

CASE NO. 920-V-18

PRELIMINARY MEMORANDUM

January 10, 2019

Petitioner: **Rick Keever**

Request: **Authorize the following variance from the Champaign County Zoning Ordinance in the CR Conservation Recreation Zoning District:**

Authorize the construction and use of an existing shed with a rear yard of 7 feet in lieu of the minimum required 10 feet on a joint lot development, per Section 7.2.1 B. of the Zoning Ordinance.

Subject Property: **A 0.72 acre tract that is comprised of Lot 2 of Edgewood Acres Subdivision and Lot 5 of Edgewood Acres 2nd Subdivision of the Southeast Quarter of the Southeast Quarter of Section 12, Township 21 North, Range 7 East of the Third Principal Meridian, in Newcomb Township and commonly known as the residence at 2805N County Road 600E, Fisher.**

Site Area: **31,229 square feet (0.72 acre)**

Time Schedule for Development: **Already in use**

Prepared by: **Susan Burgstrom**
Senior Planner

John Hall
Zoning Administrator

BACKGROUND

The Petitioner requests a variance for an existing detached shed that has a rear yard of 7 feet in lieu of the 10 feet minimum required by ordinance. The shed was constructed without a permit sometime between 1988 and 2002.

The petitioner applied for a Zoning Use Permit on July 20, 2018. ZUPA #201-18-01 was approved on August 1, 2018, with the special condition that the petitioner apply for a variance for the detached shed. The petitioner was made aware that the shed would have to be moved if the variance is not approved.

EXTRATERRITORIAL JURISDICTION

The subject property is not within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning.

The subject property is located in Newcomb Township, which does have a Plan Commission. Townships with Plan Commissions do have protest rights on a variance and are notified of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Single Family Residence	CR Conservation-Recreation
North	Single Family Residence	CR Conservation-Recreation
East	Agriculture, wooded area, and grass	CR Conservation-Recreation
West	Single Family Residence	CR Conservation-Recreation
South	Single Family Residence	CR Conservation-Recreation

PROPOSED SPECIAL CONDITION

No special conditions are proposed at this time.

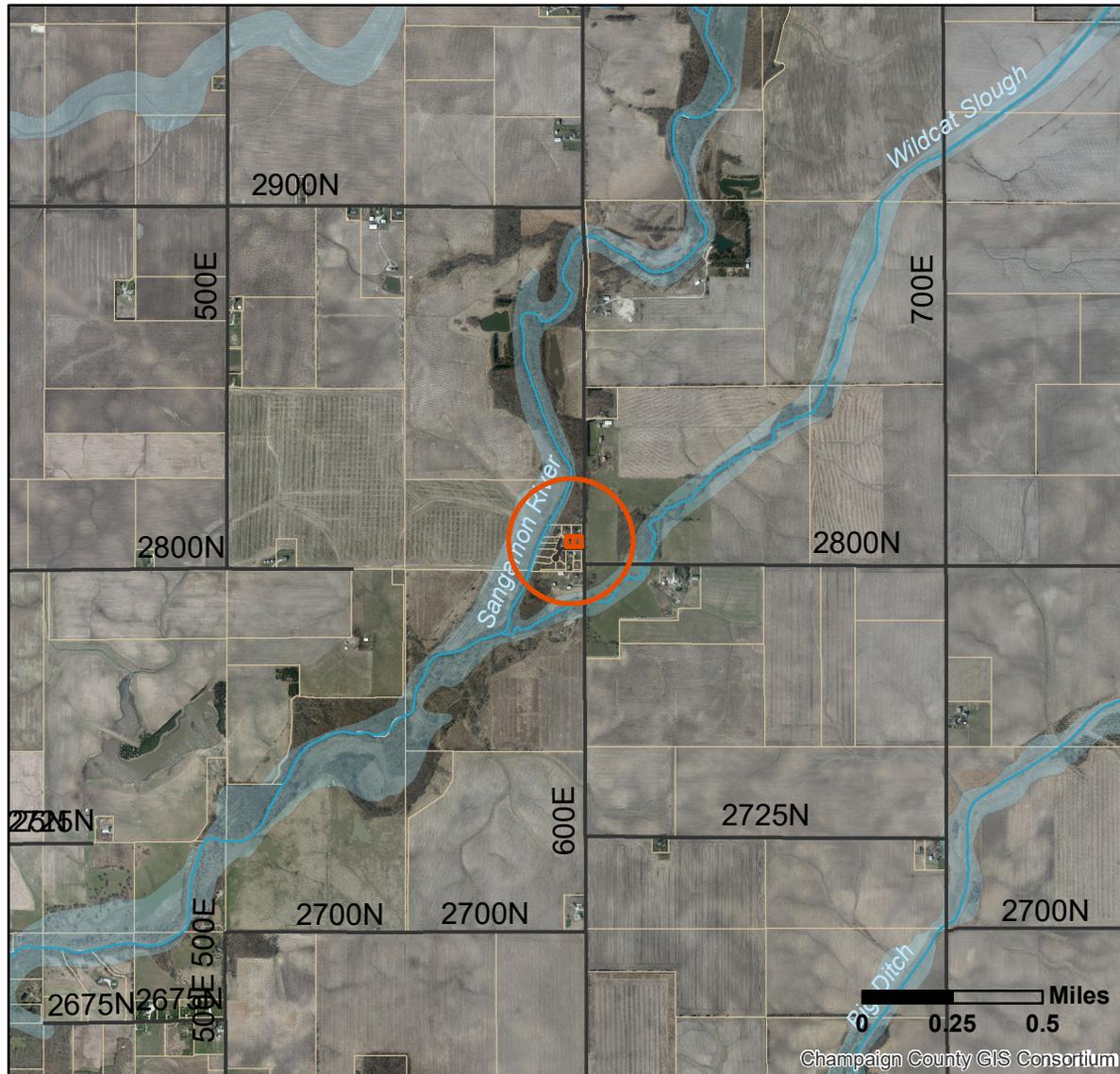
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan (same as Site Plan from ZUPA # 201-18-01) approved August 1, 2018
- C Images of Subject Property taken January 9, 2018
- D Summary of Evidence, Finding of Fact, and Final Determination dated January 17, 2019

