

# CASE NO. 019-V-21

PRELIMINARY MEMORANDUM

September 7, 2021

Petitioner: **Todd Cox**

Request: **Authorize a variance in the AG-2 Agriculture Zoning District for an existing detached shed with a side yard of 6.5 feet and a rear yard of 3 feet, in lieu of the minimum required 10 feet side and rear yards, per Section 7.2.1 of the Champaign County Zoning Ordinance.**

Subject Property: **Lot 3 of Timberview West Subdivision in Section 16 of Mahomet Township, and commonly known as the residence with an address of 109 Sharon Drive, Mahomet.**

Site Area: **0.46 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 6.5 feet and a rear yard of 3 feet in lieu of the 10 feet minimum required for accessory structures. The shed does not sit in an easement. The shed was constructed by a previous owner without a permit sometime between 1993 and 1998; the petitioner purchased the subject property in July 2009.

The petitioner has applied to construct a 40 feet by 40 feet (1,600 square feet) detached garage under ZUPA #181-21-01; its approval is contingent upon approval of the variance for the detached shed in this case.

## 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	AG-2 Agriculture
North	Single Family Residence	AG-2 Agriculture
East	Single Family Residence	AG-2 Agriculture
West	Single Family Residence	AG-2 Agriculture
South	Single Family Residence	AG-2 Agriculture

## EXTRATERRITORIAL JURISDICTION

The subject property is within the one and one-half mile extraterritorial jurisdiction of the Village of Mahomet, a municipality with zoning. Municipalities do not have protest rights on a variance and are not notified of such cases.

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

**PROPOSED SPECIAL CONDITIONS**

No special conditions are proposed at this time.

