

CASE NO. 916-V-18

PRELIMINARY MEMORANDUM

October 18, 2018

Petitioners: Duane and Teresa Foster

Request: Authorize a variance in the CR Conservation-Recreation Zoning District for a proposed lot that does not abut and have access to a public street or a private accessway meeting Champaign County street standards, per Section 4.2.1 H. of the Champaign County Zoning Ordinance.

Subject Property: A proposed lot that is the north 5.1 acres of an existing 10.18-acre lot, described as Tract A on an unrecorded Plat of Survey dated November 17, 1988, located in the Northwest Quarter of the Northwest Quarter of Section 26, Township 21 North, Range 79 East of the Third Principal Meridian in Newcomb Township.

Site Area: 5.1 acres

Time Schedule for Development: As soon as possible

**Prepared by: Susan Burgstrom
Senior Planner**

**John Hall
Zoning Administrator**

BACKGROUND

The 10.18-acre lot owned by the Fosters is legally non-conforming because it was created by easement of access prior to 1991, when lots in violation of the Plat Act were grandfathered into compliance. The easement of access was established for a larger area, including the subject property, in a document recorded in Book 853, page 358 on July 26, 1967.

The Petitioners sought to divide the 10.18-acre property into two 5.1-acre lots in the 1980s and hired Altech Consultants to draw up a Plat of Survey, which was signed by Illinois Registered Land Surveyor Lawrence F. Favet on November 17, 1988. The Plat was never recorded, and as such the two lots have not been legally divided. The petitioners told P&Z Staff that they thought the lots were properly divided when the survey was done in 1988.

The Petitioners constructed a residence in 1989 (ZUPA #230-89-01) and detached shed in 2011 (ZUPA #158-11-01). The petitioners would like to convert the shed that was constructed on the north end of the property into a house, which cannot be done unless the property is subdivided because there is already a house on the south end of the lot.

Ordinance #527 was approved by the Champaign County Board on February 18, 1997, for a text amendment to the Zoning Ordinance under Case 055-AT-96. The amendment added Section 4.2.1 H., which required that all lots either abut and have access to a public street or abut a private accessway.

The proposed 5.1-acre north lot requires a variance, because access via easement was never established in a recorded plat of subdivision per Section 4.2.1 H.

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 Newcomb 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	Residential	CR Conservation-Recreation
North	Residential	CR Conservation-Recreation
East	Residential	CR Conservation-Recreation
West	Residential	CR Conservation-Recreation
South	Residential	CR Conservation-Recreation

MINOR SUBDIVISION APPROVAL MAY BE REQUIRED

The proposed variance will bring access via the existing easement into compliance with Section 4.2.1H. of the Champaign County Zoning Ordinance. However, Section 13.2.1 of the Zoning Ordinance states: “The BOARD or the GOVERNING BODY shall not approve VARIANCES or SPECIAL USE Permits, and the Zoning Administrator shall not issue Zoning Use Permits or Zoning Compliance Certificates when the CONSTRUCTION or USE would violate...the Illinois Plat Act (765 ILCS 205/0.01 *et seq.*)”

There is uncertainty regarding the timing of when the easement for the subject property was created and the language of the Plat Act at that time. This uncertainty is the difference between the petitioners being able to proceed with simply recording their existing Plat of Survey or having to go through the process of a Minor Subdivision that must be approved by the County Board. A proposed condition has been added to ensure compliance.

PROPOSED SPECIAL CONDITION

- A. As soon as possible, P&Z staff will verify with the State’s Attorney’s Office whether the petitioner needs to pursue a Minor Subdivision or simply record the existing Plat of Survey and no Zoning Use Permit shall be approved on the proposed lot until the necessary plat has been duly recorded at the Recorder of Deeds.**

The special condition stated above is required to ensure the following:

That the new lot configuration conforms to the Illinois Plat Act (765 ILCS 205).

ATTACHMENTS

- A Case Maps (Location, Land Use, and Zoning)
- B Site Plan from ZUPA #158-11-01 approved June 13, 2011
- C Plat of Survey by Altech Consultants signed by Illinois Registered Land Surveyor Lawrence F. Favet on November 17, 1988 and received October 9, 2018
- D Easement Agreement from Recorder of Deeds Book 853 Page 356 recorded July 26, 1967
- E Site Visit Photos taken October 13, 2018
- F Draft Summary of Evidence, Finding of Fact, and Final Determination dated October 25, 2018

