

## CASE NO. 011-V-21

### PRELIMINARY MEMORANDUM

June 8, 2021

Petitioners: **Kenneth and Laura Hlinka**

Request: **Authorize a variance for an existing detached shed with a side yard of 2.5 feet and a rear yard of 3.5 feet in lieu of the minimum required 5 feet side and rear yards for detached structures in the R-3 Two-Family Zoning District, per Section 7.2.2 of the Zoning Ordinance.**

Subject Property: **Lot 18 of O'Neil's First Street Subdivision in Urbana Township, and commonly known as the residence with an address of 3104 South First Street, Champaign.**

Site Area: **0.55 acre**

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

Prepared by: **Susan Burgstrom, Senior Planner  
John Hall, Zoning Administrator**

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## BACKGROUND

The Petitioner requests a variance for an existing detached shed that has a side yard of 2.5 feet and a rear yard of 3.5 feet in lieu of the 5 feet minimum required by ordinance. The shed was constructed prior to the adoption of the Zoning Ordinance on October 10, 1973, but was moved to the current position sometime between 2005 and 2008, per aerial photos (Attachment C). The petitioner purchased the subject property in December 2009.

The petitioner received approval to construct a swimming pool under ZUPA #95-21-01 approved April 21, 2021, contingent upon approval of the variance for the detached shed in this case. A special condition of approval in the ZUPA is that the petitioner will abide by any reasonable conditions set forth in this zoning case. No special conditions are proposed.

## EXISTING LAND USE AND ZONING

**Table 1. Land Use and Zoning in the Vicinity**

<b>Direction</b>	<b>Land Use</b>	<b>Zoning</b>
Onsite	Single Family Residence	R-3 Two Family Residence
North	Single Family Residence	R-3 Two Family Residence
East	UI Agriculture	AG-2, but UI is exempt from zoning
West	UI Agriculture	AG-2, but UI is exempt from zoning
South	Single Family Residence	R-3 Two Family Residence

## EXTRATERRITORIAL JURISDICTION

The subject property is within the one and one-half mile extraterritorial jurisdiction of the Village of Savoy, a municipality with zoning. It is within one and one-half miles of the cities of Champaign and

Urbana, but per an intergovernmental agreement, the property is within Savoy's extraterritorial jurisdiction. Municipalities do not have protest rights on a variance and are not notified of such cases.

The subject property is located in Urbana Township, which does not have a Plan Commission. Townships with Plan Commissions do have protest rights on a variance and are notified of such cases.

### **PROPOSED SPECIAL CONDITIONS**

No special conditions are proposed at this time.

