking up, and between 8 to 10 feet above the street, okay. I also drove down River Road, and at the address 6773 you have got from the edge of the road to a drop into the river, 27 feet. At 6525 you have got 30 feet from the edge of

the road to the drop into the river with nothing stopping you. At 6501 you have got 28 feet. There were far closer -- when I say closer I mean from the edge of the road to a big drop into the river with nothing stopping you far, far more dangerous, far, far more likely to happen. We have had more cars in the river than we have up in somebody's lawn, okay.
I think as far as our property goes, like I said, we are the only neighbor that Lisa has touching her property and she's the only neighbor I have at this time that touches my property.
To have the pool in the front yard is not the answer. I think it's commendable -- Lisa and I, the first time we talked in three years was the other day. She has her family, I do my thing. There's, you know, no problem or anything, they're a nice quiet family, nice quiet people and we mind our own business, other than me being here I guess.
I'm kind of disappointed that the road commissioner isn't here to hear those numbers, because I have been thinking that for a long

time. We have got far more dangerous things going on on that road than Lisa's pool.

I think it's commendable that a family wants their children in their own backyard so she knows where they're at. The pool -- if you saw how her house set, to put the pool off to the side -- she's got a little guy, I don't know how old he is.

MS. SHAW: Five.

MS. FARMER: But if she can't watch from the kitchen window to see, you know, that everything is okay in the pool -- you have got, I would assume, a much better view putting that pool where you want to put it or where it's at. To be honest with you, I didn't even know they had a pool.

You know, we -- we have no objection and, like I said, we are their closest neighbor. You know, this is not the buddy plan, I'm not here to -- you know, because we -- our paths go different ways. But I think it's -- I think it's sad that, you know, it has to be drawn out like this in such a dramatic way and, you know, I was more -- I was figuring you guys were going

to hit us with the safety thing, not snow, that's bizarre. I can see if you came down the road with big blowers, you're talking a plow.

MR. McKINNEY: They might come down the road with big blowers next winter, who knows.

MS. FARMER: I have never had any debris in my yard from that, believe me, and we sit up high too, so.

Anything can happen, but these numbers I gave you are far more likely to happen. That is I think a far more dramatic, far more likely disaster than Lisa putting her pool where she wants it. That's it, okay.

MR. McKINNEY: Thank you.

Is there anybody else here that wishes to testify in favor? Anybody here that wishes to testify against the petition?

Seeing none, entertain a motion to go back into open session.

MR. BRONKEMA: So moved.

MR. FINFROCK: Second.

MR. McKINNEY: Been moved and seconded to go back into open session. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say no.

Motion passed. Back in open session.

Let's go through our finding of facts.

MR. REIBEL: In determining whether the strict application of the Zoning Ordinance creates impractical difficulties for or imposes a particular hardship on an applicant for a variation, the Board shall consider the extent to which the following facts have been established by the evidence: A) The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.

MR. ANDERSON: The location, orientation of existing house along lots, River Road frontage, septic system, landscaping and highway right-of-way on two sides of the lot is such that it is not possible for the Petitioner to construct a swimming pool and deck as proposed

that conforms to the required setback of 50 feet. I really understand why you wouldn't want to have a pool in your front yard, not everyone wants to parade in front of your neighbors in a swimsuit.

MS. SHAW: My neighbors don't want to see me in my swimsuit.

MR. ANDERSON: I feel that standard's met.

(All those simultaneously agreed.)

MR. REIBEL: B) The conditions upon which the petition for a variation are based are unique and would not be applicable generally to other property within the same zoning classification.

MR. SWORD: The conditions upon which the petition for a variation are based are unique and are not applicable generally to other property within the R-2 single-family residence district due to the existing house location and orientation with the rear yard along the lots, River Road frontage, the septic system location, topography of the site with the lot being approximately 6 to 8 foot above the elevation of

River Road and highway right-of-way on two sides of the lot. I feel that standard is met.

(All those simultaneously agreed.)

MR. REIBEL: C) The purpose of the variation is not based exclusively on a desire to obtain a higher financial return on the property.

MR. BRONKEMA: The evidence indicates that the purpose of the variation is not based exclusively on the desire to obtain a higher financial return on the property but rather to provide a swimming pool for the occupants of the dwelling, and she testified that it wasn't for a higher property value. So I feel that standard's met.

(All those simultaneously agreed.)

