

CASE NO. 031-V-21

*PRELIMINARY MEMORANDUM
JANUARY 4, 2022*

Petitioner: Alvin Decker, via agent Kim Decker

Request: Authorize a variance for a 3.42-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.

Subject Property: An existing 2.35-acre lot plus part of an 85.57-acre tract in the Northeast Corner of Section 25, Township 18 North, Range 9 East of the Third Principal Meridian in Philo Township, commonly known as the residence with an address of 1779 CR 800N, Philo.

Site Area: 2.35 existing + 1.07 proposed = 3.42 acres

Time Schedule for Development: As soon as possible

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

BACKGROUND

Mr. Donald Carter purchased the 2.35-acre lot on the southwest corner of CR 1800E and CR 800N in 2004. A house was built on the lot by previous owners shortly after the lot was created in 2002. Starting around 2011, Mr. Carter rented 1.07 acres from his neighbor, Mr. Alvin Decker, to house his sheep and dogs. Mr. Carter would like to add the 1.07 acres to his property rather than continue renting the land.

The proposed additional 1.07 acres needs a variance from the County for creating a lot greater than three acres on Best Prime Farmland. Mr. Decker is in agreement with Mr. Carter's plan and applied for the variance.

No comments have been received.

EXTRATERRITORIAL JURISDICTION

The subject property is located within the one and one-half mile extraterritorial jurisdiction of the Village of Philo, a municipality with zoning. The Village of Philo waived its subdivision rights in a letter received December 3, 2021 (Attachment C), so the petitioner can proceed with dividing the property under County regulations. No subdivision is required by the County.

The subject property is located in Philo Township, which does not have a Planning Commission. Townships with Plan Commissions have protest rights on a variance and receive notification of such cases.

EXISTING LAND USE AND ZONING
Table 1. Land Use and Zoning in the Vicinity

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

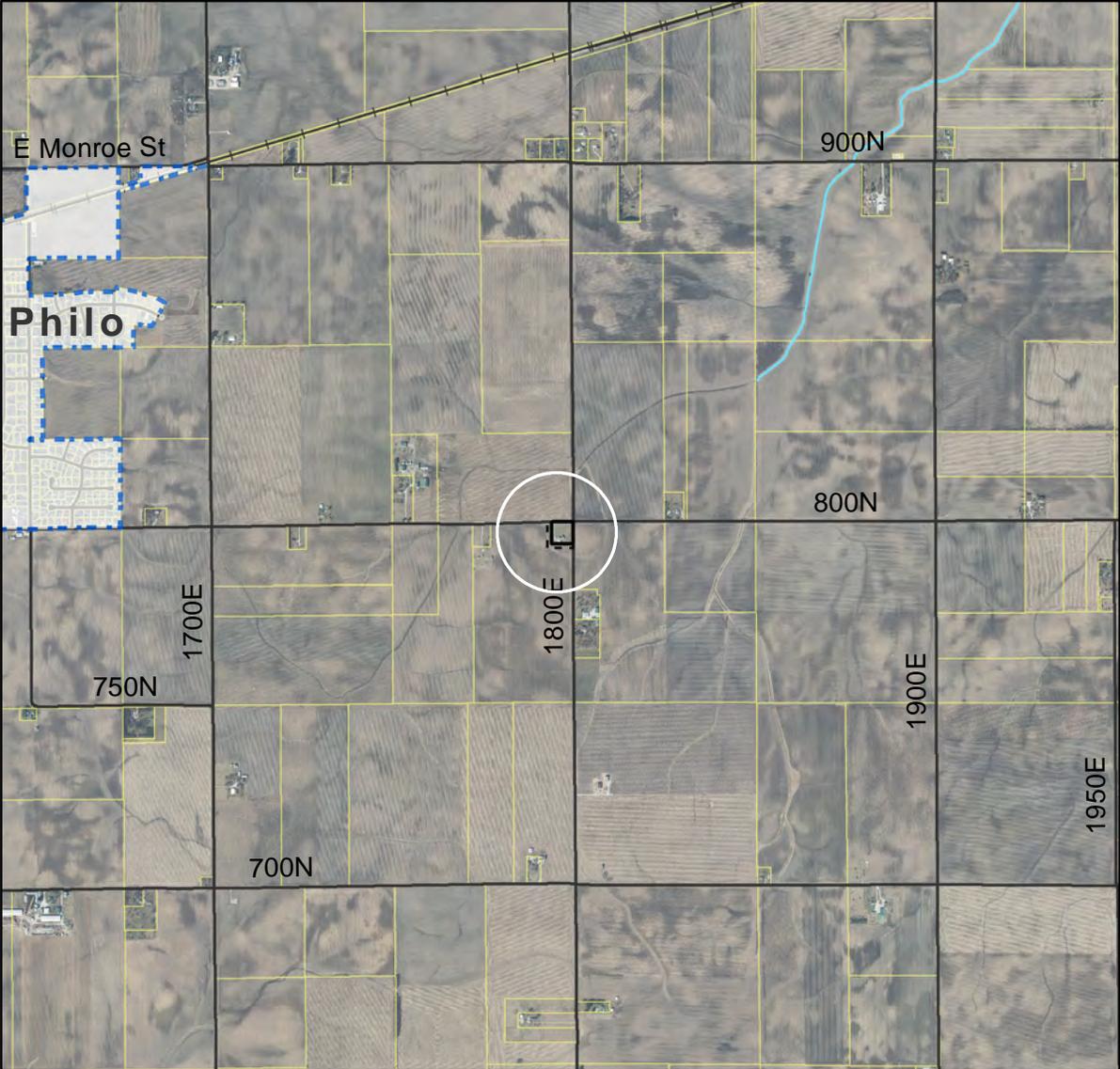
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received December 3, 2021
- C Letter from the Village of Philo received December 3, 2021
- D Site Images taken November 30, 2021
- E Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 031-V-21 dated January 13, 2022