### **ATTACHMENTS**

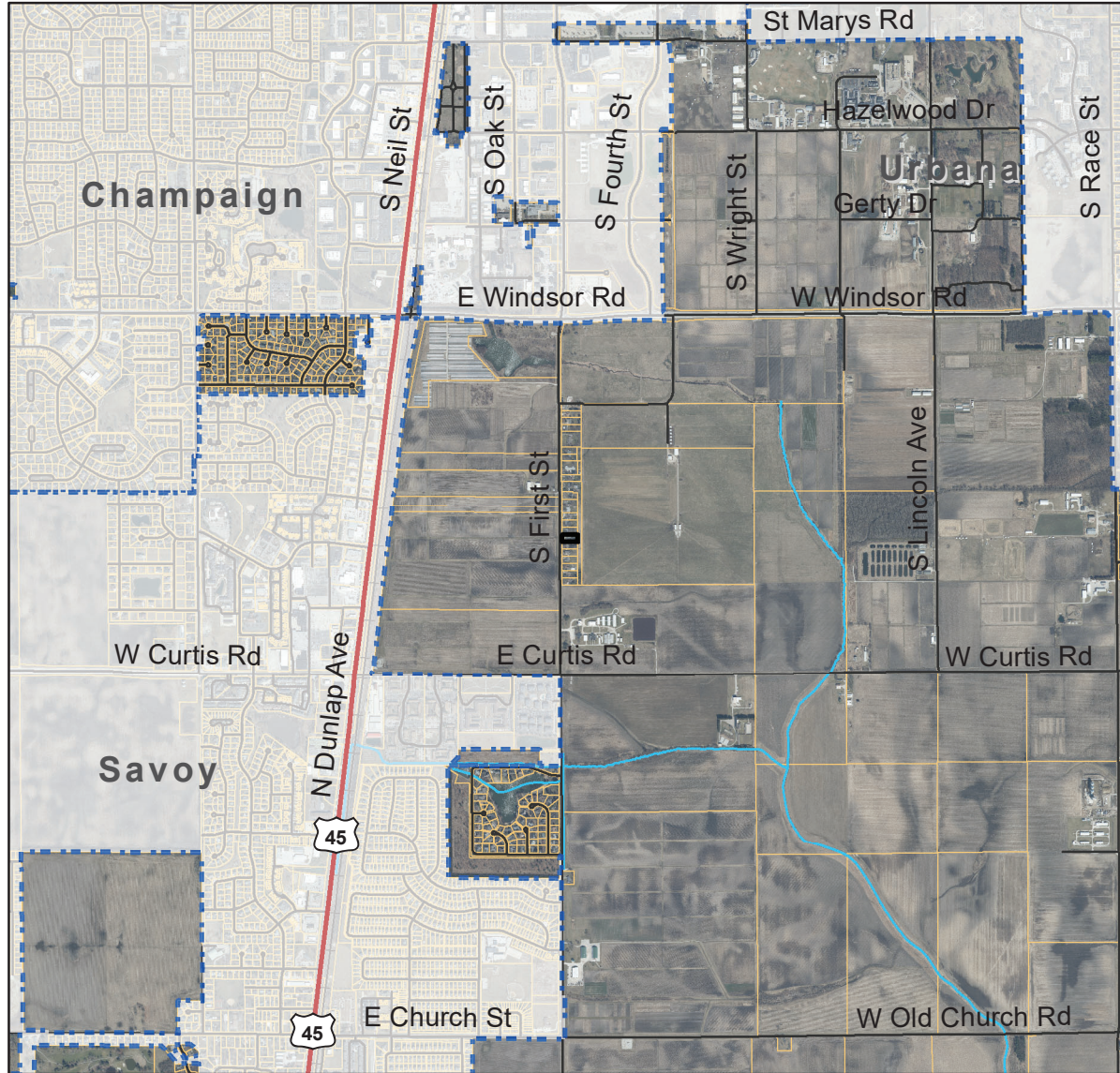
- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received April 20, 2021
- C 1973, 2005, 2008, and 2020 aerial photos
- D Images of Subject Property taken May 13, 2021
- E Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated June 17, 2021