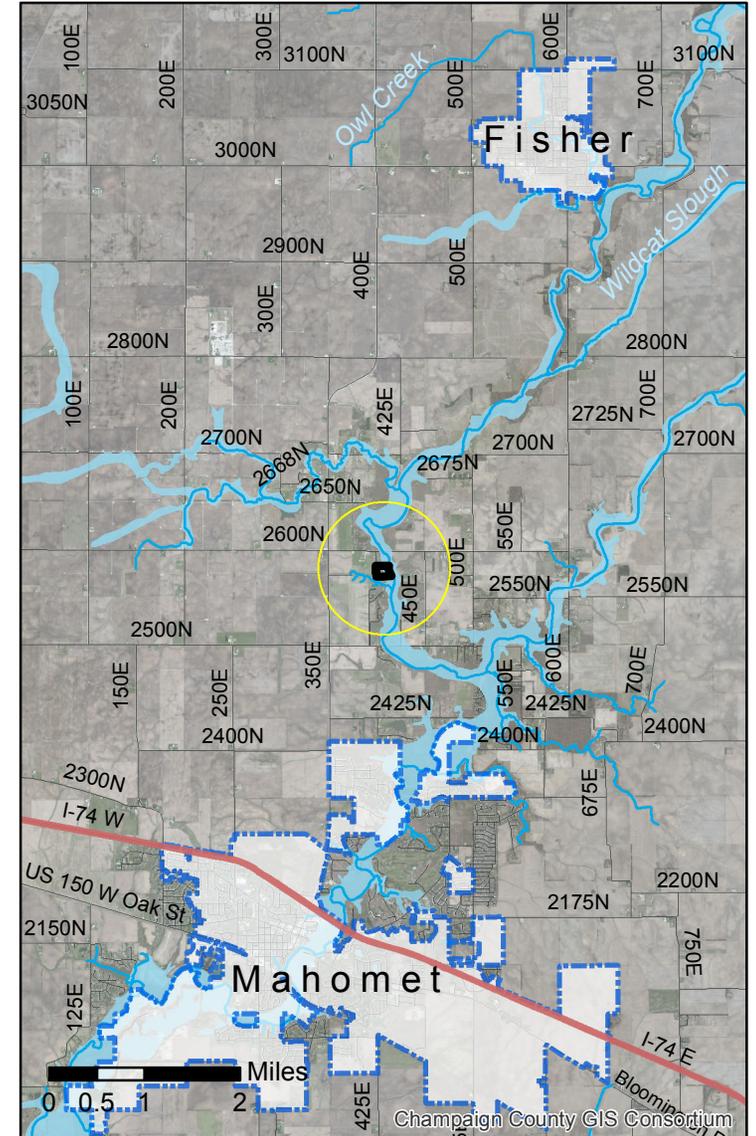
Location Map

Case 916-V-18
October 25, 2018

Subject Property



Property location in Champaign County



Legend

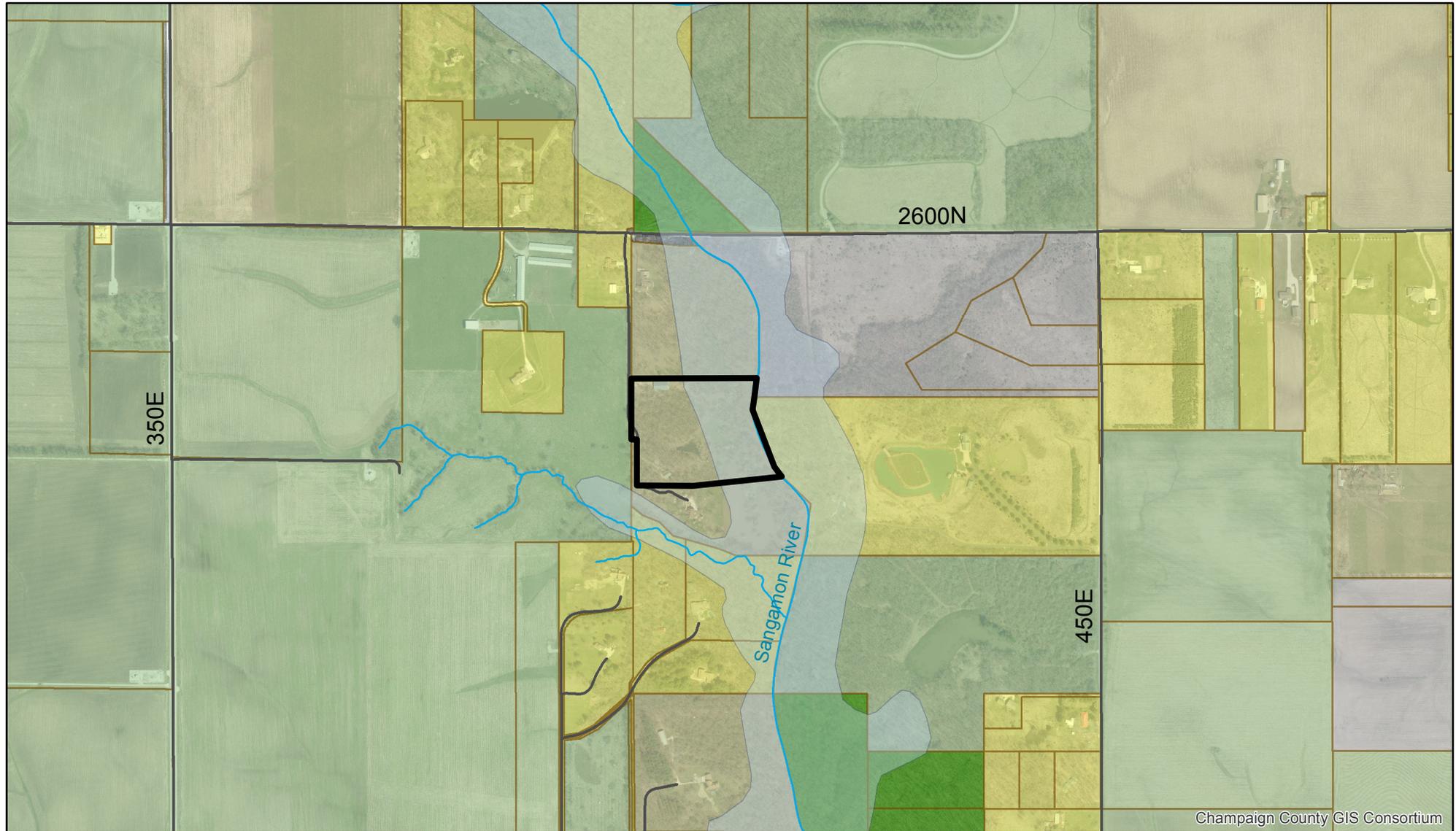
-  Subject Property
-  Municipal Boundary
-  Parcels
-  Streets
-  Stream
-  FEMA Flood Hazard Area