Location Map

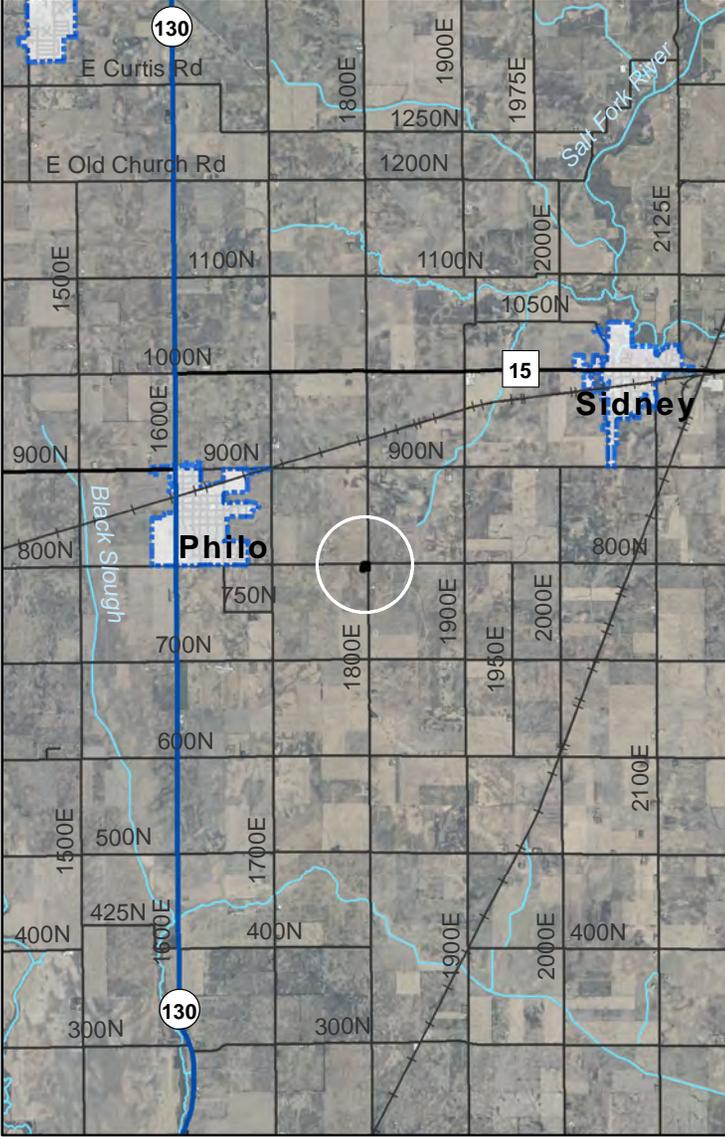
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Subject Property



