

1 AS APPROVED FEBRUARY 14, 2019

2
3 **MINUTES OF REGULAR MEETING**

4

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

5 **1776 E. Washington Street**

6 **Urbana, IL 61801**

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8
9 **DATE: January 17, 2019**

**PLACE: Lyle Shields Meeting Room
1776 East Washington Street**

10
11 **TIME: 6:30 p.m.**

Urbana, IL 61802

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MEMBERS PRESENT: Frank DiNovo, Ryan Elwell, Larry Wood, Jim Randol, Marilyn Lee

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14 **MEMBERS ABSENT:** None

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16 **STAFF PRESENT:** Connie Berry, Susan Burgstrom, John Hall

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19 **OTHERS PRESENT:** Danny Roy, Barbara Roy, Hilda Carper, Philip Carper, Rick Kever, Stephen
20 Roland, Jennifer Roland

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1. Call to Order

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24 The meeting was called to order at 6:30 p.m.

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26 Mr. Hall informed the Board that the State’s Attorney’s Office verified that this meeting can occur without
27 an appointed Chair; therefore, the present Board is required to appoint an interim Chair for this meeting.

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29 **Mr. DiNovo moved, seconded by Mr. Wood, to appoint Ryan Elwell as interim Chair for tonight’s**
30 **meeting. The motion carried by voice vote.**

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32 **2. Roll Call and Declaration of Quorum**

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34 The roll was called, and a quorum declared present.

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36 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the
37 witness register for that public hearing. He reminded the audience that when they sign the witness register
38 they are signing an oath.

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40 **3. Correspondence**

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42 None

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44 **4. Approval of Minutes**

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46 None

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48 **5. Continued Public Hearing**

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4 **6. New Public Hearings**

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6 **Case 919-V-18 Petitioner: Danny Roy Request: Authorize the construction and use of an existing**
7 **detached shed with a side yard of 2 feet 4 inches in lieu of the minimum required 10 feet in the AG-2**
8 **Agriculture Zoning District, per Section 7.2.1 B. of the Zoning Ordinance. Location: A 0.56-acre lot**
9 **that is Lot 46 of Busboom’s Wiltshire Estates 4th Subdivision in Section 13, Township 19 North,**
10 **Range 10 East of the Third Principal Meridian in St. Joseph Township and commonly known as the**
11 **residence at 1309 Bradford Circle, St. Joseph.**

12
13 Mr. Elwell informed the audience that Case 919-V-18 is an Administrative Case and as such, the County
14 allows anyone the opportunity to cross-examine any witness. He said that at the proper time, he will ask
15 for a show of hands for those who would like to cross-examine, and each person will be called upon. He
16 requested that anyone called to cross-examine go to the cross-examination microphone to ask any
17 questions. He said that those who desire to cross-examine are not required to sign the witness register
18 but are requested to clearly state their name before asking any questions. He noted that no new
19 testimony is to be given during the cross-examination. He said that attorneys who have complied with
20 Article 7.6 of the ZBA By-Laws are exempt from cross-examination.

21
22 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign
23 the witness register for that public hearing. He reminded the audience that when they sign the witness
24 register they are signing an oath. He asked the audience if anyone desired to sign the witness register and
25 there was no one.

26
27 Mr. Elwell asked the petitioner if he would like to make a statement regarding the nature of his request.

28
29 Mr. Danny Roy, who resides at 1309 Bradford Circle, St. Joseph, stated that he had a shed dropped off at
30 his home a few years ago and he evidently received some bad advice and located the shed too close to
31 the property line. He said that there was some confusion between himself and his neighbor because the
32 easement has been maintained by them both since 1988. He said that when he applied for a permit to
33 construct an addition to his home it was discovered that shed was in violation. He said that the variance
34 is being requested because there is no alternate location for the shed because of the septic system,
35 drainage and existing mature trees.

36
37 Mr. Elwell asked the Board if there were any questions for Mr. Roy.