Champaign County
Department of
PLANNING &
ZONING

Land Use Map

Case 916-V-18
October 25, 2018



Legend

- | | | | |
|------------------|-----------------|--------------------|------------------------|
| Subject Property | Ag/Residential | Residential | FEMA Flood Hazard Area |
| Parcels | Agriculture | Undeveloped non-ag | Stream |
| Streets | Forest Preserve | | |

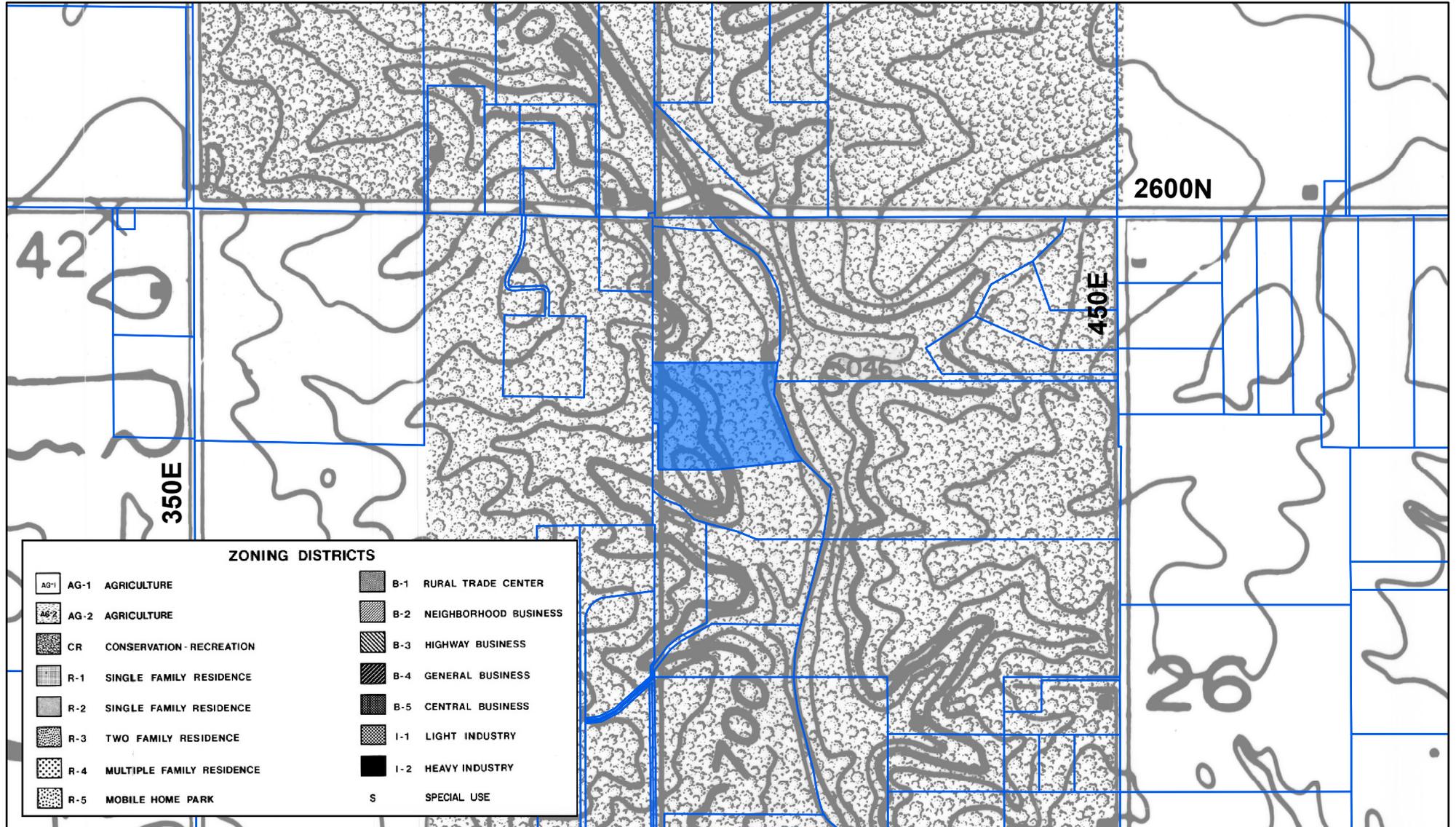
0 200 400 800 Feet



Champaign County
Department of
PLANNING &
ZONING

Zoning Map

Case 916-V-18
 October 25, 2018

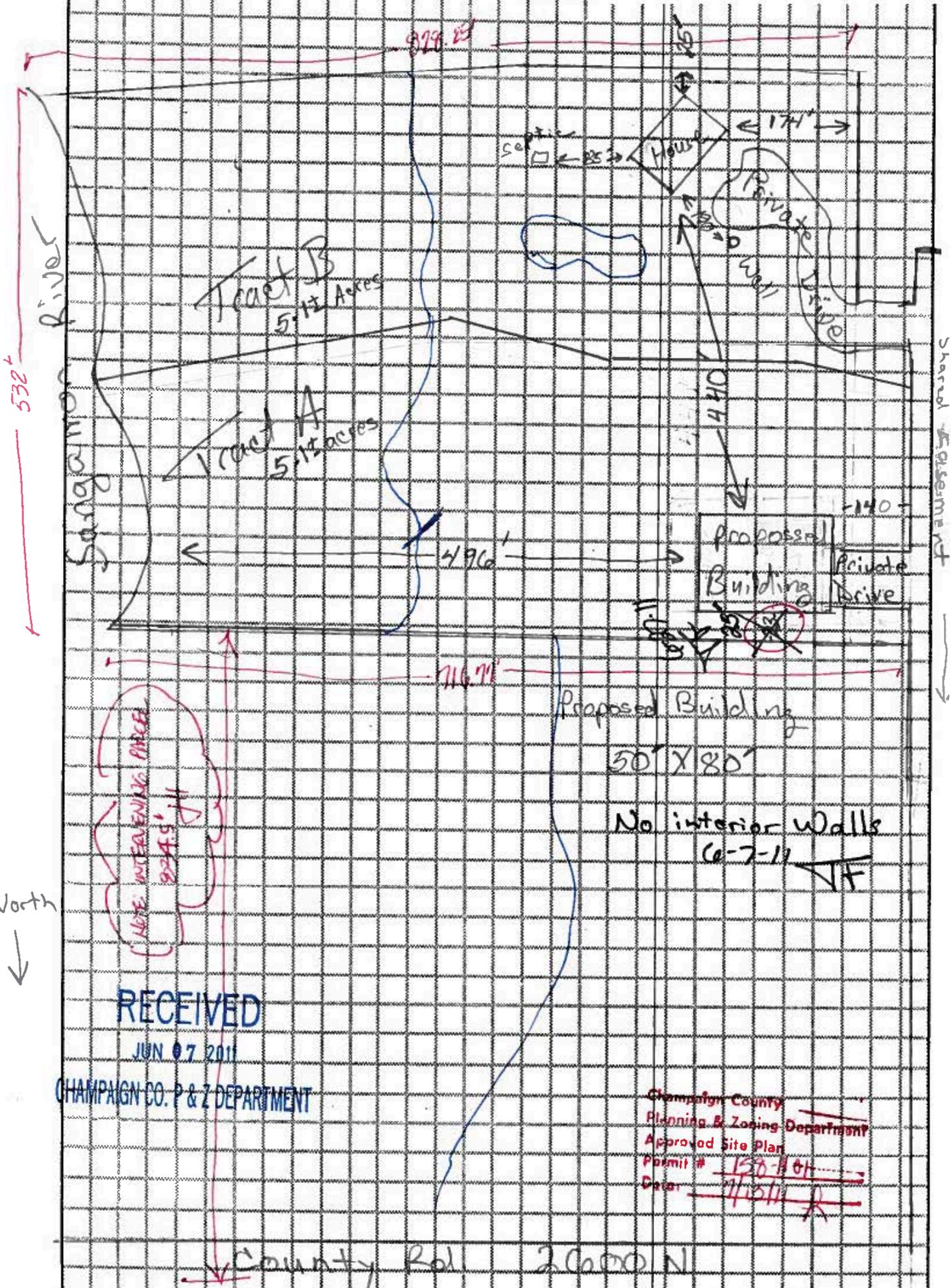


Legend

-  Parcels
-  Subject Property

0 200 400 800 Feet





RECEIVED

JUN 07 2011

CHAMPAIGN CO. P & Z DEPARTMENT

Champaign County
 Planning & Zoning Department
 Approved Site Plan
 Permit # 150-1101
 Date 7/15/11

County Rd 2000 N

RECEIVED

OCT 09 2018

CHAMPAIGN CO. P & Z DEPARTMENT

STATE OF ILLINOIS)
) S.S.
 COUNTY OF CHAMPAIGN)

Surveyor's Certificate

I, Lawrence F. Favet, being Illinois Registered Land Surveyor No. 2679, do hereby certify that at the request of DUANE FOSTER, I have caused a survey to be made under my direct supervision of the following described tracts of land:

TRACT "A"

A tract of land situated in the East One-Half of Section 27 and in the West One-Half of Section 26 all in Township 21 North, Range 7 East of the Third Principal Meridian, Champaign County, Illinois; the boundary of which is described as follows:

Commencing at a point which is on, and 834.5 feet South of, the Northern Terminus of the North-South line on the North line of said Section 27 which lies 12 feet West of the Northeast corner of said Section 27, The Southern Terminus which lies 1847 feet South of the Northeast corner of said Section 27, said point also being on the South line of a tract described in a Warranty Deed to M. H. Miller recorded as Document Number 481814 in