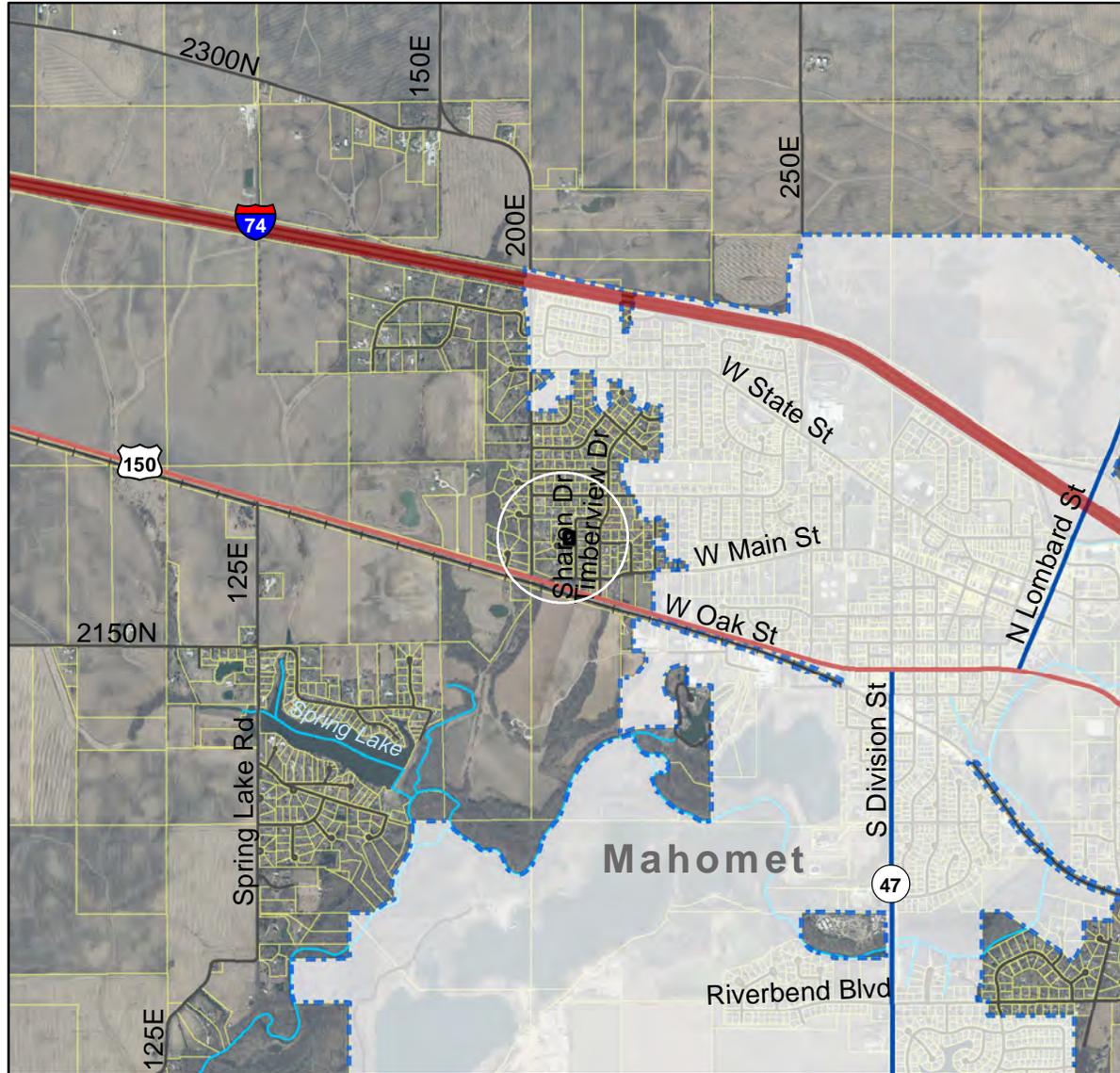
**ATTACHMENTS**

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received July 27, 2021
- C Images of Subject Property taken August 25, 2021
- D Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated September 16, 2021