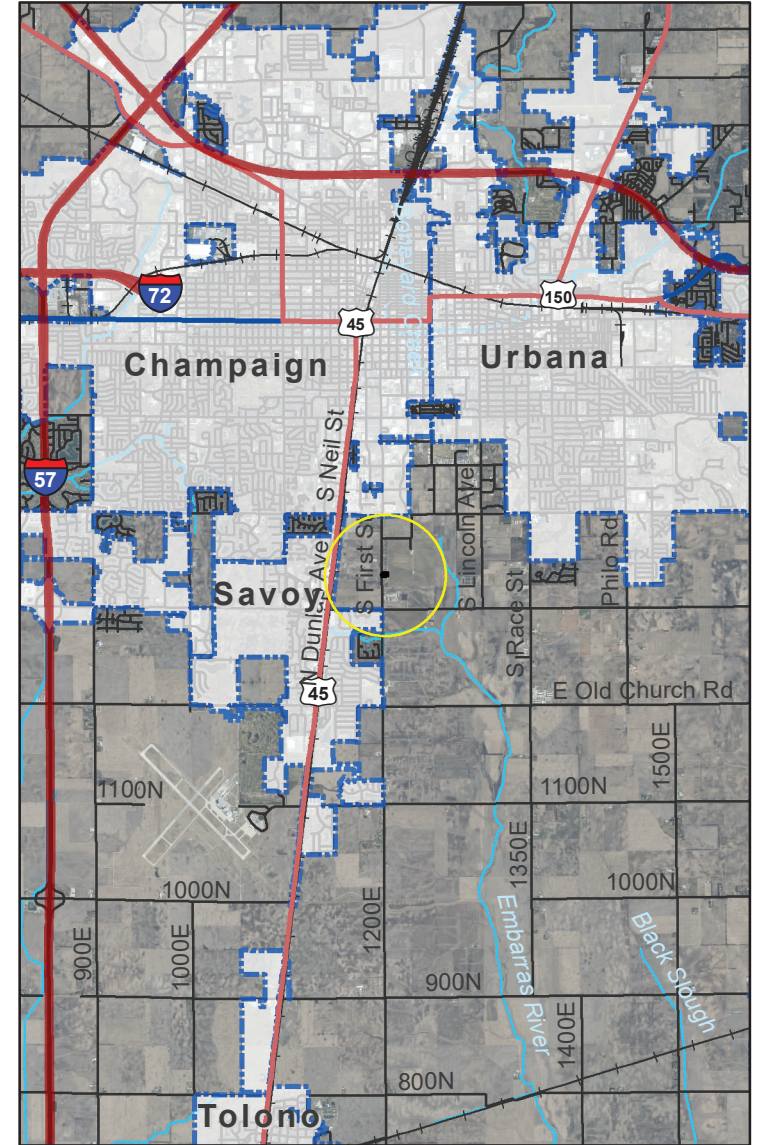
# Location Map

Case 011-V-21  
June 17, 2021

Subject Property



Property location in Champaign County



## Legend

- Subject Property
- Municipal Boundary
- Parcels
- Streams

0 0.125 0.25 0.5 Miles

0 0.5 1 2 Miles






Champaign County  
Department of  
**PLANNING &  
ZONING**



# Land Use Map

Case 011-V-21  