the office of the Recorder of Champaign County, and hereby known as the True Point of Beginning for Tract "A", proceed along the South line of the Tract described in said Document Number 481814, on a local bearing of North 87° 23' 49" East, 716.77 feet to the centerline of the Sangamon River; thence along the centerline of said river, South 02° 56' 28" West, 180.94 feet; thence continue along centerline of said river, South 17° 42' 39" East, 117.47 feet; thence South 78° 21' 56" West, 358.29 feet; thence North 74° 14' 45" West, 182.36 feet; thence North 86° 23' 49" West, 137.30 feet; thence North 80° 18' 01" West, 82.56 feet to a point on said North-South line as the Point of Beginning; thence North 00° 22' 20" West, along said North-South line 260.72 feet to the True Point of Beginning for tract "A", encompassing 5.114 Acres, more or less.

Together with an easement of ingress and egress recorded in Book 853 at Page 356 in the office of the Recorder of Champaign County, Illinois, the description of which is as follows:

1. A point on the North line of Section 27, Township 21 North, Range 7 East of the Third Principal Meridian which lies 12 feet West of the Northeast corner of said Section and
2. A point on the East line of Section 27 aforesaid which lies 1847 feet South of the Northeast corner of said Section and

I further certify this Plat is true and correct, that I have set the corner monuments as described on this Plat, that there are improvements on tracts that are not shown, that part of tracts of land are located in the Special Flood Hazard Area identified for the County of Champaign, Illinois by the Federal Emergency Management Agency on the Flood Insurance Rate Map, Panel Number 170894-01003 B, dated March 1, 1984, and that I have not made a search of the records for easements or other encumbrances for the tract of land.