# Location Map

Case 019-V-21  
September 16, 2021

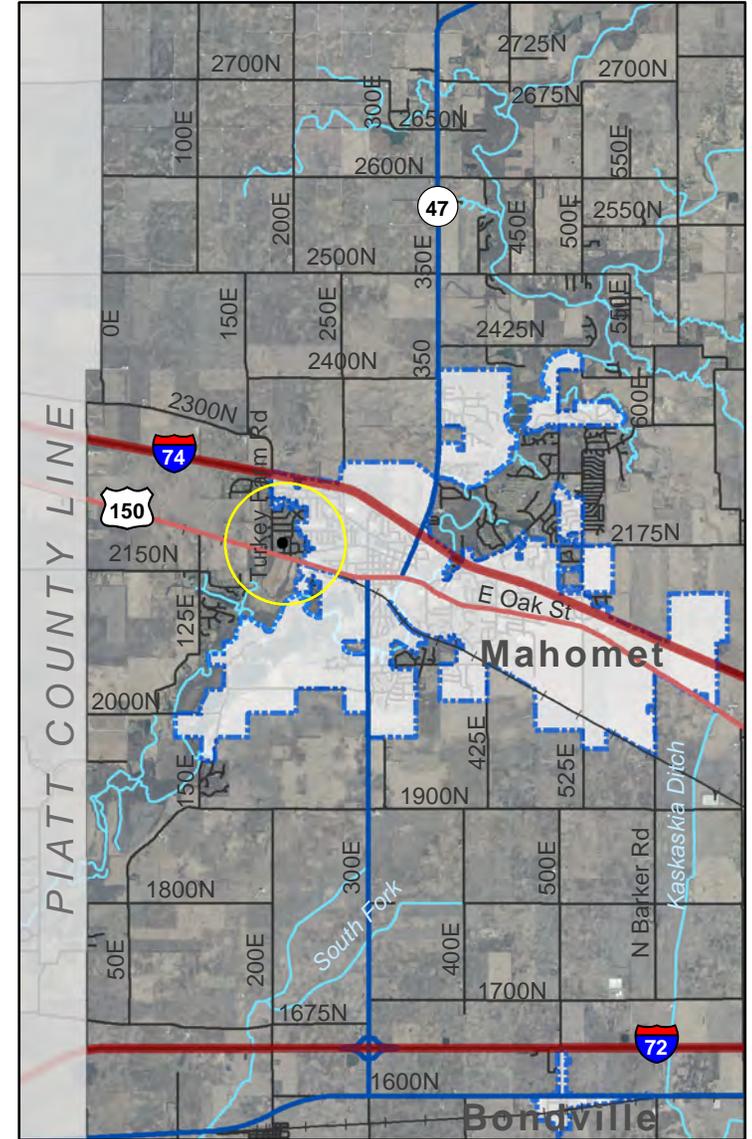
Subject Property



## Legend

-  Subject Property
-  Parcels
-  Municipal Boundary

Property location in Champaign County



0 0.5 1 2 Miles

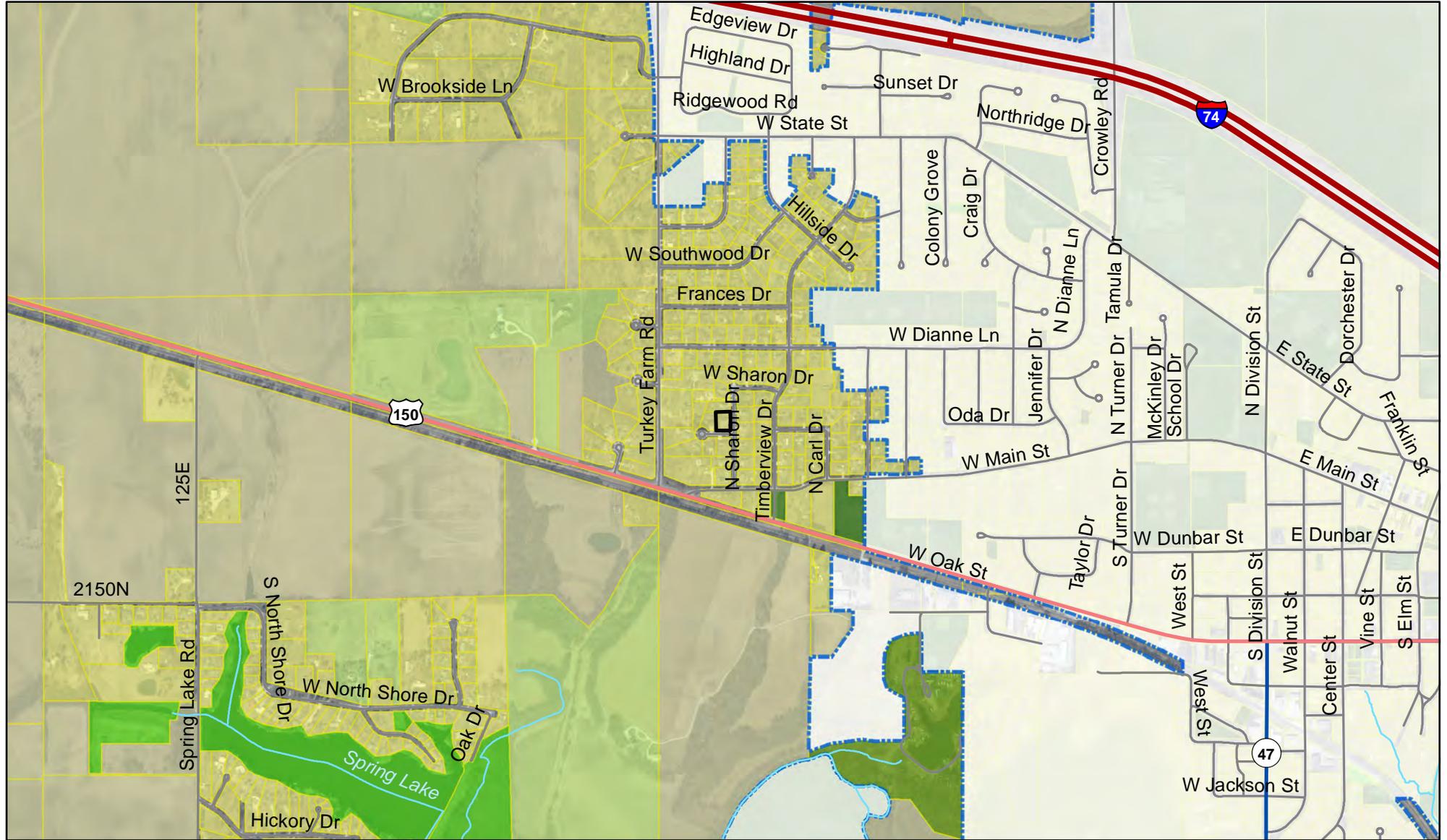


Champaign County  
Department of  
PLANNING &  
ZONING

# Land Use Map

Case 019-V-21

September 16, 2021



## Legend

- |                    |                |                 |
|--------------------|----------------|-----------------|
| Subject Property   | Agriculture    | Commons Area    |
| Municipal Boundary | Ag/Residential | Vet or Frat Org |
| Parcels            | Residential    | Tax Exempt      |