MR. REIBEL: D) The alleged difficulty or hardship has not been created by any person presently having an interest in the property.

MR. FINFROCK: The alleged difficulty or hardship has not been created by Mr. and Mrs. Shaw. Even though Mr. and Mrs. Shaw constructed

the dwelling in 1995, it is unlikely that they contemplated a swimming pool at the time the house was constructed and the septic field installed. I believe that standard's met.

(All those simultaneously agreed.)

MR. REIBEL: E) The granting of the variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

MR. BRONKEMA: No evidence has been submitted that would indicate that the granting of the variation will be materially detrimental to the public welfare or injurious to the property or improvements in the neighborhoods in which the property is located. Standard's met.

(All those simultaneously agreed.)

MR. REIBEL: F) The proposed variation will not impair an adjacent supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the

public safety or substantially diminish or impair property values within that neighborhood.

MR. SWORD: No evidence has been submitted that would indicate that the variation will impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood. That standard is met.

(All those simultaneously agreed.)

MR. REIBEL: The Zoning Board of Appeals shall not vary the regulations of this ordinance unless it should make findings in each specific case that: A) The plight of the owner is due to unique circumstances.

MR. FINFROCK: The circumstances are unique due to the location, orientation of the existing dwelling of the site, as well as the location of the existing septic system and the double frontage nature of the lot with the right-of-way along the rear of the lot as well as along the side of the lot. I believe that

standard's met.

(All those simultaneously agreed.)

MR. REIBEL: B) The variation if granted will not alter the essential character of the locality.

MR. BRONKEMA: The variation will not alter the essential character of the locality, as there is an adequate buffer between the proposed swimming pool and River Road due to the difference in elevation and the lots on River Road, plus they're also well concealed by brush and trees that they have planted in that area. I feel that standard's met.

(All those simultaneously agreed.)

MR. McKINNEY: Going through all the standards, we have found that all standards have been met. With that, before we entertain a motion do we want to require this waiver of liability that Curtis Cook has asked us -- if we do grant the petition he would like a little protection for the Highway Department.

MR. FINFROCK: My feeling is that we

should, yes.
MR. McKINNEY: Okay, so in the motion you may want to include that. And I think Randy has also stipulated that he would like to see something in the motion about requirement that the Shaws or the owner of the property at that time would have to be required at their cost to move the pool if River Road was to be widened, I don't know if you still wanted that in the motion or not.
MR. ANDERSON: I don't think we need it with that.
MR. REIBEL: Just the waiver of liability is sufficient?
MR. ANDERSON: Yeah.
MR. McKINNEY: So I will entertain a motion.
MR. BRONKEMA: I make a motion that we grant the variation to David and Lisa Shaw at 6021 North CL Myers Drive, Byron for a variation to allow the above-ground pool and deck to be constructed 27 feet from the right-of-way in lieu of the 50 feet with the signing of the variations for the liability for the Highway

Department.
MR. REIBEL: And recordation of that document as well, include that as well?
MR. BRONKEMA: Yes.
MR. McKINNEY: And all standard were met.
MR. BRONKEMA: With all the standards being met of the 05-09 variance.
MR. McKINNEY: Been moved to approve the variation. Is there a second?
MR. ANDERSON: I'll second it.
MR. McKINNEY: Been moved and seconded to approve No. 05-09 variation for David and Lisa Shaw with the waiver of liability being signed and filed with the County.
Roll call.
MR. REIBEL: Sword?
MR. SWORD: Yes.
MR. REIBEL: Finfrock?
MR. FINFROCK: Yes.
MR. REIBEL: Anderson?
MR. ANDERSON: Yes.
MR. REIBEL: Bronkema?
MR. BRONKEMA: Yes.
MR. REIBEL: McKinney?

MR. McKINNEY: Yes.
(By voice vote five ayes.)
MR. REIBEL: Five voted yes.
MR. McKINNEY: Motion passed.
Come in and see Mr. Reibel tomorrow to get the paperwork signed and filed with the County and then you will be able to take care of your -- if there's nothing else take care of your permit so you can proceed.
MS. SHAW: Thank you.
MR. SWORD: And you can hope for warm weather.
MR. BRONKEMA: This is off the record.
(A discussion was held off the record.)
(The hearing was concluded at 7:33 p.m.)

Now on this 28th day of May, A.D. 2009, I do signify that the foregoing testimony was given before the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman

Michael Reibel,
Zoning Administrator

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