

CASE NO. 902-V-18

PRELIMINARY MEMORANDUM

May 10, 2018

Petitioners: Jane Berbaum, Robert Musson, Richard Musson, and David Sides

Request: Authorize a variance in the AG-1 Agriculture Zoning District for the addition of 2 acres to an existing 2.78-acre lot on best prime farmland, for a total lot size of 4.78 acres in lieu of the maximum area of 3 acres for lots with soils that are best prime farmland, per Section 5.3 of the Champaign County Zoning Ordinance.

Subject Property: An existing 2.78 acre tract of land plus 2 acres of surrounding land located in the Northeast Quarter of the Southeast Quarter of Section 12, Township 20 North, Range 8 East of the Third Principal Meridian in Hensley Township, with an address of 2237 CR 1200 East, Champaign.

Site Area: 2.78 + 2.0 acres

Time Schedule for Development: Currently in use

**Prepared by: Susan Burgstrom
Senior Planner**

**John Hall
Zoning Administrator**

BACKGROUND

The petitioners would like to create a 4.78 acre lot that would include the existing farmstead that is currently on the 2.78-acre lot, a machine shed on 1.51 acres to the north (Tract B), and a 0.49 strip of land to the south (Tract A). Petitioners Jane Berbaum, Robert Musson, and Richard Musson own the 45.22 acre tract from which 2 acres would be removed. David and Nancy Sides own the 2.78 acre lot to which the 2 acres would be added.

The owner of the 2.78 acre lot would like to use the machine shed to house farm machinery and equipment. The owner has already converted the south 0.49-acre strip of land from row crop production to an orchard. No other farmland would be taken out of production.

EXTRATERRITORIAL JURISDICTION

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

The subject property is located within Hensley Township, which has a Planning Commission. Townships with Plan Commissions have protest rights on a variance and do receive notification of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Agriculture	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
East	Agriculture	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture

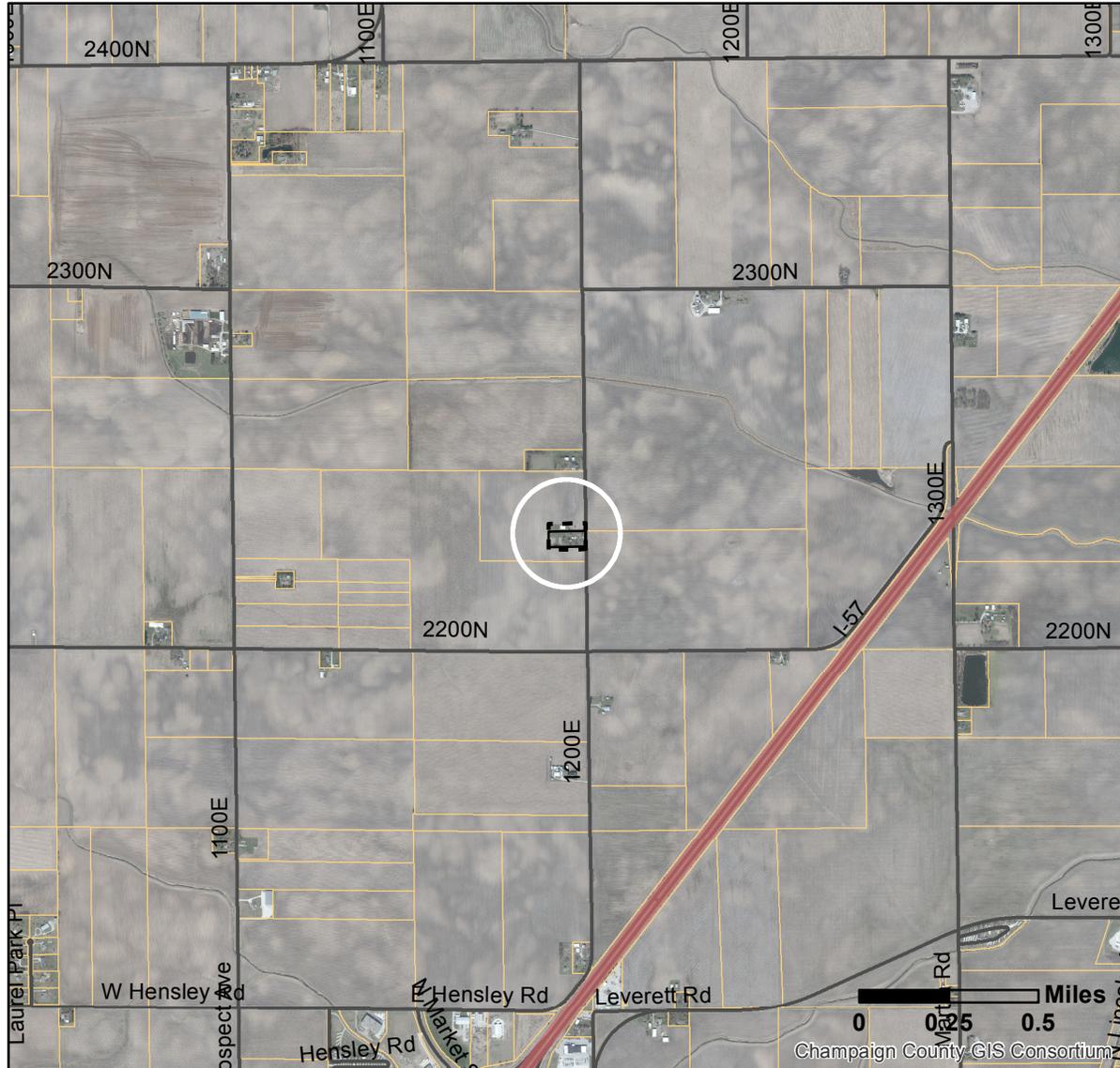
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received March 23, 2018
- C Site Images taken May 10, 2018
- D Summary of Evidence, Finding of Fact, and Final Determination for Case 902-V-18 dated May 17, 2018