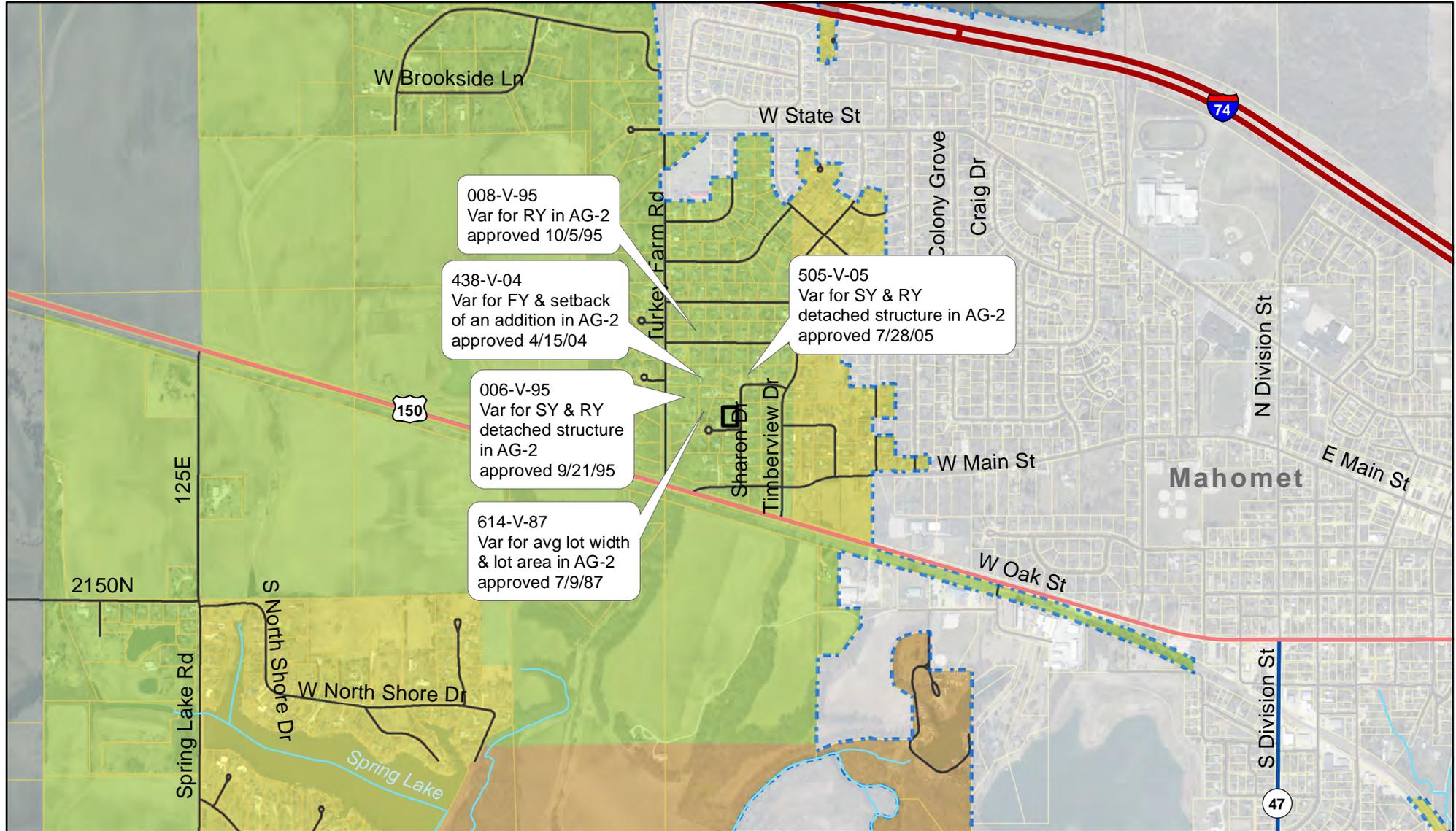
0 300 600 1,200 Feet



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ZONING**

# Zoning Map

Case 019-V-21  
September 16, 2021



008-V-95  
Var for RY in AG-2  
approved 10/5/95

438-V-04  
Var for FY & setback  
of an addition in AG-2  
approved 4/15/04

006-V-95  
Var for SY & RY  
detached structure  
in AG-2  