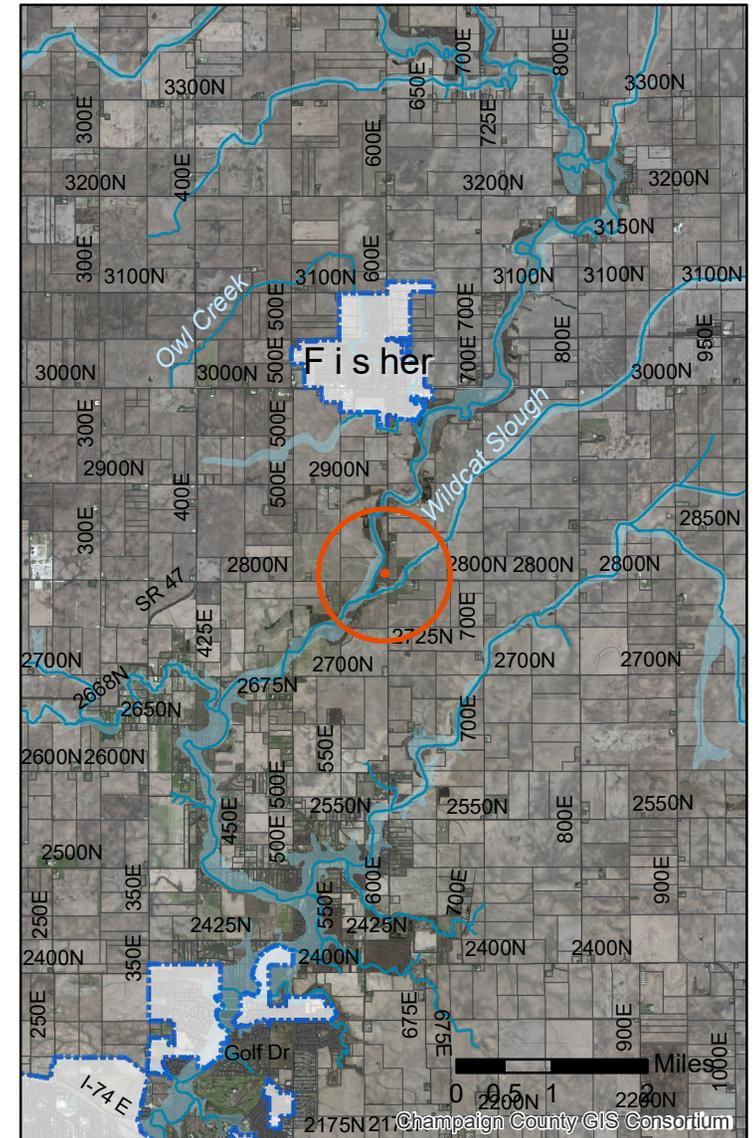
Location Map

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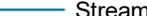
Subject Property