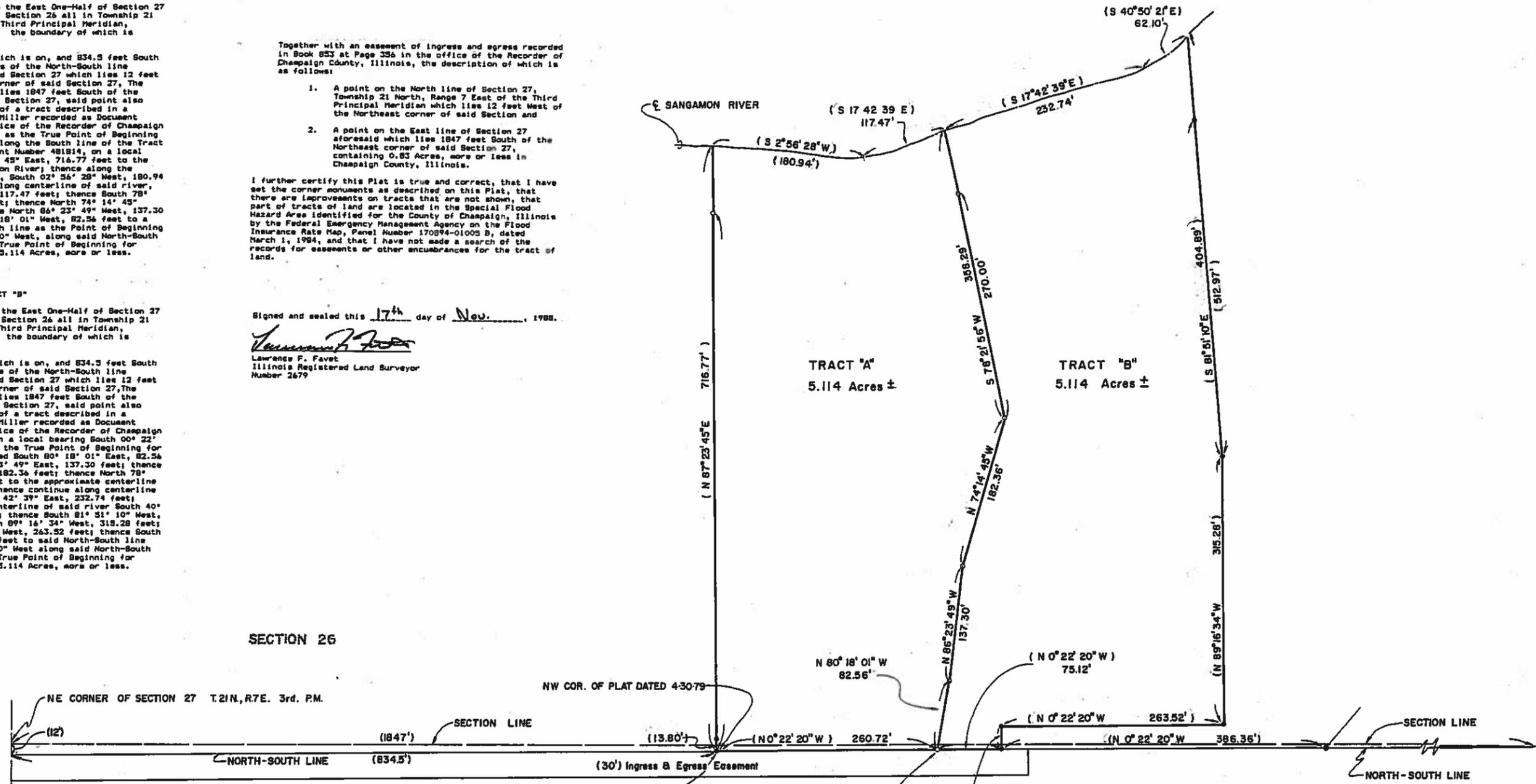
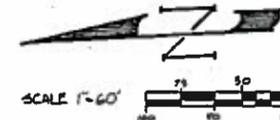
TRACT "B"

A tract of land situated in the East One-Half of Section 27 and in the West One-Half of Section 26 all in Township 21 North, Range 7 East of the Third Principal Meridian, Champaign County, Illinois; the boundary of which is described as follows:

Commencing at a point which is on, and 834.5 feet South of, the Northern Terminus of the North-South line on the North line of said Section 27 which lies 12 feet West of the Northeast corner of said Section 27, The Southern Terminus which lies 1847 feet South of the Northeast corner of said Section 27, said point also being on the South line of a tract described in a Warranty Deed to M. H. Miller recorded as Document Number 481814 in the office of the Recorder of Champaign County; thence proceed on a local bearing South 00° 22' 20" East, 260.72 feet to the True Point of Beginning for Tract "B"; thence proceed South 80° 18' 01" East, 82.56 feet; thence South 86° 23' 49" East, 137.30 feet; thence South 74° 14' 45" East, 182.36 feet; thence North 78° 21' 56" East, 358.29 feet to the approximate centerline of the Sangamon River; thence continue along centerline of said river, South 17° 42' 39" East, 232.74 feet; thence continue along centerline of said river South 40° 50' 21" East, 62.10 feet; thence South 81° 51' 10" West, 512.97 feet; thence North 09° 16' 34" West, 315.28 feet; thence North 00° 22' 20" West, 263.52 feet; thence South 87° 23' 49" West, 30.00 feet to said North-South line; thence North 00° 22' 20" West along said North-South line, 75.12 feet to the True Point of Beginning for Tract "B", encompassing 5.114 Acres, more or less.

Signed and sealed this 17th day of Nov., 1988.