approved 9/21/95

614-V-87  
Var for avg lot width  
& lot area in AG-2  
approved 7/9/87

505-V-05  
Var for SY & RY  
detached structure in AG-2  
approved 7/28/05

## Legend

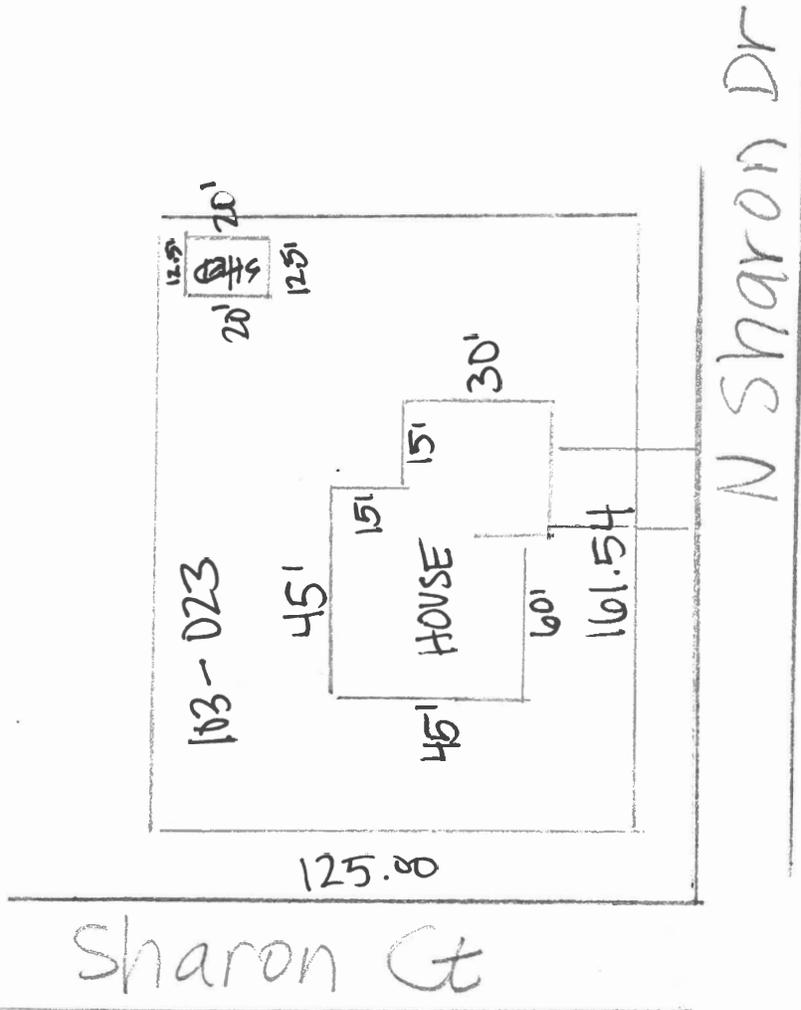
- Subject Property
- Parcels
- Municipal Boundary
- CR Conservation Recreation
- AG-1 Agriculture
- AG-2 Agriculture
- R-1 Single-Family Residence