June 17, 2021



- Legend**
-  Subject Property
  -  Parcels
  -  Residential

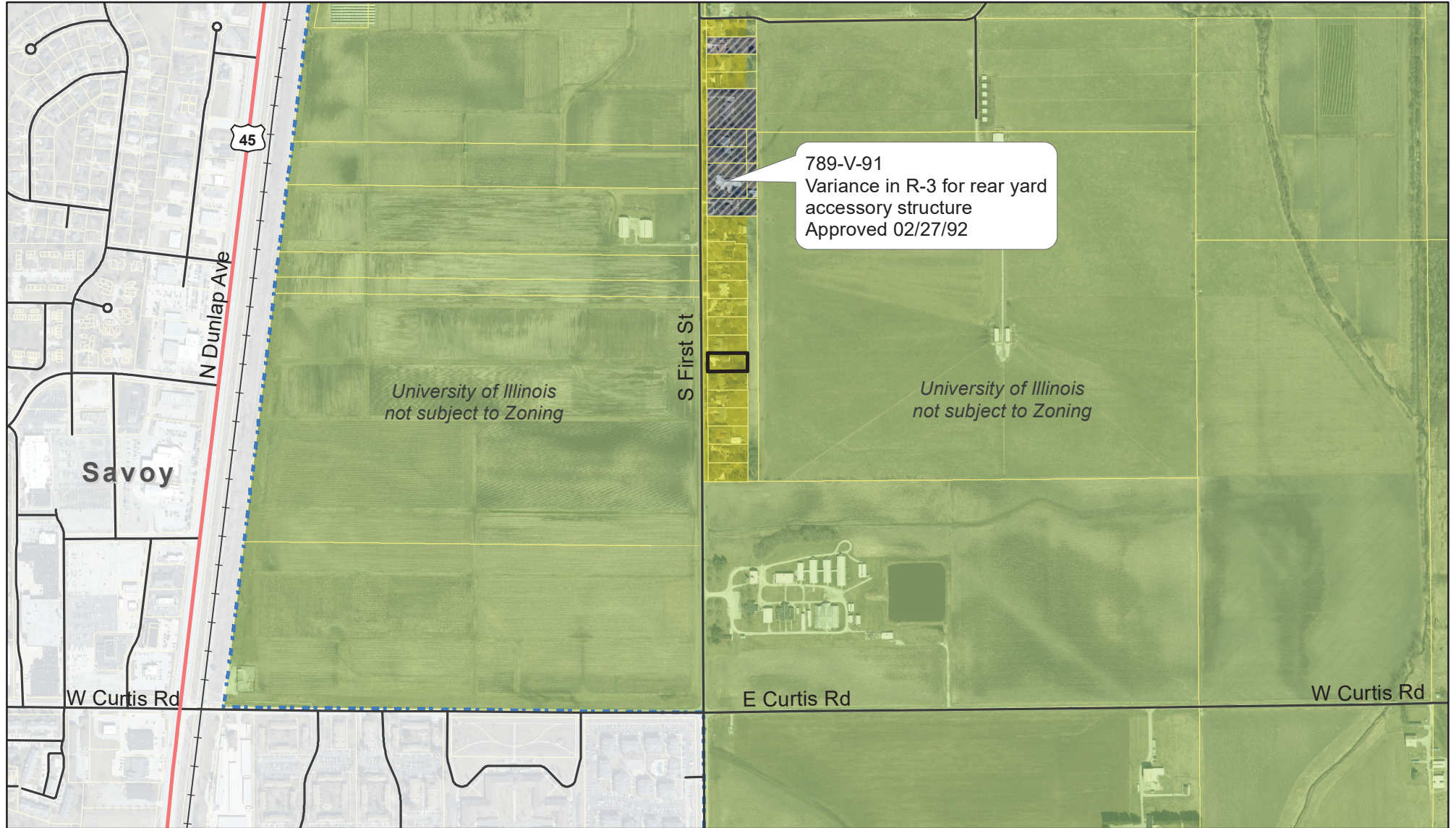


Champaign County  
Department of  
PLANNING &  
ZONING



# Zoning Map

Case 011-V-21  
June 17, 2021



## Legend

- Subject Property
- Parcels
- AG-2 Agriculture
- R-3 Two-Family Residence
- Annexation Agreement