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39 Mr. DiNovo asked Mr. Roy if the shed was on a foundation.

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41 Mr. Roy stated no. He said that the original landscape was sloped and was not level, so he had dirt and

1 rock brought in so that water would not settle under the shed and cause rotting. He said a single-axle
2 truck hauled in the dirt and rock to create the level platform.

3
4 Ms. Lee stated that Mr. Roy's lot is an irregular lot, which is not something that this Board normally
5 sees.

6
7 Mr. DiNovo asked Mr. Roy if the evergreen tree is between the house and the shed.

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9 Mr. Roy stated yes, a mature Blue Spruce tree is between the house and the shed.

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11 Mr. DiNovo asked Mr. Roy if the tree was planted before or after the shed.

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13 Mr. Roy stated that the tree was planted before the placement of the shed and is approximately 20 years
14 old.

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16 Mr. DiNovo asked Mr. Roy if there were trees along the eastern property line.

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18 Mr. Roy stated yes. He said that Frazier Fir trees were planted 11 feet off the property line when the new
19 subdivision to the east of his property was developed. He said that the Frazier Fir tree line provides a
20 natural screen for privacy.

21
22 Mr. Wood asked Mr. Roy if he had to relocate the shed, what underground utilities would be affected,
23 and are there utilities located under the shed currently.

24
25 Mr. Roy stated that there are no utilities under the shed, which is the reason why he chose that location,
26 plus he has easy access to the shed from his garage and his lawnmower is stored in the shed. He said
27 that he is involved in the heating/ air-conditioning-refrigeration business and he has some construction
28 type tools stored in the shed so that it is easy for him to go back and forth from the shed to the house. He
29 said that the shed's current location is the only space on his lot that did not have underground utilities.
30 He said that his power, cable and telephone are at the opposite direction of their yard from the south and
31 crosses to the back of his house, which made putting anything in that location a problem. He said that
32 on the south side of his house there is a 4-inch tile to service their sump pump discharge for the full
33 basement under his home. He said that the house was constructed in 1989 and the sump pump
34 discharges into the 4-inch tile which is connected to a farm tile. He said that the 4-inch drainage tile
35 extends from the house to the southeast corner of the lot where there is a power transformer, so the
36 options of relocating the shed and avoiding the power utilities, septic field and 4-inch drainage tile
37 would be difficult, and the drainage tile runs every day. He said that when they constructed their home
38 they hit groundwater at 6 feet, so even on a 90-degree day in July, his sump pump runs. He said that
39 there is no storm sewer on Bradford Circle, so if he would eject the sump pump water into the cul-de-sac
40 the area would be saturated with water and would not be very pleasant during winter conditions.

41

1 Mr. Wood asked Mr. Roy if the shed sits on the easement itself.

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3 Mr. Roy stated no.

4

5 Mr. DiNovo asked Mr. Roy if there was an active Homeowner's Association for his subdivision.

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7 Mr. Roy stated no, but the newer subdivision to the east does have an active Homeowner's Association.

8

9 Mr. Elwell asked the Board and staff if there were additional questions for Mr. Roy, and there were
10 none.

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12 Mr. Elwell asked the audience if anyone desired to cross-examine Mr. Roy, and there was no one.

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14 Mr. Elwell asked the audience if anyone desired to sign the witness register to present testimony
15 regarding this case, and there was no one.

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17 Mr. Elwell closed the witness register.

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19 Mr. DiNovo asked staff if they examined the subdivision plat. He said that the GIS aerial indicates the
20 area that we are calling an easement, but it appears that it was created by the developer to provide a
21 future pedestrian walkway. He said that the part of the area that is in the newer phase of the subdivision
22 is owned by the Homeowner's Association for that phase, but the area that is adjacent to the subject
23 property is drawn as an extension of the road right-of way. He asked staff if the original plat clarified
24 the status of that strip of land.