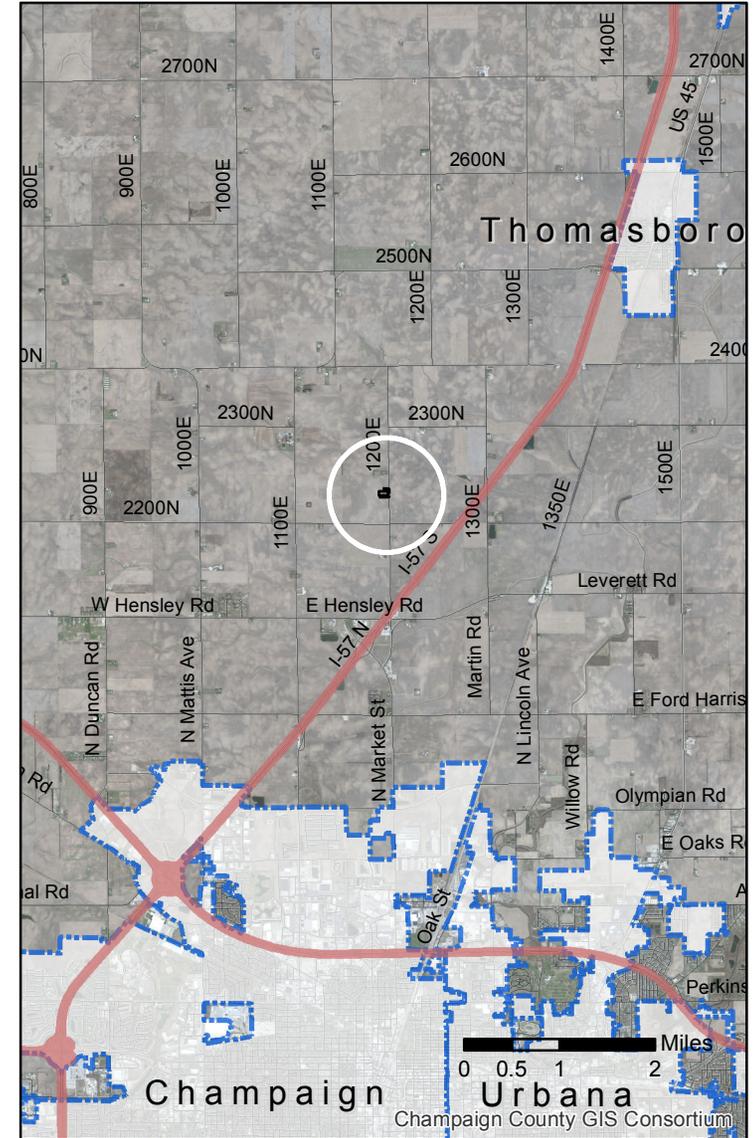
Location Map

Case 902-V-18
May 17, 2018

Subject Property



Property location in Champaign County