Lawrence F. Favet
 Lawrence F. Favet
 Illinois Registered Land Surveyor
 Number 2679



SECTION 26

TRACT "A"
 5.114 Acres ±

TRACT "B"
 5.114 Acres ±

SECTION 27

LEGEND

- BOUNDARY OF TRACT
- LAND LINE
- IRON PIN FOUND
- IRON PIN SET
- (123.45) DIMENSION OF RECORD
- 123.45' MEASURED DIMENSION

Altech Consultants, Inc.
 1305 SOUTH MATTIS AVENUE
 CHAMPAIGN, ILLINOIS 61821 PH.(27)356-0563
 SURVEYING ENGINEERING PLANNING

FOSTER SECTION 26 SURVEY		
SCALE: 1" = 60'	APPROVED BY:	DRAWN BY:
DATE:		REVISED:
PLAT OF SURVEY		
A.C.I. JOB No. 8045		DRAWING NUMBER Sh. 1 of 1 SMs.

BOOK 853 PAGE 356

EASEMENT AGREEMENT

The undersigned FRANCIS KAMERER and BEVERLY M. KAMERER husband and wife, of Champaign County, Illinois, for and in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual covenants and agreements herein set forth, do hereby grant, bargain, sell and convey unto DARRELL S. OZIER, the owner of certain tracts of real estate located contiguous to the tract next below described, an easement of ingress and egress over and across Section 27, Township 21 North, Range 7 East of the Third Principal Meridian, which such easement area shall be restricted to and encompassed by the area described as:

The North 1200 feet of a strip of ground, 30 feet in even width which lies adjacent to and west of a straight line between the following two described points:

- 1) A point on the North line of Section 27, Township 21 North, Range 7 East of the Third Principal Meridian which lies 12 feet West of the Northeast corner of said Section and
- 2) A point on the East line of Section 27 aforesaid which lies 1847 feet South of the Northeast corner of said Section 27, containing 0.83 acres more or less in Champaign County, Illinois.

Said easement shall be taken and held as an Easement Appurtenant and as one which runs with the land and shall extend in favor of all real estate owned by the said Darrell S. Ozier, either legally or equitably, as of the date of this Agreement, located in Section 26 in Township 21 North, Range 7 East of the Third Principal Meridian in Champaign County, Illinois.

As a specific part of the consideration for the grant of such easement, the Grantors and Grantee do herewith further agree as follows:

1. The Grantors and their subsequent Grantees or lessees, shall at all times have the complete rights of access to any road placed in said easement area.

2. If the Grantors desire they shall have the right, at any time subsequent hereto, to have constructed in said easement area an improved road for the entire North South dimension of said easement area, and upon so doing they shall be entitled to be reimbursed for one-half of the total cost of same at the time that the Grantee first desires or evidences his desire to use such road for ingress and egress purposes.

3. If the Grantee desires, he shall have the right to have constructed in said easement area an improved road for the entire North South dimension of such easement, and upon so doing the Grantors shall have the right to use said road without the duty to reimburse the Grantee for one-half of the original cost of same.

4. Regardless of whether the Grantors or the Grantee installs such a road in the first instance, the parties so installing same shall be under the duty to maintain such road and keep it in proper state of repair until the other party hereto, i. e. Grantors or Grantee, evidence their desire to use such road from which time forward the cost of maintaining such road shall be equally borne by the parties.

5. It is further agreed that the grant of the above easement includes the right in favor of the Grantee to install, or cause to be installed, within the easement area above described, all necessary equipment including by way of description, but not of limitation, poles, anchors, guywires, transmission lines, conduits, for the extension of electrical and telephone services along and upon said easement area, so as to facilitate the further extension of same on the lands owned by the Grantee, his successors in title and for

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like extension of same to lands owned by the Grantors herein, their successors and Grantees. As part of the consideration for the foregoing, it is agreed that if the Grantee causes such last mentioned facilities so to be installed, he shall pay the charges required for the installation of same, and if the Grantors cause the same to be so installed in the first instance, then the Grantee herein shall reimburse the Grantors for one-half of the total cost of same, upon request of the Grantors.

IN WITNESS whereof the Grantors have this date executed and delivered this instrument and do hereby relinquish and waive all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois in and to the easement area hereinabove described, and the Grantee herein has affixed his signature hereto to reflect his acceptance of the grant of such easement and the terms and conditions herein set forth.

DATED this 24TH day of ~~NOV~~^{JULY}, 1967.

Francis T. Kamere
Grantor
Beverly M. Kamere
Grantor

Receipt is hereby acknowledge of the delivery of the above Easement and the same is herewith accepted subject to the terms and conditions as therein set forth.

Darrell S. Ozier
Darrell S. Ozier

STATE OF ILLINOIS) SS I, the undersigned, a Notary Public in and for said
COUNTY OF CHAMPAIGN) County and State aforesaid, DO HEREBY CERTIFY,
FRANCIS T. KAMERER that BEVERLY M. KAMERER
husband and wife, each in his and her own right and as the spouse of the other, and DARRELL S. OZIER, individually, personally known to me to be the same persons whose names were subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instruments as their free and voluntary act, for the uses and purposes therein set forth, and the waiver of the right of homestead.
Given under my hand and Notarial Seal, this 24TH day of ~~NOV~~^{JULY}, A. D. 1967.