25

26 Ms. Burgstrom stated that the recorded subdivision plat indicates that the area was for utility and
27 pedestrian access and it doesn't designate certain ownership of the area.

28

29 Mr. DiNovo asked if the plat designates the area as an out lot.

30

31 Ms. Burgstrom stated no.

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33 Mr. Elwell asked the Board if they were ready to move to the Findings of Fact for Case 919-V-18.

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35 **Mr. Randol moved, seconded by Ms. Lee, to move to the Findings of Fact for Case 919-V-18. The**
36 **motion carried by voice vote.**

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38 **FINDINGS OF FACT FOR CASE 919-V-18:**

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40 **From the documents of record and the testimony and exhibits received at the public hearing for**
41 **zoning case 919-V-18 held on January 17, 2019, the Zoning Board of Appeals of Champaign**

1 **County finds that:**

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1. Special conditions and circumstances DO 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.

Mr. Randol stated that special conditions and circumstances DO 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 of the underground utilities, established trees, septic field, and drainage tile.

Mr. DiNovo stated that the shed abuts a strip of land that does not have a clear purpose.

2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or construction.

Mr. Randol stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or construction because to relocate it over any of the items previously mentioned, established trees would have to be removed and it would pose a problem for the proposed addition to the home.

3. The special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant.

Mr. DiNovo stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant because the existence of this strip of land makes the location of the property line unclear, and this seems to be a common problem in this development, and they are all maintained by the adjacent landowners.

4. The requested variance IS in harmony with the general purpose and intent of the Ordinance.

Mr. Randol stated that the requested variance IS in harmony with the general purpose and intent of the Ordinance because other storage buildings in the area are similarly established.

5. The requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

Mr. DiNovo stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the shed remains more than 10 feet away from any private lot line.

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Mr. Randol stated that there were no comments received from the Fire Department or the Township Highway Commissioner.

6. The requested variance IS the minimum variation that will make possible the reasonable use of the land/structure.

Mr. Randol stated that the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure because it is consistent with other homes in the area.

7. NO SPECIAL CONDITIONS ARE HEREBY IMPOSED.

Mr. Elwell entertained a motion to adopt the Summary of Evidence, Documents of Record, and Findings of Fact, as amended.

Ms. Lee moved, seconded by Mr. Randol, to adopt the Summary of Evidence, Documents of Record, and Findings of Fact, as amended. The motion carried by voice vote.

Mr. Elwell entertained a motion to move to the Final Determination for Case 919-V-18.

Ms. Lee moved, seconded by Mr. Wood, to move to the Final Determination for Case 919-V-18. The motion carried by voice vote.

FINAL DETERMINATION FOR CASE 919-V-18:

Mr. DiNovo moved, seconded by Ms. Lee, that 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 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 919-V-18 is hereby GRANTED to the petitioner, Danny Roy, to authorize the following variance in the AG-2 Agriculture Zoning District:

A variance for the construction and use of an existing detached shed with a side yard of 2 feet 4 inches in lieu of the minimum required 10 feet, per Section 7.2.1 B. of the Zoning Ordinance.

Mr. Elwell requested a roll call vote.

1 The roll was called as follows:

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3	Randol – yes	Wood – yes	DiNovo – yes
4	Lee – yes	Elwell – yes	

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6 Mr. Hall informed Mr. Roy that he has received an approval for his requested variance, and staff would
7 be in contact regarding final paperwork.