Legend

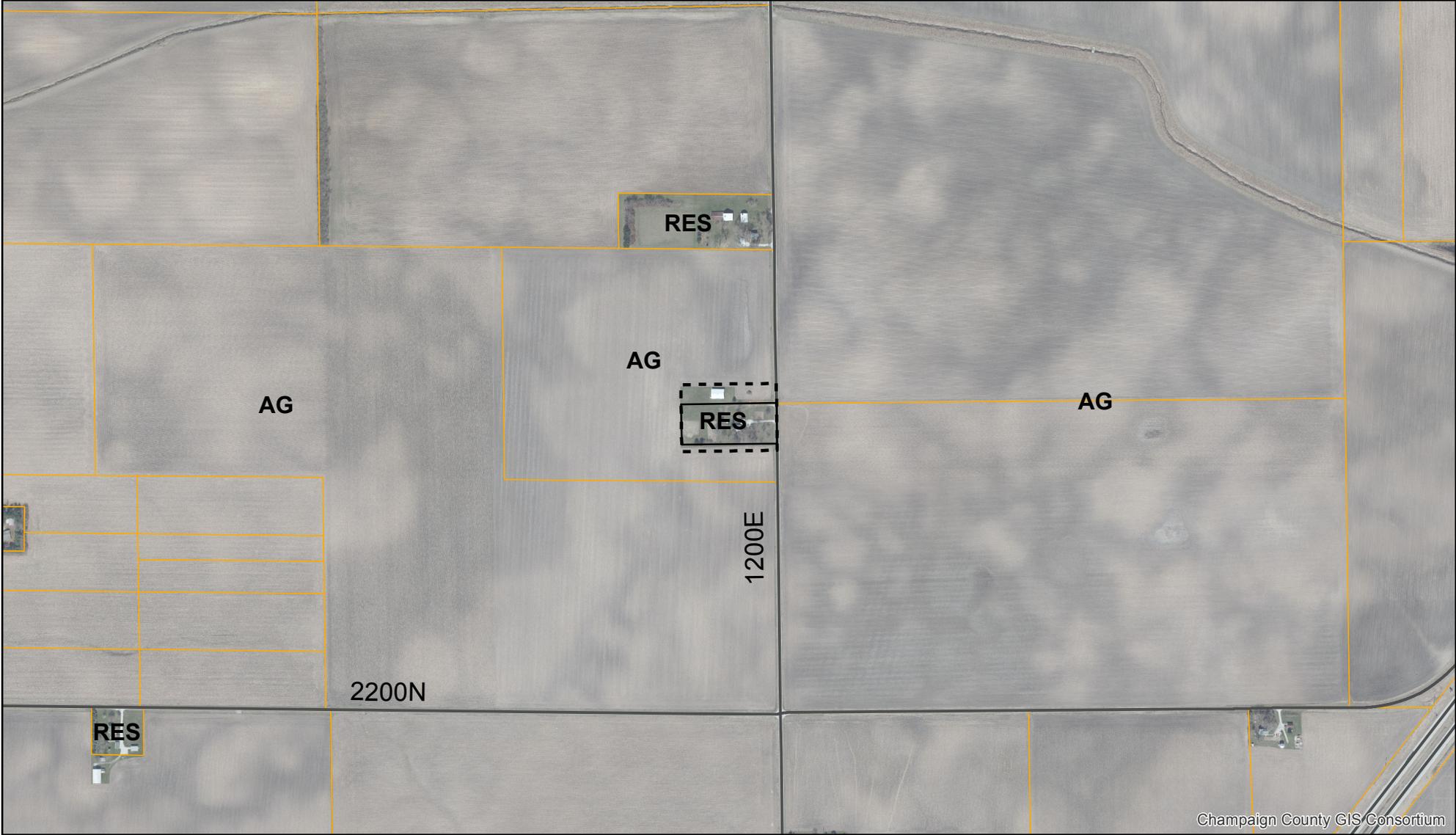
-  4.78 acre proposed lot
-  2.78 acre base lot
-  Municipal Boundary
-  Parcels
-  Streets