-  Proposed additional area
-  Subject Property
-  Parcels
-  Municipal Boundary

Property location in Champaign County



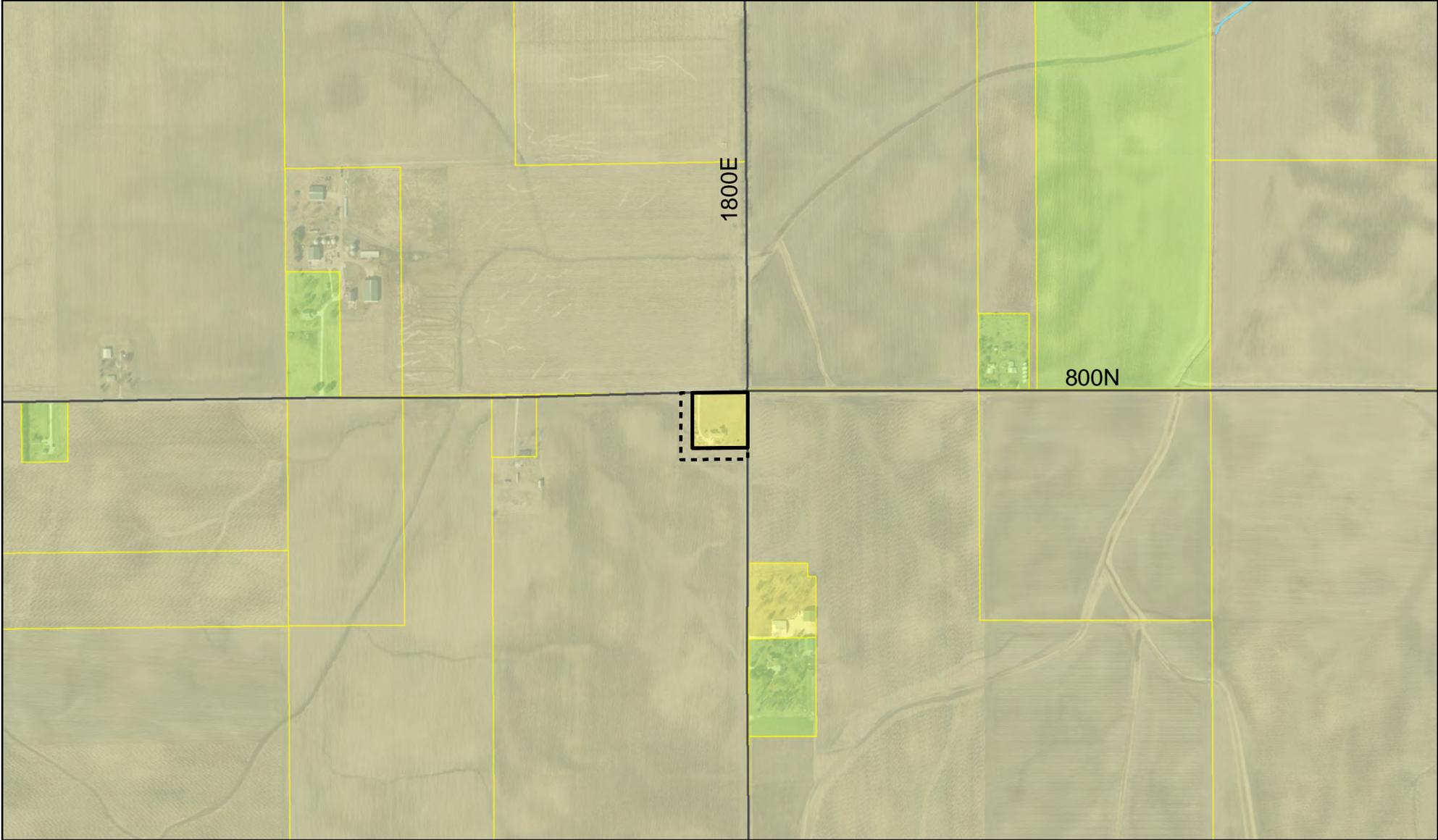
0 0.5 1 2 Miles



Champaign County
Department of
**PLANNING &
ZONING**

Land Use Map

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January 13, 2022



- Proposed additional area
- Subject Property
- Parcels
- Agriculture
- Ag/Residential
- Residential