0 200 400 800 Feet











Sub of Sec. 4  
25-19-8

S First St

O'Neill's  
First  
Street Sub

301-006

301-007

301-008

1364.48

G.L. 2



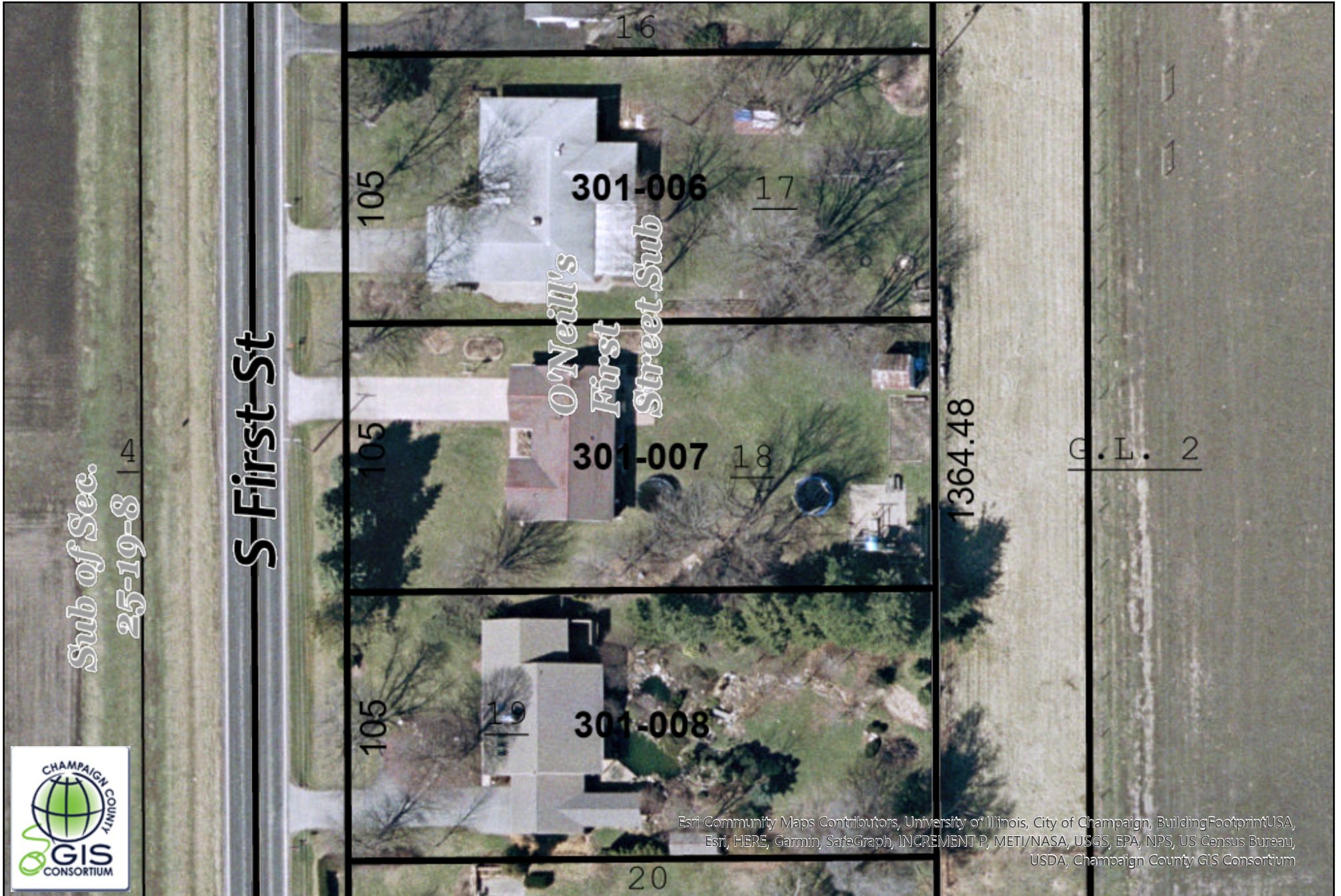
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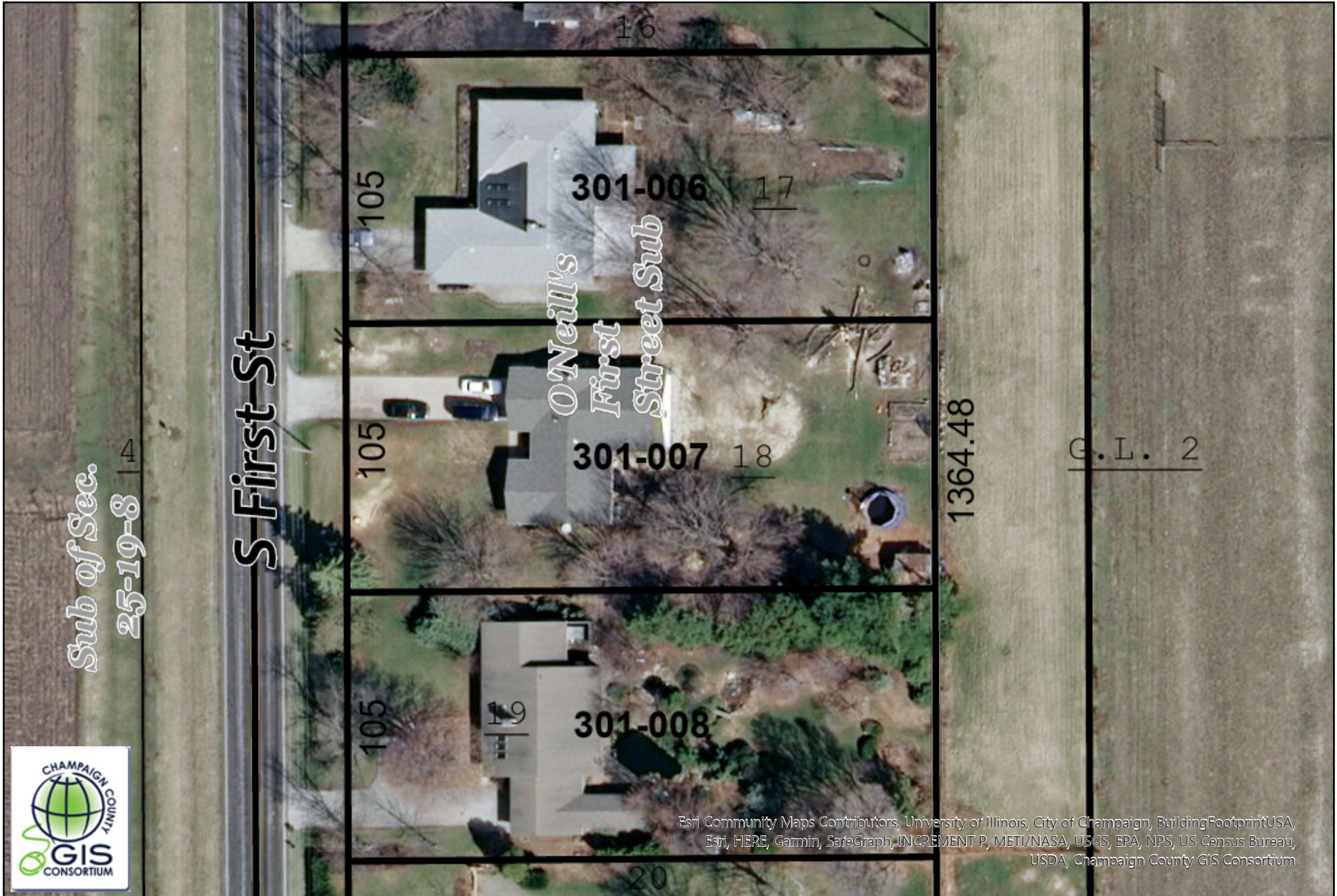