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Land Use Map

Case 902-V-18
May 17, 2018



Champaign County GIS Consortium

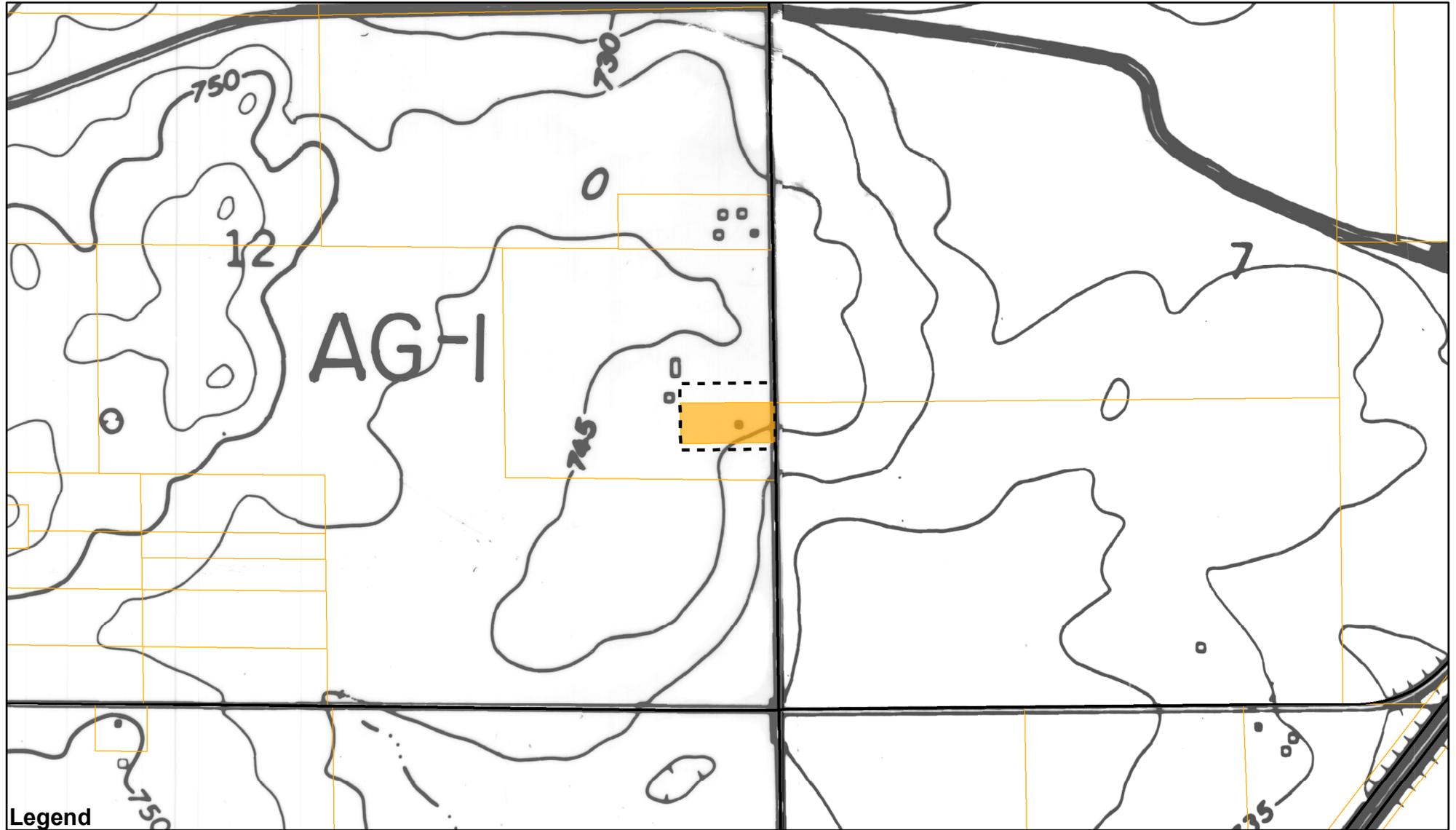
Legend

- 4.78 acre proposed lot
- Parcels
- 2.78 acre base lot
- Streets



Zoning Map

Case 902-V-18
May 17, 2018



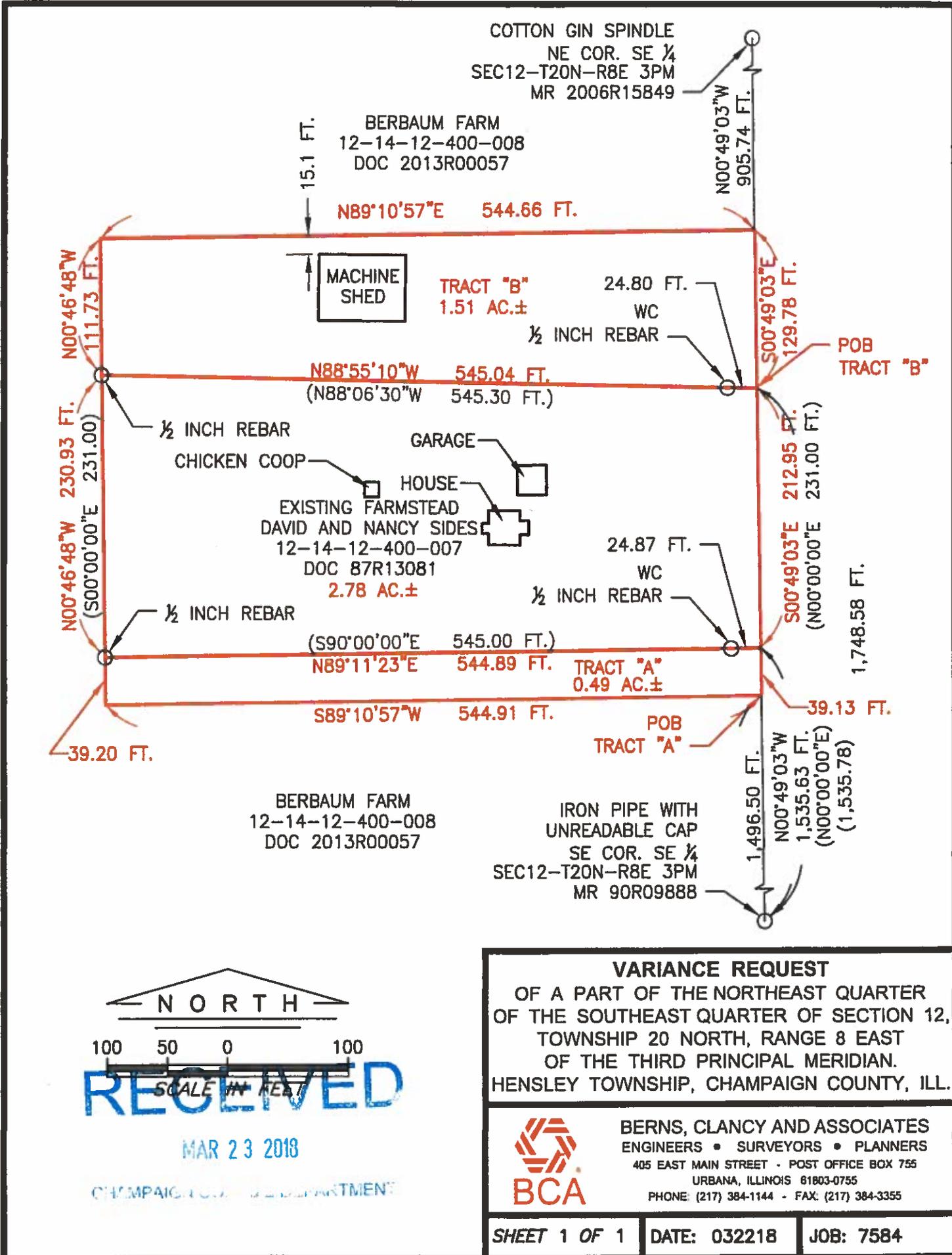
Legend

-  4.78 acre proposed lot
-  2.78 acre base lot
-  Parcels

0 200 400 800 Feet



Champaign County
Department of
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ZONING



902-V-18 Site Images



Existing residence from CR 1200E facing NW



Existing residence from CR 1200E facing west

902-V-18 Site Images



Existing residence from CR 1200E facing SW



Existing residence from CR 1200E facing SW

PRELIMINARY DRAFT

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**FINDING OF FACT
AND FINAL DETERMINATION**

**of
Champaign County Zoning Board of Appeals**

Final Determination: *{ GRANTED/GRANTED WITH SPECIAL CONDITION(S)/DENIED }*

Date: *{ MAY 17, 2018 }*

Petitioners: **Jane Berbaum, Robert Musson, Richard Musson, and David Sides**