0 200 400 800 Feet



Champaign County
Department of
PLANNING &
ZONING

Zoning Map

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-  Proposed additional area
-  Subject Property
-  Parcels
-  AG-1 Agriculture

0 200 400 800 Feet



Champaign County
Department of
**PLANNING &
ZONING**

19-27-25-200-007

2020 aerial
11/19/2021



RECEIVED

DEC 03 2021

CHAMPAIGN CO. P & Z DEPARTMENT



VILLAGE OF PHILO
R. E. FRANKS MEETING CENTER

November 10, 2021

Dear County Government,

This will confirm that the Board of Trustees for the Village of Philo approved waiving its extratorrial jurisdiction and consenting to the break out and conveyance of a portion of PIN # 19-27-25-200-006 to an adjacent property owner so long as such conveyance takes place on or before May 10, 2022.



Larry R. Franks

Board President

RECEIVED

DEC 03 2021

CHAMPAIGN COUNTY & ZONING DEPARTMENT

031-V-21 Site Images



From CR 800N facing SE toward subject property



From CR 800N showing pens on west side of 2.35-acre property

031-V-21 Site Images



From CR 1800E facing west to proposed area behind (south of) house



From CR 1800E facing NW toward 2.35-acre property

PRELIMINARY DRAFT

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**FINDING OF FACT
AND FINAL DETERMINATION
of the
Champaign County Zoning Board of Appeals**

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

Date: ***{January 13, 2022}***

Petitioner: **Alvin Decker, via agent Kim Decker**

Request: **Authorize a variance for a 3.42-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.**

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PRELIMINARY DRAFT

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **January 13, 2022**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner Alvin Decker owns the 85.65-acre lot and Donald Carter owns the 2.35-acre lot. Mr. Carter rents the proposed additional area from Mr. Decker.
2. The subject property is an existing 2.35-acre lot plus part of an 85.57-acre tract in the Northeast Corner of Section 25, Township 18 North, Range 9 East of the Third Principal Meridian in Philo Township, commonly known as the residence with an address of 1799 CR 800N, Philo.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is located within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning.
 - (1) The Village of Philo waived its subdivision rights in a letter received December 3, 2021, so the petitioner can proceed with dividing the property under County regulations.
 - B. The subject property is located in Philo Township, which does not have a Planning Commission. Townships with Plan Commissions have protest rights on a variance and 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. Both the 2.35-acre tract and the 85.65-acre tract are zoned AG-1 Agriculture. The larger tract is in agricultural production and the 2.35 acre tract is residential in use.
 - B. Land to the north, east, south and west is 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 on December 3, 2021 shows an outline of the proposed lot, which indicated the following:
 - (1) The proposed lot would be 386 feet by 386 feet, or 3.42 acres.
 - (2) The 2.35-acre lot includes the following existing features:
 - a. One residence constructed under ZUPA # 290-0202 approved October 25, 2002; and
 - b. Numerous accessory structures utilized for farm animals.
 - (3) Mr. Carter rents the additional 1.07 acres to house farm animals. Mr. Carter seeks to purchase the additional 1.07 acres for the same purpose.
 - B. Prior Zoning Use Permits for the subject property include:

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- (1) One 4,548 square feet residence constructed under ZUPA# 290-0202 approved October 25, 2002.
- C. There are no prior zoning cases on or in the vicinity of the subject property.
- D. The requested variance is for a lot size of 3.42 acres in lieu of the maximum area of 3 acres for lots on 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) “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 from 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.
 - (2) “AREA, LOT” is the total area within the LOT LINES.
 - (3) “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:
 - (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.
 - (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.