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9 **Case 920-V-18 Petitioner: Rick Keever Request: Authorize a variance for the construction and use**
10 **of an existing shed with a rear yard of 7 feet in lieu of the minimum required 10 feet on a joint lot**
11 **development in the CR Conservation Recreation Zoning District, per Section 7.2.1 B of the Zoning**
12 **Ordinance. Location: A 0.72-acre tract that is comprised of Lot 2 of Edgewood Acres Subdivision**
13 **and Lot 5 of Edgewood Acres 2nd Subdivision o the Southeast Quarter of the Southeast Quarter of**
14 **Section 12, Township 21 North, Range 7 East of the Third Principal Meridian, in Newcomb**
15 **Township and commonly known as the residence at 2805 CR 500E, Fisher.**

16

17 Mr. Elwell informed the audience that Case 920-V-18 is an Administrative Case and as such, the County
18 allows anyone the opportunity to cross-examine any witness. He said that at the proper time, he will ask
19 for a show of hands for those who would like to cross-examine, and each person will be called upon. He
20 requested that anyone called to cross-examine go to the cross-examination microphone to ask any
21 questions. He said that those who desire to cross-examine are not required to sign the witness register
22 but are requested to clearly state their name before asking any questions. He noted that no new
23 testimony is to be given during the cross-examination. He said that attorneys who have complied with
24 Article 7.6 of the ZBA By-Laws are exempt from cross-examination.

25

26 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign
27 the witness register for that public hearing. He reminded the audience that when they sign the witness
28 register they are signing an oath. He asked the audience if anyone desired to sign the witness register and
29 there was no one.

30

31 Mr. Elwell asked the petitioner if he would like to make a statement regarding the nature his request.

32

33 Mr. Rick Keever, who resides at 2805 N CR 600E, Fisher, stated that shortly after he constructed an
34 addition to his house he discovered that he had leftover materials, so his wife decided that he should use
35 the materials for a shed. He said that his neighbor had purchased a shed that was delivered to his
36 property, so Mr. Keever decided that he would construct a shed that was similar to his neighbor’s shed.
37 He said that he located the shed in its current location due to the existing septic field, power lines, cable
38 television lines, and the propane line that services his home. He said that there used to be a large tree
39 further to the west that limited placement of the shed.

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41 Mr. Elwell asked the Board if there were any questions for Mr. Keever.

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Mr. DiNovo asked Mr. Keever if the shed was located on a foundation.

Mr. Keever stated no. He said that the shed sits on four 4” x 4” posts with a plywood deck and the walls are constructed on top of that, and since the construction the four 4” x 4” posts have sunk into the ground by 4 inches, if he attempted to relocate the shed it would probably fall apart and not survive the move.

Mr. DiNovo asked Mr. Keever if he located the property pins on his lot.

Mr. Keever stated that he located two pins on the rear lot.

Mr. Elwell asked the Board if there were additional questions for Mr. Keever, and there were none.

Mr. Elwell asked staff if there were any questions for Mr. Keever, and there were none.

Mr. Elwell asked the audience if anyone desired to cross-examine Mr. Keever, and there was no one.

Mr. Elwell asked the audience if anyone desired to sign the witness register and present testimony regarding this case, and there was no one.

Mr. Elwell closed the witness register.

Mr. Elwell asked the Board if they were ready to move to the Findings of Fact for Case 920-V-18.

Ms. Lee moved, seconded by Mr. Wood, to move to the Findings of Fact for Case 920-V-18. The motion carried by voice vote.

FINDINGS OF FACT FOR CASE 920-V-18:

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 920-V-18 held on January 17, 2019, the Zoning Board of Appeals of Champaign County finds that:

- 1. Special conditions and circumstances DO 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.**

Mr. Randol stated that special conditions and circumstances DO 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 of the location of the septic field, buried cable and propane line.

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2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or construction.

Mr. DiNovo stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or construction because relocating the shed would probably destroy it.

3. The special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant.

Mr. Randol stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant because when the lot was purchased in 1990, the utilities were already put in the ground, so that determined where a storage shed could be located.

4. The requested variance IS in harmony with the general purpose and intent of the Ordinance.

Mr. Randol stated that the requested variance IS in harmony with the general purpose and intent of the Ordinance because the building is in harmony with other storage buildings in the neighborhood, and the Zoning Ordinance is not clear about what can be placed in the rear yard.