Request: **Authorize a variance in the AG-1 Agriculture Zoning District for the addition of 2 acres to an existing 2.78-acre lot on best prime farmland, for a total lot size of 4.78 acres in lieu of the maximum area of 3 acres for lots with soils that are best prime farmland, per Section 5.3 of the Champaign County 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 **May 17, 2018**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Jane Berbaum, Robert Musson, and Richard Musson own the 45.22 acre tract from which 2 acres would be removed. David and Nancy Sides own the 2.78 acre lot to which the 2 acres would be added.
2. The subject property is an existing 2.78 acre tract of land plus 2 acres of surrounding land located in the Northeast Quarter of the Southeast Quarter of Section 12, Township 20 North, Range 8 East of the Third Principal Meridian in Hensley Township, with an address of 2237 CR 1200 East, Champaign.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is not located within the one and one-half mile extraterritorial jurisdiction of a municipality.
 - B. The subject property is located within Hensley Township, which has a Planning Commission. Townships with Plan Commissions have protest rights on a variance and do receive notification 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 subject property is a 2.78 acre tract with a residence, and is currently zoned AG-1 Agriculture.
 - B. Land to the north, south, east, and west of the subject property is also zoned AG-1 Agriculture and is in agricultural production.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The site plan received March 23, 2018, indicates the following:
 - (1) Existing structures on the property include:
 - a. A residence that was constructed prior to the adoption of the Zoning Ordinance on October 10, 1973;
 - b. A 54 feet by 72 feet machine shed on the north end of the proposed lot, constructed in 1975; and
 - c. A 24 feet by 24 feet garage northeast of the residence, constructed in 1986;
 - d. A 20 feet by 18 feet chicken coop northwest of the residence, constructed prior to the adoption of the Zoning Ordinance on October 10, 1973.
 - (2) There is no construction proposed on the subject property.