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- (5) “LOT LINES” are the lines bounding a LOT.
 - (6) “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.
- 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:
 - 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.

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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 testified the following on the application: **“We are wishing to sell 66 feet on 2 sides of the established lot which has been under lease for close to 10 years. No additional farmland will be taken out of production This land has been rented to have more room for the owner’s sheep and dogs. This property would have no changes to the look of the property from what it is now.”**
 - B. Regarding the soils that make up the subject property:
 - (1) The soil on the proposed 5.08-acre lot is BEST PRIME FARMLAND. It consists of 56B Dana silt loam and has an average LE of 91.
 - C. The existing house on the 2.35 acres sits far back from the adjacent roads, and was built by previous owners.
 - D. Mr. Carter rents the additional 1.07 acres in part to house farm animals. Mr. Carter seeks to purchase the additional 1.07 acres for the same purpose.

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 the following on the application: **“If we do not receive the variance, we will not be able to sell this bordering area as the total lot would be over 3 acres.”**
 - B. Without the variance, the petitioner could not add the 1.07 acres to the existing 2.35-acre residential lot.

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 the following on the application: **“The Village of Philo has already approved the waiving of its extraterritorial jurisdiction. See attached letter from the Village. There are absolutely no subdivision intentions. The current owner purchased the property, and did not do the original building of the lot.”**
 - B. The lot was created and the house was built in 2002. The current owner purchased the property in March 2004.

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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 the following on the application: **“It will not change the look of the property at all. There are no subdivision intentions. No additional farmland will be taken out of production, and the look of the property will not change.”**
 - 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. Ordinance No. 914 (Case 711-AT-12) approved on November 27, 2012, revised the best prime farmland definition to have a Land Evaluation (LE) rating of 91 or higher rather than the previous rating of 85 or higher.
 - D. The 3.42-acre lot area is 114% of the required three acre maximum, for a variance of 14%.
 - E. No on the ground changes are proposed.
 - F. 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 the following on the application: **“As above, no changes to the property will be noticeable to the public.”**
 - B. The Philo Township Highway Commissioner has been notified of this variance, and no comments have been received.
 - C. The Philo Township Supervisor has been notified of this variance, and no comments have been received.
 - D. The Philo 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 Petitioners testified the following on the application: **“The Village of Philo has approved the intentions. This will just allow the current owner to own the additional feet rather than renting it.”**

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GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:

No special conditions are proposed at this time.

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DOCUMENTS OF RECORD

1. Application for Variance received December 3, 2021, with attachments:
 - Site Plan
 - Letter from the Village of Philo

2. Site Plan received December 3, 2021

3. Preliminary Memorandum dated January 4, 2022, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received December 3, 2021
 - C Letter from the Village of Philo received December 3, 2021
 - D Site Images taken November 30, 2021
 - E Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 031-V-21 dated January 13, 2022

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SUMMARY DRAFT FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **031-V-21** held on **January 13, 2022**, 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 existing house on the 2.35 acres sits far back from the adjacent roads, and was built by previous owners.***
 - b. ***Mr. Carter rents the additional 1.07 acres in part to house farm animals. He seeks to purchase the additional 1.07 acres for the same purpose.***
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 variance, the petitioner could not add the 1.07 acres to the existing residential lot, so he would have to continue renting rather than purchase the extra area.***
3. The special conditions, circumstances, hardships, or practical difficulties ***{DO / DO NOT}*** result from actions of the applicant because:
 - a. ***The lot was created and the house was built in 2002. The current owner purchased the property in March 2004.***
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 3.42-acre lot area is 114% of the required three acre maximum, for a variance of 14%.***
 - b. ***No on the ground changes are proposed.***
 - c. ***The requested variance is not prohibited by the Zoning Ordinance.***
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 case, 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:
 - a. ***Any additional land added to the subject property would take land out of agricultural production.***
7. ***{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}***

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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 **031-V-21** is hereby ***{GRANTED/ GRANTED WITH CONDITIONS/ DENIED}*** to the petitioners, **Alvin Decker**, to authorize the following:

Authorize a variance for a 3.42-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, 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:

Ryan Elwell, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date