Mr. DiNovo stated that lots in this development are non-conforming and smaller than that permitted in the CR, Conservation-Recreation district, and the required setbacks impose a disproportionate limitation on the property.

5. The requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

Mr. DiNovo stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because there are similar structures on the adjoining lot and the shed has been in place for nearly 16 years without any complaints.

Mr. Randol stated that the closest building was over 16 feet away.

6. The requested variance IS the minimum variation that will make possible the reasonable use of the land/structure.

Mr. DiNovo stated that the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure because any variance would require relocating the shed, which

1 would destroy it.

2

3 **7. NO SPECIAL CONDITIONS ARE HEREBY IMPOSED**

4

5 Mr. Elwell entertained a motion to adopt the Summary of Evidence, Documents of Record, and Findings
6 of Fact, as amended.

7

8 **Ms. Lee moved, seconded by Mr. Randol, to adopt the Summary of Evidence, Documents of**
9 **Record, and Findings of Fact, as amended. The motion carried by voice vote.**

10

11 Mr. Elwell entertained a motion to move to the Final Determination for Case 920-V-18.

12

13 **Ms. Lee moved, seconded by Mr. Randol, to move to the Final Determination for Case 920-V-18.**
14 **The motion carried by voice vote.**

15

16 **FINAL DETERMINATION FOR CASE 920-V-18:**

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18 **Mr. Randol moved, seconded by Ms. Lee, that the Champaign County Zoning Board of Appeals**
19 **finds that, based upon the application, testimony, and other evidence received in this case, that the**
20 **requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority**
21 **granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of**
22 **Appeals of Champaign County determines that:**

23

24 **The Variance requested in Case 920-V-18 is hereby GRANTED to the petitioner, Rick Kever, to**
25 **authorize the following variance in the CR Conservation Recreation Zoning District:**

26

27 **Authorize the construction and use of an existing shed with a rear yard of 7 feet in lieu of the**
28 **minimum required 10 feet on a joint lot development, per Section 7.2.1 B. of the Zoning**
29 **Ordinance.**

30

31 Mr. Elwell requested a roll call vote.

32

33 The roll was called as follows:

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35	DiNovo – yes	Wood – yes	Lee – yes
36	Randol – yes	Elwell – yes	

37

38 Mr. Hall informed Mr. Kever that he has received an approval for his requested variance, and staff
39 would be in contact regarding final paperwork. He said that Mr. Kever was a member of the Zoning
40 Board of Appeals during the late 1990's, and he thanked Mr. Kever for his patience during this process.

41

1 Mr. DiNovo requested a five-minute recess.

2
3 **The Board recessed at 7:15 p.m.**

4 **The Board resumed at 7:20 p.m.**

5
6 **Case 921-V-18 Petitioner: Stephen and Jennifer Roland Request: Authorize the following variances**
7 **in the AG-1 Agriculture Zoning District: Part A: Authorize a variance for the separate use of an**
8 **existing non-conforming lot that was in common ownership with adjacent property that has an**
9 **average lot width of 161 feet in lieu of the required minimum 200 feet, and a lot area of 12,558**
10 **square feet (0.288 acre) in lieu of the minimum required 1 acre, per Section 5.3 of the Zoning**
11 **Ordinance. Location: A 12,588 square foot tract in the Northwest corner of the Southwest Quarter**
12 **of Section 16, Township 19 North, Range 7 East of the Third Principal Meridian in Scott**
13 **Township, and commonly known as the residence at 202 South Main Street, Seymour.**

14
15 Mr. Elwell informed the audience that Case 921-V-18 is an Administrative Case and as such, the County
16 allows anyone the opportunity to cross-examine any witness. He said that at the proper time, he will ask
17 for a show of hands for those who would like to cross-examine, and each person will be called upon. He
18 requested that anyone called to cross-examine go to the cross-examination microphone to ask any
19 questions. He said that those who desire to cross-examine are not required to sign the witness register
20 but are requested to clearly state their name before asking any questions. He noted that no new
21 testimony is to be given during the cross-examination. He said that attorneys who have complied with
22 Article 7.6 of the ZBA By-Laws are exempt from cross-examination.