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### 011-V-21 Site Images



Facing east to shed in SE corner of subject property



Showing area between shed and fence to south (fence is not necessarily property line)



### 011-V-21 Site Images



Showing area between shed and barbed fence to east (fence is not necessarily property line)



From property to east facing back of shed



### 011-V-21 Site Images



**From north side of shed facing north along rear property fence**



**From south side yard facing east to shed**



**PRELIMINARY DRAFT**

**011-V-21**

**SUMMARY OF EVIDENCE, FINDING OF FACT  
AND FINAL DETERMINATION  
of  
Champaign County Zoning Board of Appeals**

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

Date: ***{June 17, 2021}***

Petitioner: **Kenneth and Laura Hlinka**

Request: **Authorize a variance for an existing detached shed with a side yard of 2.5 feet and a rear yard of 3.5 feet in lieu of the minimum required 5 feet side and rear yards for detached structures in the R-3 Two-Family Zoning District, per Section 7.2.2 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 **June 17, 2021**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Kenneth and Laura Hlinka own the subject property.
2. The subject property is the 0.55-acre Lot 18 of O'Neil's First Street Subdivision in Urbana Township, and commonly known as the residence with an address of 3104 South First Street, Champaign.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
  - A. The subject property is within the one and one-half mile extraterritorial jurisdiction of the Village of Savoy, a municipality with zoning. It is within one and one-half miles of the cities of Champaign and Urbana, but per an intergovernmental agreement, the property is within Savoy's extraterritorial jurisdiction. Municipalities do not have protest rights on a variance and are not notified of such cases.
  - B. The subject property is located in Urbana Township, which does not 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 0.55-acre subject property is zoned R-3 Two-Family Residence Zoning District and is residential in use.
  - B. Land to the north and south is zoned R-3 Two-Family Residence and is residential in use.
  - C. Land to the east and west is zoned AG-2 Agriculture and is in use as agriculture. The University of Illinois Board of Trustees owns the land, so it is exempt from local zoning.

**GENERALLY REGARDING THE PROPOSED SITE PLAN**

5. Regarding the site plan for the subject property:
  - A. The Petitioner's Site Plan received April 20, 2021, indicates the following:
    - (1) Existing buildings include:
      - a. One 3,089 square feet residence; and
      - b. One 12 feet by 14 feet (168 square feet) detached shed in the southeast corner.
    - (2) The petitioner has received approval to construct a swimming pool under ZUPA #95-21-01 approved April 21, 2021, contingent upon approval of the variance for the detached shed in this case. A special condition of approval in the ZUPA is that the petitioner will abide by any reasonable conditions set forth in this zoning case.



**PRELIMINARY DRAFT****Case 011-V-21****Page 3 of 9**

- B. The following are previous Zoning Use Permits for the subject property:
- (1) ZUPA #124-07-01 was approved on May 16, 2007, to construct an addition to a single-family residence with an attached garage.
  - (2) The original residence was constructed prior to the adoption of the Zoning Ordinance on October 10, 1973.
- C. There are no prior zoning cases for the subject property.
- D. The required variance is as follows: authorize an existing detached shed with a side yard of 2.5 feet and a rear yard of 3.5 feet in lieu of the minimum required 5 feet side and rear yards for detached structures in the R-3 Two-Family Zoning District, per Section 7.2.2 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.
  - (7) “SPECIAL CONDITION” is a condition for the establishment of a SPECIAL USE.



**PRELIMINARY DRAFT**

- (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.
- (11) “YARD, SIDE” is a YARD situated between a side LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT and extending from the rear line of the required FRONT YARD to the front line of the required REAR YARD.
- B. The R-3 Two Family Residence DISTRICT is intended to provide areas for SINGLE and TWO FAMILY DWELLINGS, set on medium sized building LOTS and is intended for application within or adjoining developed areas where community facilities exist.
- 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 SIDE YARD for an accessory structure in the R-3 District is established in Section 7.2.2.B. of the *Zoning Ordinance* as 5 feet.



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- E. Minimum REAR YARD for an accessory structure in the R-3 District is established in Section 7.2.2.C. of the Zoning Ordinance as 10 feet.

**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 14 feet by 12 feet shed was moved to within 3.5 feet of east property line and 2.5 feet of south line and we were unaware of the 5 feet ordinance.”**
- B. In the County 1973 aerial photo, it appears the same shed was located farther north on the property. The shed was moved to the southeast corner sometime between 2005 and 2008, per aerial photos.

**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, **“Moving the shed is possible but would require a complete emptying and tear down for the 5 feet property line regulation.”**
- B. Regarding the proposed Variance: without the proposed variance, the existing detached shed 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, **“Unaware of the zoning regulations and the physical limitations of the property.”**
- B. The detached shed was moved sometime between 2005 and 2008; the petitioner purchased the property on December 12, 2009.