Dorothy O. Cromwell
Notary Public
MY COMMISSION EXPIRES JULY 29, 1967

764122

STATE OF ILLINOIS
CHAMPAIGN COUNTY
For record in the Recorder's Office
JUL 26 1967 10 25 AM
853
Beverly M. Kamere
Darrell S. Ozier

INDEXED

Darrell Ozier
420
474 Box 581c

916-V-18 Site Images



Private access drive facing south – subject property is ahead on left



Existing shed, from private access drive facing east

916-V-18 Site Images



From NE corner of shed facing SE toward Sangamon River (rear yard)



Existing residence, from private access drive facing east

916-V-18 Site Images



From private access drive facing north to CR 2600N



From north side of CR 2600N facing a driveway (left) and private access drive to subject property (right)

916-V-18 Site Images



From CR 2600N facing west



From CR 2600N facing east

PRELIMINARY DRAFT

916-V-18

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

of

Champaign County Zoning Board of Appeals

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

Date: *{October 25, 2018}*

Petitioners: **Duane and Teresa Foster**

Request: **Authorize a variance in the CR Conservation-Recreation Zoning District for a proposed lot that does not abut and have access to a public street or a private accessway meeting Champaign County street standards, per Section 4.2.1 H. 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 **October 25, 2018**, the Zoning Board of Appeals of Champaign County finds that:

1. Duane and Teresa Foster, 401B CR 2600N, Mahomet, Illinois, own the subject property.
2. The subject property is a proposed lot that is the north 5.1 acres of an existing 10.18-acre lot, described as Tract A on an unrecorded Plat of Survey dated November 17, 1988, located in the Northwest Quarter of the Northwest Quarter of Section 26, Township 21 North, Range 79 East of the Third Principal Meridian in Newcomb Township.
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 with zoning.
 - B. The subject property is located within Newcomb 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. Regarding land use and zoning on and adjacent to the subject property:
 - A. The subject property is zoned CR Conservation Recreation and is residential in use.
 - B. Land surrounding the subject property is also zoned CR Conservation Recreation and is residential in use.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan of the subject site:
 - A. The subject property is part of an irregularly shaped lot of approximately 10.18 acres that does not have frontage on a public street.
 - B. The Site Plan from ZUPA #158-11-01 approved on July 13, 2011, is the Site Plan for the proposed variance, and indicates the following existing and proposed features:
 - (1) Existing features include:
 - a. "Tract A" is approximately 5.1 acres and includes the 50 feet by 80 feet shed ("proposed building" on the site plan") that was constructed under ZUPA #158-11-01;
 - b. "Tract B" is also roughly 5.1 acres and includes the 28 feet by 36 feet house that was constructed under ZUPA #230-89-01;
 - c. A leach field located east of the house;
 - d. A well located northwest of the house; and

PRELIMINARY DRAFT**Case 916-V-18**

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- e. A 30-foot wide access easement which has a roughly 10-foot wide gravel drive running adjacent to the west side of the subject property.
 - (a) The gravel drive leads to a roughly 24-foot wide gravel drive on the subject property extending to the existing shed on the north end, per aerial photography.
 - (b) The gravel drive between the access drive in the easement and the existing residence appears to be approximately 15 feet wide per aerial photography.
- (2) Proposed features include:
 - a. Should the variance for lot access be approved, the petitioners intend to divide the property into the two 5.1-acre lots shown, "Tract A" to the north and "Tract B" to the south.
- C. The required variance is as follows: A variance from Paragraph 4.2.1.H of the Zoning Ordinance, which requires that no structure shall be constructed nor use established upon or moved to a lot that does not abut and have access to a public street or a private accessway meeting Champaign County street standards.

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) "ACCESS" is the way MOTOR VEHICLES move between a STREET or ALLEY and the principal USE or STRUCTURE on a LOT abutting such STREET or ALLEY.
 - (2) "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, animals, and chattels.
 - (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 LINES" are the lines bounding a LOT.
 - (6) "PLAT" is a map, plan or layout showing the SUBDIVISION of land and indicating the location and boundaries of individual LOTS.
 - (7) "PRIVATE ACCESSWAY" is a service way providing ACCESS to one or more LOTS which has not been dedicated to the public.

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- (8) “STREET” is a thoroughfare dedicated to the public within a RIGHT-OF-WAY which affords the principal means of ACCESS to abutting PROPERTY. A STREET may be designated as an avenue, a boulevard, a drive, a highway, a lane, a parkway, a place, a road, a thoroughfare, or by other appropriate names. STREETS are identified on the Official Zoning Map according to type of USE, and generally as follows:
- (a) MAJOR STREET: Federal or State highways
 - (b) COLLECTOR STREET: COUNTY highways and urban arterial STREETS.
 - (c) MINOR STREET: Township roads and other local roads.
- (9) “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. 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, **“Prior permits did not require direct access to a public street, but current proposed lot split requires direct access rather than just easement.”**
- B. Regarding the 10.18-acre subject property and the proposed variance:
- (1) The 10.18-acre lot is legally non-conforming because it was created by easement of access prior to 1991, when lots in violation of the Plat Act were grandfathered into compliance.
 - a. The easement of access was established for a larger area, including the subject property, in a document recorded in Book 853, page 358 on July 26, 1967.
 - (2) In the interest of dividing the 10.18-acre property into two 5.1-acre lots, the petitioners had Altech Consultants draw up a Plat of Survey, which was signed by Illinois Registered Land Surveyor Lawrence F. Favet on November 17, 1988.
 - a. The Plat Act requires all plats to be recorded in order to be legally divided. No one submitted the plat to the County Recorder’s Office; therefore, the lot was never legally divided.
 - (3) Despite never being recorded, Tract A and Tract B were drawn on the Site Plan for ZUPA #158-11-01 approved on July 13, 2011, for construction of the shed on the subject property.
 - (4) The petitioners would like to convert the shed that was constructed on the north end of the property under ZUPA #158-11-01 into a house, which cannot be done unless the property is subdivided because there is already a house on the south end of the lot.
 - (5) Ordinance #527 was approved by the Champaign County Board on February 18, 1997, for a text amendment to the Zoning Ordinance under zoning case 055-AT-96. The amendment added Section 4.2.1 H., which required that all lots either abut and have access to a public street or abut a private accessway.
 - a. The proposed 5.1-acre north lot requires a variance, because access via easement was never established in a recorded plat of subdivision per Section 4.2.1 H.
 - (6) The proposed variance will bring access via the existing easement into compliance with Section 4.2.1H. of the Champaign County Zoning Ordinance. However, Section 13.2.1 of the Zoning Ordinance states: “The BOARD or the GOVERNING BODY shall not approve VARIANCES or SPECIAL USE Permits, and the Zoning Administrator shall not issue Zoning Use Permits or Zoning Compliance Certificates when the CONSTRUCTION or USE would violate...the Illinois Plat Act (765 ILCS 205/0.01 et seq.).”
 - a. There is uncertainty regarding the timing of when the easement was created and the language of the Plat Act at that time. This uncertainty is the difference between the petitioners being able to proceed with simply recording their existing Plat of Survey or having to go through the process of a Minor Subdivision that must be approved by the County Board.