RECEIVED

JUL 27 2021

CHAMPAIGN CO. P & Z DEPARTMENT



### 019-V-21 Site Images



From north side yard facing NW



From rear yard facing north

### 019-V-21 Site Images



From west neighbor's yard facing east



From Sharon Drive facing west

**PRELIMINARY DRAFT**

**019-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: *{September 16, 2021}*

Petitioner: **Todd Cox**

Request: **Authorize a variance in the AG-2 Agriculture Zoning District for an existing detached shed with a side yard of 6.5 feet and a rear yard of 3 feet, in lieu of the minimum required 10 feet side and rear yards, per Section 7.2.1 of the Champaign County Zoning Ordinance.**

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**Table of Contents**

**General Application Information..... 2**

**Requested Variance ..... 3**

**Specific Ordinance Requirements..... 3 - 5**

**Variance Evidence ..... 5 - 7**

**Documents of Record..... 8**

**Case 019-V-21 Findings of Fact..... 9**

**Case 019-V-21 Final Determination ..... 10**

***PRELIMINARY DRAFT***

**SUMMARY OF EVIDENCE**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **September 16, 2021**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner Todd Cox owns the subject property.
2. The subject property is the 0.46-acre Lot 3 of Timberview West Subdivision in Section 16 of Mahomet Township, and commonly known as the residence with an address of 109 Sharon Drive, Mahomet.
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 Mahomet, 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 Mahomet Township, which has a Plan Commission. Townships with Plan Commissions 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 0.46-acre subject property is in the AG-2 Agriculture Zoning District and is residential in use.
  - B. Land surrounding the subject property is zoned AG-2 Agriculture and is residential in use.

***GENERALLY REGARDING THE PROPOSED SITE PLAN***

5. Regarding the site plan for the subject property:
  - A. The Petitioner's Site Plan received July 27, 2021, indicates the following:
    - (1) Existing buildings include:
      - a. One 1,810 square feet residence; and
      - b. One 12.5 feet by 20 feet (250 square feet) detached shed in the northwest corner.
    - (2) The petitioner has applied to construct a 40 feet by 40 feet (1,600 square feet) detached garage under ZUPA #181-21-01; its approval is contingent upon approval of the variance for the detached shed in this case.
  - B. The following are previous Zoning Use Permits for the subject property:
    - (1) ZUPA #197-87-01 was approved on August 13, 1987, to construct a single-family residence with an attached garage.
    - (2) There is no permit on file for the existing shed, but aerial photography indicates it was constructed between 1993 and 1998.

**PRELIMINARY DRAFT****Case 019-V-21**  
**Page 3 of 10**

- C. There are several prior zoning cases in the vicinity of the subject property:
- (1) Case 614-V-87 was a variance for lot area and average lot width on Lots 2, 4, and 5 adjacent to the subject property, approved on July 9, 1987.
  - (2) Case 706-V-90 was a variance for side yard of a principal structure at 205 Richard Dr, Mahomet, approved on June 12, 1990.
  - (3) Case 006-V-95 was a variance for side yard and rear yard of a detached structure at 108 Turkey Farm Rd, Mahomet, approved on September 21, 1995.
  - (4) Case 008-V-95 was a variance for rear yard at 1206 W Dianne, Mahomet, approved on October 5, 1995 for.
  - (5) Case 438-V-04 was a variance for setback and front yard of an addition at 204 Turkey Farm Road, Mahomet, approved on April 15, 2004.
  - (6) Case 505-V-05 was a variance for side yard and rear yard of an accessory structure at 1106 Sharon Dr, Mahomet, approved July 28, 2005.
- D. The required variance is as follows: Authorize a variance in the AG-2 Agriculture Zoning District for an existing detached shed with a side yard of 6.5 feet and a rear yard of 3 feet, in lieu of the minimum required 10 feet side and rear yards, per Section 7.2.1 of the Champaign County 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.

**PRELIMINARY DRAFT**

- (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) “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.
  - (8) “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.
  - (9) “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.
  - (10) “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 AG-2 Agriculture DISTRICT is intended to prevent scattered indiscriminate urban development and to preserve the AGRICULTURAL nature within areas which are predominately vacant and which presently do not demonstrate any significant potential for development. This DISTRICT is intended generally for application to areas within one and one-half miles of existing communities in 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.