Property location in Champaign County



Legend

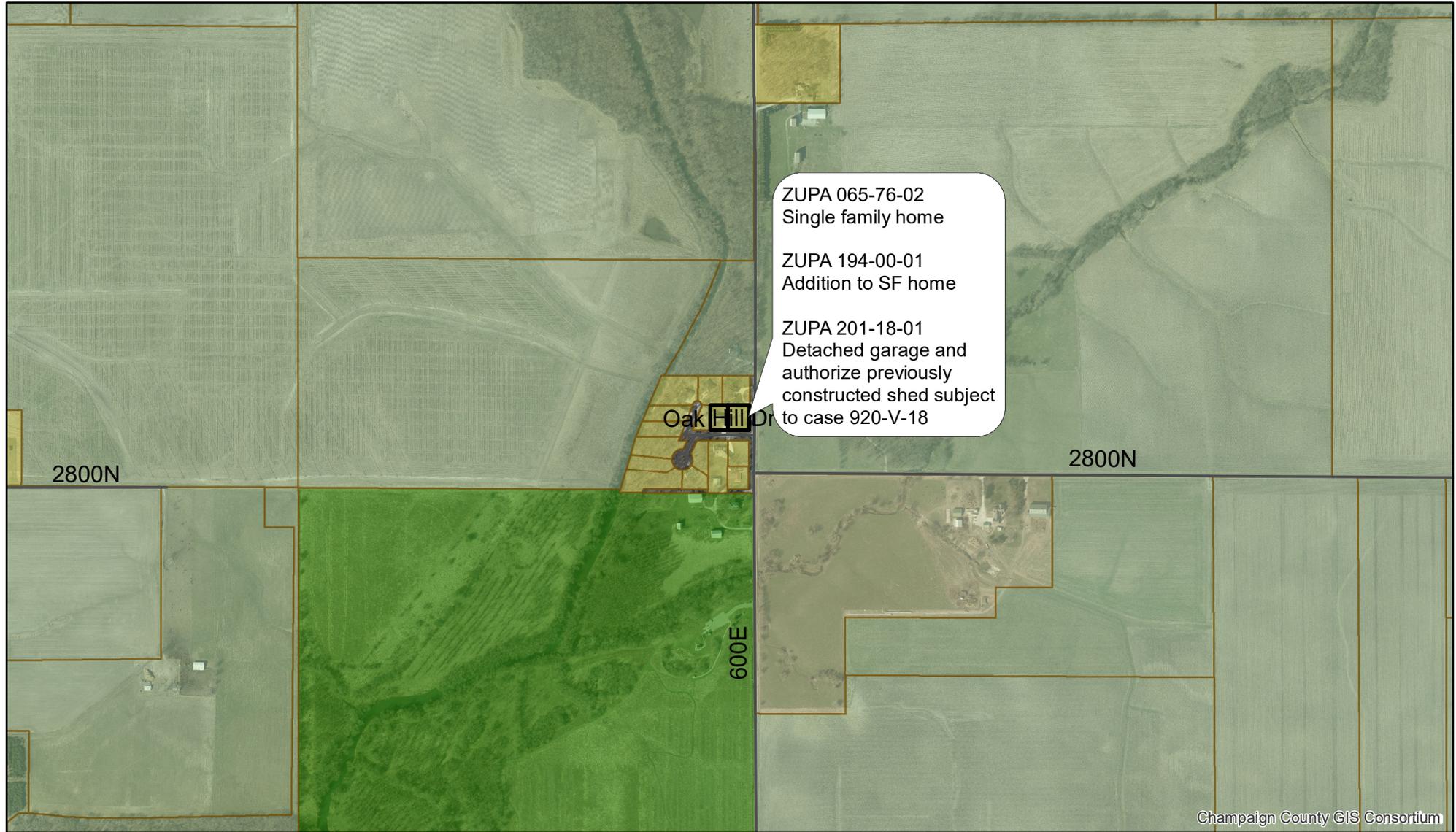
-  Subject Property
-  Stream
-  Parcels
-  2013 Flood Hazard Area
-  Municipal Boundary