**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, **“The shed is in the SE corner of the property. Away from neighbor’s view and use of their property. Moving 1.5’ and 2.5’ will not change current situation or use.”**



**PRELIMINARY DRAFT**

- B. Regarding the proposed Variance for an accessory building with a side yard of 2.5 feet and a rear yard of 3.5 feet in lieu of the minimum required 5 feet side and rear yards for detached structures in the R-3 district: the requested variance for the 2.5 side yard is 50% of the minimum required, for a variance of 50%, and the requested variance for the 3.5 feet rear yard 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 side and rear yard requirements. In general, the side and rear yards are presumably intended to ensure the following:
- (1) Adequate light and air: The subject property is in residential use. The surrounding properties are both 0.55-acre lots in residential use.
  - (2) Separation of structures to prevent conflagration: The subject property is served by the Savoy Fire Protection District and their station is approximately 1.5 road miles from the subject property. The nearest structure to the detached shed on adjacent property is a detached shed to the south that is approximately 80 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: **“The shed is in a non-view/usage area of the properties. The shed has been in current location for over 15 years with no problems or situations occurring.”**
  - B. The Urbana Township Road Commissioner has been notified of this variance, and no comments have been received.
  - C. The Savoy Fire Protection District has been notified of this variance, and 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 has testified on the application: **“If the shed was put on the property line or over it, I believe it should be moved; however an Engineering firm verified the corner location and it is on owner’s property but just short of the 5 feet limit. Nothing detrimental to either property has occurred.**

**GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL**

13. No special conditions are proposed at this time.

***PRELIMINARY DRAFT***

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**DOCUMENTS OF RECORD**

1. Variance Application received April 20, 2021, with attachment:
  - A Site Plan
  
2. Preliminary Memorandum dated June 8, 2021, with attachments:
  - A Case Maps (Location, Land Use, Zoning)
  - B Site Plan received April 20, 2021
  - C 1973, 2005, 2008, and 2020 aerial photos
  - D Images of Subject Property taken May 13, 2021
  - E Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated June 17, 2021



## SUMMARY DRAFT FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 011-V-21 held on **June 17, 2021**, 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:
  - a. *The petitioner was unaware of the 5-foot side and rear yard ordinance until they applied to construct a swimming pool in April 2021.*
  - b. *In the County 1973 aerial photo, it appears the same shed was located farther north on the property. The shed was moved to the southeast corner sometime between 2005 and 2008, per aerial photos.*
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:
  - a. *Without the proposed variance, the existing detached shed would have to be emptied and moved elsewhere on the property.*
3. The special conditions, circumstances, hardships, or practical difficulties ***{DO / DO NOT}*** result from actions of the applicant because:
  - a. *The detached shed was moved sometime between 2005 and 2008; the petitioner purchased the property on December 12, 2009.*
4. The requested variance ***{~~SUBJECT TO THE PROPOSED CONDITION~~ / IS / IS NOT}*** in harmony with the general purpose and intent of the Ordinance because:
  - a. *The requested variance for the 2.5 side yard is 50% of the minimum required, for a variance of 50%, and the requested variance for the 3.5 feet rear yard is 70% of the minimum required, for a variance of 30%.*
  - b. *There is adequate light and air around the shed.*
  - c. *The nearest structure to the detached shed on adjacent property is a detached shed to the south that is approximately 80 feet away.*
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:
  - a. *Relevant jurisdictions have been notified of this variance, and no comments have been received.*
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:}***

**PRELIMINARY DRAFT**

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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 **011-V-21** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Kenneth and Laura Hlinka**, to authorize the following:

**Authorize a variance for an existing detached shed with a side yard of 2.5 feet and a rear yard of 3.5 feet in lieu of the minimum required 5 feet side and rear yards for detached structures in the R-3 Two-Family Zoning District, per Section 7.2.2 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:

Ryan Elwell, Chair  
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date