**PRELIMINARY DRAFT****Case 019-V-21**  
**Page 5 of 10**

- 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 AG-2 District is established in Section 7.2.1. B. of the Zoning Ordinance as 10 feet.
- E. Minimum REAR YARD for an accessory structure in the AG-2 District is established in Section 7.2.1.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 previous owners placed the shed in the location it is. It seems they placed it where they did as that is the best location for the shed and out of the way on the property. Unfortunately, if we were to move the shed it would become unusable.”**

**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 when installed by previous owners could not be moved without destroying the shed itself and making it unusable.”**
  - B. Regarding the proposed Variance: without the proposed variance, the existing detached shed would have to be demolished.

**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, **“When the property was purchased in 2009, I was not aware of the shed being too close to the lot line or aware of the zoning regulations. The shed was already on the property when the house was purchased.”**

**PRELIMINARY DRAFT**

- B. The detached shed was constructed sometime between 1993 and 1998 without a permit. The petitioner purchased the property on July 24, 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 creates zero hazard to persons in the neighborhood.”**
  - B. Regarding the proposed Variance for an accessory building with a side yard of 6.5 feet and a rear yard of 3 feet in lieu of the minimum required 10 feet side and rear yards for detached structures in the AG-2 district: the requested variance for the 6.5 feet side yard is 65% of the minimum required, for a variance of 35%, and the requested variance for the 3 feet rear yard is 30% of the minimum required, for a variance of 70%.
  - 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 similarly sized lots in residential use.
    - (2) Separation of structures to prevent conflagration: The subject property is served by the Cornbelt Fire Protection District and their station is approximately 1.3 road miles from the subject property. The nearest structure to the detached shed on adjacent property is a residence to the northeast that is approximately 20 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 located in the far back corner of the property. It doesn’t interfere with anything for safety reasons.”**
  - B. The Mahomet Township Road Commissioner has been notified of this variance, and no comments have been received.
  - C. The Cornbelt Fire Protection District has been notified of this variance, and no comments have been received.
  - D. The shed does not sit in an easement.

***PRELIMINARY DRAFT***

**Case 019-V-21**  
**Page 7 of 10**

***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: **“We use this shed for our mower along with other outside equipment. If we could move it without damaging the structure, we would. Due to the shed being in the back corner, it doesn’t cause any harm or block roads, etc. for safety purposes.”**

***GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL***

13. No special conditions are proposed at this time.

**Case 019-V-21**

***PRELIMINARY DRAFT***

Page 8 of 10

**DOCUMENTS OF RECORD**

1. Variance Application received July 27, 2021, with attachment:
  - A Site Plan
  
2. Preliminary Memorandum dated September 7, 2021, with attachments:
  - A Case Maps (Location, Land Use, Zoning)
  - B Site Plan received July 27, 2021
  - C Images of Subject Property taken August 25, 2021
  - D Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated September 16, 2021

**PRELIMINARY DRAFT****Case 019-V-21**  
**Page 9 of 10****SUMMARY DRAFT FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **019-V-21** held on **September 16, 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 shed was placed without a permit by a prior owner sometime between 1993 and 1998, making it at least 23 years old.*
  - b. *The petitioner was unaware of the Zoning Ordinance requirements when they purchased the property in 2009.*
  
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 demolished.*
  
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
  - a. *The detached shed was constructed sometime between 1993 and 1998 without a permit. The petitioner purchased the property on July 24, 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. *There is adequate light and air around the shed.*
  - b. *The nearest structure to the detached shed on adjacent property is a residence to the north that is approximately 20 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:}**

**Case 019-V-21**  
Page 10 of 10

**PRELIMINARY DRAFT**

**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 **019-V-21** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioner, **Todd Cox**, to authorize the following:

**Authorize a variance in the AG-2 Agriculture Zoning District for an existing detached shed with a side yard of 6.5 feet and a rear yard 3 feet, in lieu of the minimum required 10 feet side and rear yards, per Section 7.2.1 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:

Ryan Elwell, Chair  
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date