Champaign County
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Land Use Map

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January 17, 2019



Legend

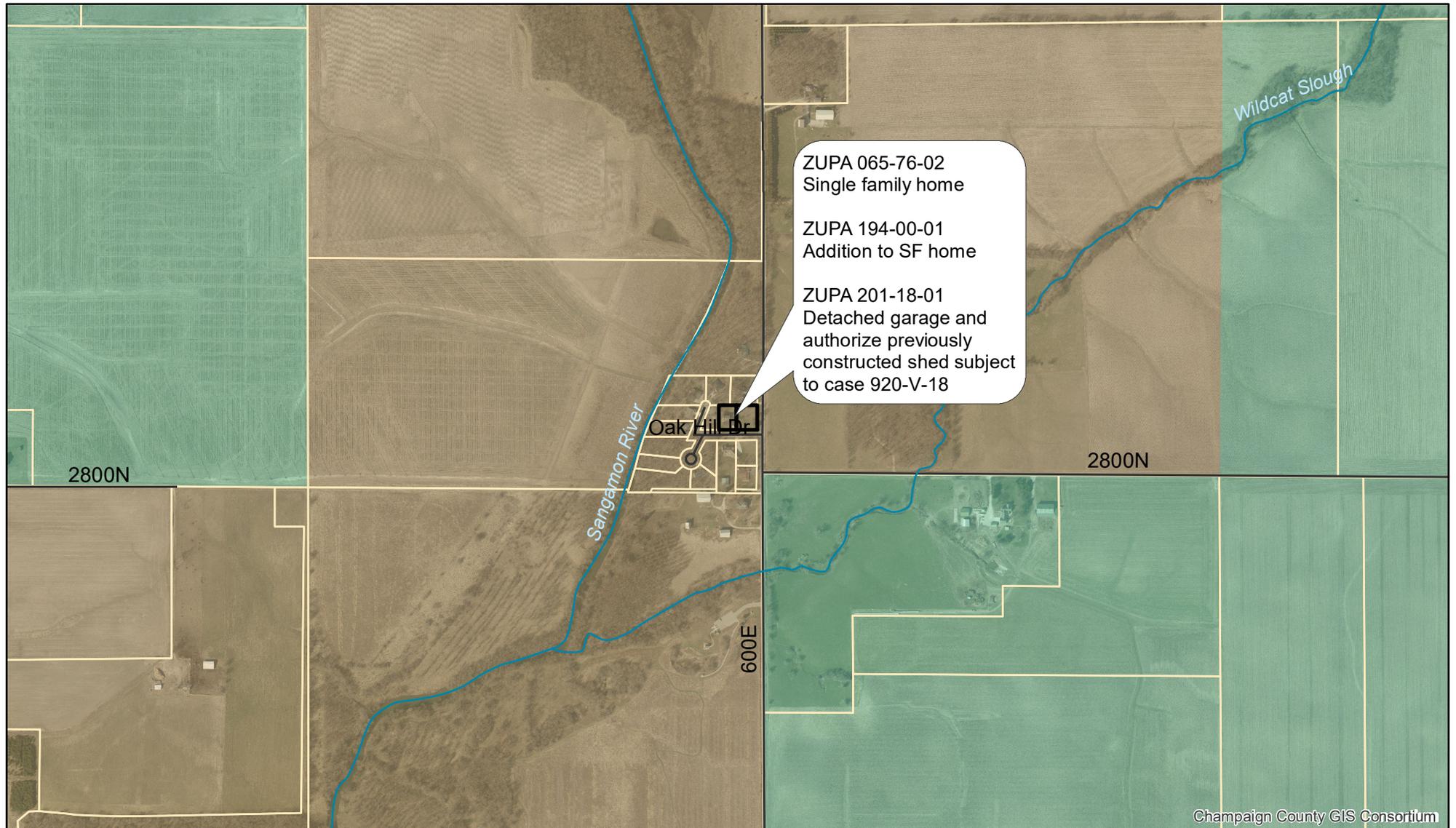
- Subject Property
- Agriculture
- Residential
- Streets
- Ag/Residential
- Ch.Co. Forest Preserve
- Parcels