PRELIMINARY DRAFT

- b. A condition has been added that approval of the variance be contingent upon verification by P&Z staff with the State's Attorney's Office of either the need to pursue a Minor Subdivision or being able to simply record the existing Plat of Survey, and that no Zoning Use Permit will be approved until that verification is complete.

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, **"We could not access either part of the property without the existing drives established by easement."**
- B. Regarding the proposed Variance:
- (1) Without the proposed variance, the petitioners could not divide their property into the two lots which are otherwise compliant with the Zoning Ordinance.

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, **"We would like to move to a property requiring less maintenance, and split it into two lots so both existing structures could be residences."**
- B. The petitioners told P&Z Staff that they thought the lots were properly divided when the survey was done in 1988.

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, **"Maintaining the current access drives will result in the least disturbance to natural areas."**
- B. Regarding the requested Variance for a proposed lot that does not abut and have access to a public street or a private accessway meeting Champaign County street standards:
- (1) The requested variance for a lot that does not abut a public street or a private accessway meeting Champaign County street standards is a variance of 100%.
- C. Regarding the proposed Variance:
- (1) Zoning Case 847-AT-93 amended the Zoning Ordinance to clarify regulations for lot access and flag lots. The Finding of Fact for that case provided the considerations that underlie requirements for frontage on public streets: "The division of large tracts potentially creates problems with respect to drainage,

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emergency vehicle access, and extension of public streets and utilities if not reviewed by means of a plat of subdivision.”

- (2) Drainage for the property does not appear to be impacted by the lack of frontage onto a public street; topography still provides proper drainage despite the lack of frontage.
- (3) Regarding emergency vehicle access, the Cornbelt Fire Protection District was notified of this case, and no comments have been received.
- (4) There are no known proposed extensions to public streets or utilities near the subject property.

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 Petitioner has testified on the application: **“Investment by an additional property owner should result in increased maintenance of the access drive and improved safety.”**
 - B. The Newcomb 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.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

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

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:
 - A. **As soon as possible, P&Z staff will verify with the State’s Attorney’s Office whether the petitioner needs to pursue a Minor Subdivision or simply record the existing Plat of Survey and no Zoning Use Permit shall be approved on the proposed lot until the necessary plat has been duly recorded at the Recorder of Deeds.**

The special condition stated above is required to ensure the following:

That the new lot configuration conforms to the Illinois Plat Act (765 ILCS 205).

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DOCUMENTS OF RECORD

1. Variance Application received on July 18, 2018
2. Site Plan from ZUPA #158-11-01 approved June 7, 2011
3. Plat of Survey by Altech Consultants signed by Illinois Registered Land Surveyor Lawrence F. Favet on November 17, 1988 and received October 9, 2018
4. Easement Agreement from Recorder of Deeds Book 853 Page 356 recorded July 26, 1967
5. Preliminary Memorandum dated February 18, 2015 with attachments:
 - A Case Maps (Location, Land Use, and Zoning)
 - B Site Plan from ZUPA #158-11-01 approved June 13, 2011
 - C Plat of Survey by Altech Consultants signed by Illinois Registered Land Surveyor Lawrence F. Favet on November 17, 1988 and received October 9, 2018
 - D Easement Agreement from Recorder of Deeds Book 853 Page 356 recorded July 26, 1967
 - E Site Visit Photos taken October 13, 2018
 - F Draft Summary of Evidence, Finding of Fact, and Final Determination dated October 25, 2018

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **916-V-18** held on **October 25, 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:}***
 - A. **As soon as possible, P&Z staff will verify with the State's Attorney's Office whether the petitioner needs to pursue a Minor Subdivision or simply record the existing Plat of Survey and no Zoning Use Permit shall be approved on the proposed lot until the necessary plat has been duly recorded at the Recorder of Deeds.**

The special condition stated above is required to ensure the following:

That the new lot configuration conforms to the Illinois Plat Act (765 ILCS 205).

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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 **916-V-18** is hereby **{GRANTED / GRANTED WITH CONDITIONS / DENIED}** to the petitioners, **Duane and Teresa Foster**, to authorize the following in the CR Conservation Recreation Zoning District:

Authorize a variance for a proposed lot that does not abut and have access to a public street or a private accessway meeting Champaign County street standards, per Section 4.2.1 H. of the Champaign County Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

- A. As soon as possible, P&Z staff will verify with the State’s Attorney’s Office whether the petitioner needs to pursue a Minor Subdivision or simply record the existing Plat of Survey and no Zoning Use Permit shall be approved on the proposed lot until the necessary plat has been duly recorded at the Recorder of Deeds.**

The special condition stated above is required to ensure the following:

That the new lot configuration conforms to the Illinois Plat Act (765 ILCS 205).

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