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- B. There are no Zoning Use Permits for the subject property.
- C. The requested variance is for a lot size of 4.78 acres in lieu of the maximum area of 3 acres for lots with soils that are best prime farmland, per Section 5.3 of the Zoning Ordinance.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

- 6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
 - A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variances (capitalized words are defined in the Ordinance):
 - (1) “ACCESSORY BUILDING” is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either detached from or attached to the MAIN or PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE.
 - (2) “ACCESSORY STRUCTURE” is a STRUCTURE on the same LOT within the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either detached from or attached to the MAIN or PRINCIPAL STRUCTURE, subordinate to and USED for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
 - (3) “AGRICULTURE” is the growing, harvesting and storing of crops including legumes, hay, grain, fruit and truck or vegetable crops, floriculture, horticulture, mushroom growing, orchards, forestry and the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, pony and horse production, fur farms, and fish and wildlife farms; farm BUILDINGS used for growing, harvesting and preparing crop products for market, or for use on the farm; roadside stands, farm BUILDINGS for storing and protecting farm machinery and equipment form the elements, for housing livestock or poultry and for preparing livestock or poultry products for market; farm DWELLINGS occupied by farm OWNERS, operators, tenants or seasonal or year-round hired farm workers. It is intended by this definition to include within the definition of AGRICULTURE all types of agricultural operations, but to exclude therefrom industrial operations such as a grain elevator, canning or slaughterhouse, wherein agricultural products produced primarily by others are stored or processed. Agricultural purposes include, without limitation, the growing, developing, processing, conditioning, or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds.
 - (4) “AREA, LOT” is the total area within the LOT LINES.
 - (5) “BEST PRIME FARMLAND” is Prime Farmland Soils identified in the Champaign County Land Evaluation and Site Assessment (LESA) System that under optimum management have 91% to 100% of the highest soil productivities in Champaign County, on average, as reported in the *Bulletin 811 Optimum Crop Productivity Ratings for Illinois Soils*. Best Prime Farmland consists of the following:

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- (a) Soils identified as Agriculture Value Groups 1, 2, 3 and/or 4 in the Champaign County Land Evaluation and Site Assessment (LESA) System;
 - (b) Soils that, in combination on a subject site, have an average LE of 91 or higher, as determined by the Champaign County LESA System; or
 - (c) Any development site that includes a significant amount (10% or more of the area proposed to be developed) of Agriculture Value Groups 1, 2, 3 and/or 4 soils, as determined by the Champaign County LESA System.
- (6) “BUILDING” is an enclosed STRUCTURE having a roof supported by columns, walls, arches, or other devices and used for the housing, shelter, or enclosure of persons, animal, and chattels.
 - (7) “BUILDING, DETACHED” is a BUILDING having no walls in common with other BUILDINGS.
 - (8) “BY RIGHT” is a term to describe a USE permitted or allowed in the DISTRICT involved, without review by the BOARD or GOVERNING BODY, and complying with provisions of the Zoning Ordinance and with other applicable ordinances and regulations.
 - (9) “DWELLING, SINGLE FAMILY” is a DWELLING containing one DWELLING UNIT.
 - (10) “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.
 - (11) “LOT LINES” are the lines bounding a LOT.
 - (12) “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.
 - (13) “WELL SUITED OVERALL” is a discretionary review performance standard to describe the site on which a development is proposed. A site may be found to be WELL SUITED OVERALL if the site meets these criteria:
 - a. The site is one on which the proposed development can be safely and soundly accommodated using simple engineering and common, easily maintained construction methods with no unacceptable negative effects on neighbors or the general public; and
 - b. The site is reasonably well-suited in all respects and has no major defects.
- B. Section 5.3 of the Zoning Ordinance Footnote 13 states:
- 13. The following maximum LOT AREA requirements apply in the CR, AG-1 and AG-2 DISTRICTS:
 - A) LOTS that meet all of the following criteria may not exceed a maximum LOT AREA of three acres:

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- 1) The LOT is RRO-exempt;
 - 2) The LOT is made up of soils that are BEST PRIME FARMLAND; and
 - 3) The LOT is created from a tract that had a LOT AREA greater than or equal to 12 acres as of January 1, 1998.
- 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 9.1.9C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - d. That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.
 - e. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
 - (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9 D.2.
- D. Paragraph 9.1.9 E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
 - A. The Petitioner has testified on the application that, **“The machine shed on this agricultural coded property would continue to be used by the new owner as a structure to house farm machinery and equipment. The machine shed is surrounded by a grass lot, with its own existing driveway from the road. To expand the acreage to the north to achieve a rectangular 2-acre total area, would require taking farm ground that contains a low area that often holds water in wet seasons. There are electrical lines on the east side of the shed, which supply both the shed and the residence, and only farm ground on the north side of these lines will be needed to make a straight rectangular boundary. The excess area needed for 2-acres total would be on the south side of the residence to**

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border the north line of the farm field, and to create a buffer for a small orchard the new owner has created.”

- B. Regarding the soils that make up the subject property:
- (1) The soil on the proposed 4.78 acre lot is BEST PRIME FARMLAND and consists of Elburn silt loam (198A), Dana silt loam (56B), Clare silt loam (663B), and Drummer silty clay loam (152A), and has an average LE of 96.

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 Petitioners testified on the application that, **“In conforming with the purpose of the zoning ordinances, this property will remain as agricultural use. The buffer on the south for the orchard will provide extra distance against chemical overspray applied to the adjacent farm ground. In order for the acreage on the north to be incorporated into the lot, expensive tile drainage would be needed.”**

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 Petitioners testified on the application that, **“The original single-family residence of 2.78 acres was purchased in 1987 from within 200 acres owned by our mother, who lived there at the time. She retained the remaining 197 acres as farm ground. She passed away in 2011. Ownership passed to her grown children, who are the current owners. Although the size of modern farm machinery to be housed in this shed has changed, the existing machine shed, lot and farm ground have not changed in size, appearance or purpose.”**

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 Petitioners testified on the application that, **“In accordance with purpose of the Ordinance: the value of land, buildings and structures would be conserved in the county; lessening and avoiding congestion in the public streets by using existing entrances from rural roads; protecting natural features by creating a buffer for the orchard.”**
 - B. The maximum lot size on best prime farmland requirement was first established by Ordinance No. 726 (Case 444-AT-04) on July 22, 2004. It was made permanent with Ordinance No. 773 approved December 20, 2005.
 - C. The proposed lot area of approximately of 4.78 acres is 159% of the required three acre maximum, for a variance of 59%.

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

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 Petitioners testified on the application, **“The variance will not change the current firefighting conditions for this rural area. The property front is a rural oil chip road, with a low level of traffic, which will not change. Since the use, condition and appearance of the property will not be altered in this farming community, the neighborhood will not see any changes.”**
 - B. The Beaver Lake Drainage District has been notified of this variance but no comments have been received.
 - C. The Hensley Township Highway Commissioner has been notified of this variance but no comments have been received.
 - D. The Hensley Township Supervisor has been notified of this variance but no comments have been received.
 - E. The Thomasboro 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 petitioners did not provide a response to this question on the application.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:
- No special conditions are proposed at this time.**

DOCUMENTS OF RECORD

1. Application for Variance Permit received March 23, 2018, with attachment:
 - A Boundary Survey/Site Plan
 - B Legal description

2. Preliminary Memorandum dated May 10, 2018, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received March 23, 2018
 - C Site Images taken May 10, 2018
 - D Summary of Evidence, Finding of Fact, and Final Determination for Case 902-V-18 dated May 17, 2018

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **902-V-18** held on **May 17, 2018**, 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:}**

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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 **902-V-18** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Jane Berbaum, Robert Musson, Richard Musson, and David Sides**, to authorize the following variance in the AG-1 Agriculture Zoning District:

Authorize the addition of 2 acres to an existing 2.78-acre lot on best prime farmland, for a total lot size of 4.78 acres in lieu of the maximum area of 3 acres for lots with soils that are best prime farmland, per Section 5.3 of the Champaign County 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:

Catherine Capel, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals
Date