0 200 400 800 Feet

Champaign County
Department of
PLANNING &
ZONING

Zoning Map

Case 920-V-18
January 17, 2019



Legend

- Subject Property
- AG-1
- Parcels
- CR
- Stream

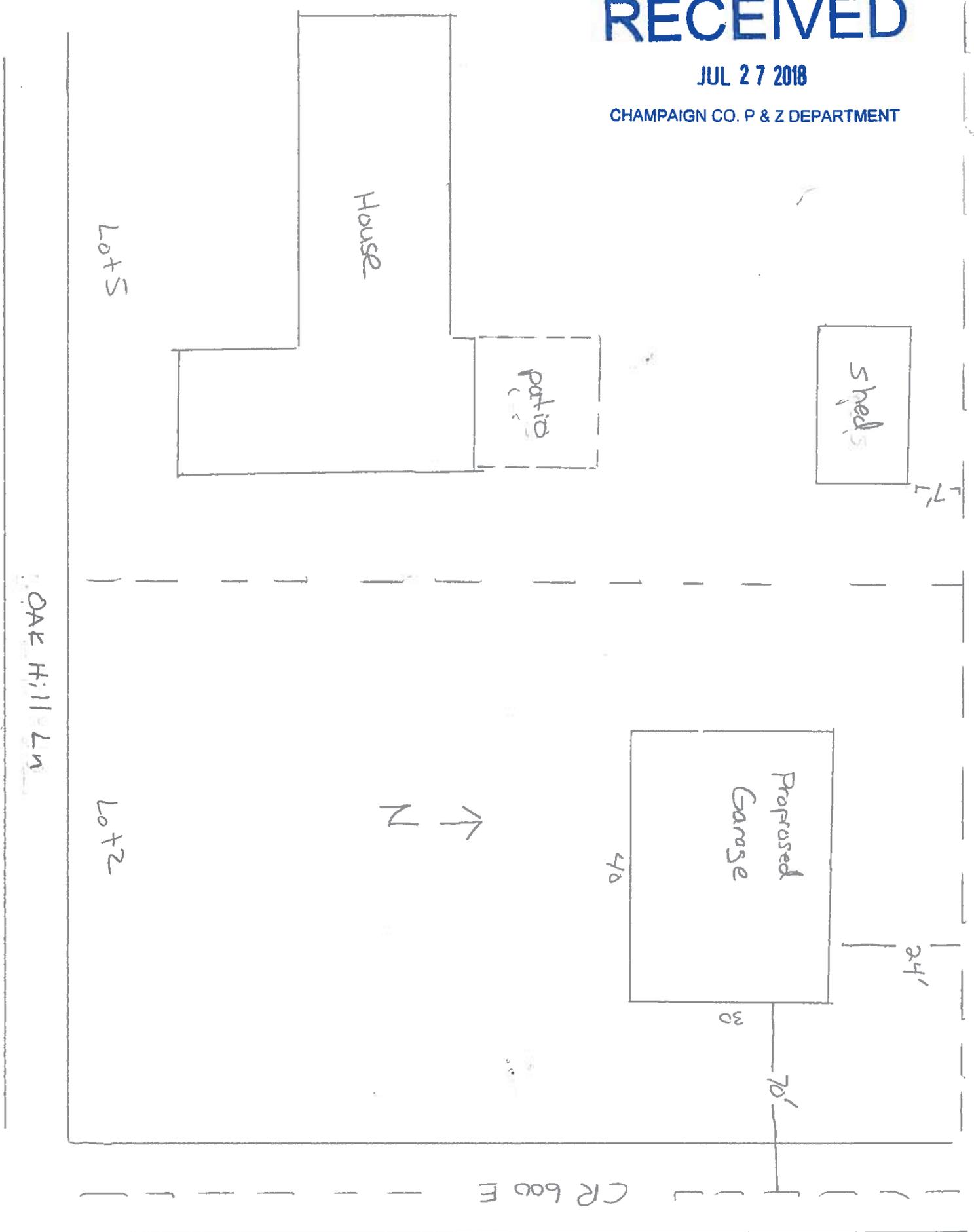
0 200 400 800 Feet

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RECEIVED

JUL 27 2018

CHAMPAIGN CO. P & Z DEPARTMENT



920-V-18 Site Images



Subject property shed is at middle-left of photo



Subject property shed is at left – 7 feet from property line verified by P&Z Staff

920-V-18 Site Images



Subject property back yard from east facing west



Shed from east facing west

PRELIMINARY DRAFT

920-V-18

**SUMMARY OF EVIDENCE, FINDING OF FACT
AND FINAL DETERMINATION**

of

Champaign County Zoning Board of Appeals

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

Date: ***{January 17, 2019}***

Petitioner: **Rick Keever**

Request: **Authorize the following variance from the Champaign County Zoning Ordinance in the CR Conservation Recreation Zoning District:**

Authorize the construction and use of an existing shed with a rear yard of 7 feet in lieu of the minimum required 10 feet on a joint lot development, per Section 7.2.1 B. of the Zoning Ordinance.

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SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **January 17, 2019**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner Rick Keever owns the subject property.
2. The subject property is a 0.72 acre tract that is comprised of Lot 2 of Edgewood Acres Subdivision and Lot 5 of Edgewood Acres 2nd Subdivision of the Southeast Quarter of the Southeast Quarter of Section 12, Township 21 North, Range 7 East of the Third Principal Meridian, in Newcomb Township and commonly known as the residence at 2805N County Road 600E, Fisher.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is not within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning. Municipalities do not have protest rights on a variance and are not notified of such cases.
 - B. The subject property is located in Newcomb Township, which does have a Plan Commission. Townships with Plan Commissions do have protest rights on a variance and are notified of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. The joint-lot subject property is a zoned CR Conservation Recreation and is residential in use.
 - B. Land to the north, west, and south is zoned CR Conservation Recreation and is residential in use.
 - C. Land to the east is zoned CR Conservation Recreation and is a mix of agriculture, wooded area, and grass.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Petitioner's Site Plan received July 27, 2018, indicates the following:
 - (1) Existing buildings include:
 - a. One 2,430 square feet residence; and
 - b. One 140 square feet pergola; and
 - c. One 272 square feet shed.
 - (2) The petitioner has received approval to construct a 30 feet by 40 feet (1,200 square feet) detached garage under ZUPA #201-18-01 approved August 1, 2018, contingent upon approval of the variance for the detached shed in this case. A special condition

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of approval in the ZUPA is that the petitioner will have to move the detached shed if the variance is not approved.

- B. The following are previous Zoning Use Permits for the subject property:
- (1) ZUPA #065-76-02 was approved on March 23, 1976, to construct a single family residence with an attached garage on an existing non-conforming lot of record.
 - (2) ZUPA #194-00-01 was approved on July 14, 2000, to construct a second floor addition to an existing single family home. A Zoning Compliance Certificate was signed on March 2, 2001.
- C. There are no prior zoning cases for the subject property.
- D. The required variance is as follows: authorize the construction and use of an existing shed with a rear yard of 7 feet in lieu of the minimum required 10 feet on a joint lot development, per Section 7.2.1 B. of the Zoning Ordinance.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding authorization for the proposed variance:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested Variance (capitalized words are defined in the Ordinance):
- (1) “ACCESSORY BUILDING” is a BUILDING on the same LOT within the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either detached from or attached to the MAIN or PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
 - (2) “BUILDING, DETACHED” is a BUILDING having no walls in common with other BUILDINGS.
 - (3) “DWELLING” is a BUILDING or MANUFACTURED HOME designated for non-transient residential living purposes and containing one or more DWELLING UNITS and/or LODGING UNITS.
 - (4) “LOT” is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (5) “LOT LINE, REAR” is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE or to a tangent to the midpoint of the FRONT LOT LINE. In the case of a triangular or gore shaped LOT or where the LOT comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at the maximum distance from the FRONT LOT LINE or said tangent.
 - (6) “LOT LINES” are the lines bounding a LOT.

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- (7) “SPECIAL CONDITION” is a condition for the establishment of a SPECIAL USE.
 - (8) “VARIANCE” is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning BOARD of Appeals are permitted to grant.
 - (9) “YARD” is an OPEN SPACE, other than a COURT, of uniform width or depth on the same LOT with a STRUCTURE, lying between the STRUCTURE and the nearest LOT LINE and which is unoccupied and unobstructed from the surface of the ground upward except as may be specifically provided by the regulations and standards herein.
 - (10) “YARD, REAR” is a YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
- B. The CR, Conservation-Recreation DISTRICT is intended to protect the public health by restricting development in areas subject to frequent or periodic floods and to conserve the natural and scenic areas generally along the major stream networks of the COUNTY.
- C. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9 C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - d. That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.
 - e. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
 - (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9 D.2.
- D. Minimum REAR YARD for an accessory structure in the CR Conservation Recreation District is established in Section 7.2.1.C. of the *Zoning Ordinance* as 10 feet.

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

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
- A. The Petitioner has testified on the application, **“The location of the septic field, propane line and cable line limit the location of the shed.”**

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

8. Generally regarding the Zoning Ordinance requirement of a finding that practical difficulties or hardships related to carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot:
- A. The Petitioner has testified on the application, **“The shed will likely be destroyed if a move is required as it has settled into the ground.”**
- B. Regarding the proposed Variance: without the proposed variance, the existing detached garage would have to be moved elsewhere on the property.

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

9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:
- A. The Petitioner has testified on the application, **“The underground utilities were in place when we purchased the property and the shed was built.”**
- B. The detached shed was constructed by the petitioner using extra materials from his recently constructed house; the shed was not included with the ZUPA for the house.
- C. The petitioner purchased the lot on October 31, 1990.

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

10. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance is in harmony with the general purpose and intent of the Ordinance:
- A. The Petitioner has testified on the application, **“It will allow a use that most of my neighbors currently enjoy.”**
- B. Regarding the proposed Variance for an accessory building with a rear yard of 7 feet in lieu of the minimum required 10 feet in the CR Conservation Recreation District: the requested variance is 70% of the minimum required, for a variance of 30%.
- C. Regarding the proposed Variance, the Zoning Ordinance does not clearly state the considerations that underlie the rear yard requirements. In general, the rear yard is presumably intended to ensure the following:

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- (1) Adequate light and air: The subject property is in residential use. The surrounding properties are in residential use.
- (2) Separation of structures to prevent conflagration: The subject property is within the Sangamon Valley Fire Protection District and their Fisher station is approximately 2.6 road miles from the subject property. The nearest structure to the detached shed on adjacent property is another detached shed to the north of the subject property that is approximately 12 feet away.
- (3) Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.

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

11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
 - A. The Petitioner has testified on the application: **“It is located so it does not cause issue with firefight, utility company, or other access.”**
 - B. The Newcomb Township Road Commissioner has been notified of this variance but no comments have been received.
 - C. The Sangamon Valley Fire Protection District has been notified of this variance but no comments have been received.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

12. Generally regarding and other circumstances which justify the Variance:
 - A. The Petitioner did not provide a response to this question on the application.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. No special conditions are proposed at this time.

PRELIMINARY DRAFT

DOCUMENTS OF RECORD

1. Variance Application received July 27, 2018, with attachments:
 - A Site Plan (same as Site Plan from ZUPA # 201-18-01 approved August 1, 2018)

2. Preliminary Memorandum dated January 10, 2019, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan (same as Site Plan from ZUPA # 201-18-01) approved August 1, 2018
 - C Images of Subject Property taken January 9, 2018
 - D Summary of Evidence, Finding of Fact, and Final Determination dated January 17, 2019

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **920-V-18** held on **January 17, 2019**, the Zoning Board of Appeals of Champaign County finds that:

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

FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements for approval in Section 9.1.9.C *{HAVE/HAVE NOT}* been met, and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Variance requested in Case **920-V-18** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioner, **Rick Keever**, to authorize the following variance in the CR Conservation Recreation Zoning District:

Authorize the construction and use of an existing shed with a rear yard of 7 feet in lieu of the minimum required 10 feet on a joint lot development, per Section 7.2.1 B. of the Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

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

SIGNED:

_____, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date