23
24 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign
25 the witness register for that public hearing. He reminded the audience that when they sign the witness
26 register they are signing an oath. He asked the audience if anyone desired to sign the witness register and
27 there was no one.

28
29 Ms. Lee noted that item 4.A. on page 2 of the Summary of Evidence should be corrected to indicate the
30 following: The subject property is a 12,558 square foot non-conforming lot of record and is currently
31 zoned AG-1 Agriculture. Land use is a single-family residence.

32
33 Mr. Randol asked Mr. Hall if the permit that was originally issued was for a detached garage.

34
35 Mr. Hall stated that the detached garage is a very old, non-conforming structure. He said that the permit
36 that was issued was for an addition to the residence, and that addition was a garage.

37
38 Mr. Randol thanked Mr. Hall for the clarification.

39
40 Mr. Elwell asked the petitioners if they would like to make a statement regarding the nature of their
41 request.

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2 Ms. Lee asked Mr. Hall if Part D. of the variance is for the nonconforming detached garage that was
3 constructed prior to the adoption of the Zoning Ordinance in 1973.
4

5 Mr. Hall stated yes.
6

7 Mr. Stephen Roland, who resides at 202 South Main Street, Seymour, stated that staff spoke to him
8 regarding the possibility of having Part D. of the variance removed, and he would have no issue with that
9 because he had no intention of rebuilding the old garage if it were destroyed, and he did not request Part
10 D. He said that the garage addition fell forward a bit due to the discovery of an old cistern in the back of
11 the yard as he was digging the foundation. He said that currently the old cistern is touching the
12 foundation of the garage addition and removing the old cistern would be very difficult. He said that Part
13 B. and Part C. are due to pre-existing conditions prior to his purchase. He said that he does not know
14 why the parcel is zoned AG-1, Agriculture, but the home is over 130 years old.
15

16 Mr. Elwell asked the Board and staff if there were any questions for Mr. Roland.
17

18 Mr. Hall stated that staff did speak to Mr. Roland about Part D. of the variance and he is glad to hear Mr.
19 Roland state that he was willing to withdraw Part D. from the request. He said that as staff prepares the
20 legal advertisements for cases, they will sometimes realize that there are other zoning issues with the
21 property that haven't been previously discussed with the applicant and those zoning issues are added to
22 the variance. He said that staff assumes that if someone goes through this process they would want to
23 clean up any zoning issues with the property as much as possible, but as staff thought about Part D.
24 more, given the fact that the garage extends so much into the right-of-way, staff decided that Part D.
25 should not have been included in the variance request. He noted that staff welcomes the withdrawal of
26 Part D., and if in the future Mr. Roland or a new owner desires to construct a detached building in the
27 area of the existing nonconforming detached garage, they would need to come before this Board at that
28 time and request a variance.
29

30 Ms. Lee asked Mr. Hall if the reason for removing Part D. of the variance is because the existing
31 nonconforming structure can remain at its current location until it is destroyed.
32

33 Mr. Hall stated yes.
34

35 Mr. Elwell asked the Board if there were additional questions or comments regarding this case.
36

37 Mr. DiNovo stated that he is confused about the parcel and the right-of-way, because as he reviews the
38 plat for G. & H. Subdivision, he does not understand how the lot dimensions 106' x 161' was
39 determined. He said that it appears that the lot is only 151' wide and if you take all of the dimensions on
40 the plat, to the extent that they can be identified, he is not convinced that the legal description is
41 accurate. He said that the big question is if there is any right-of-way on South Street other than the half

1 right-of-way that was created in the original recorded plat, and if there isn't, then the north boundary of
2 this lot is 28 feet further to the north, although the lot dimension does not change. He said if that is the
3 case, he is not sure that Part B. is required either because there would be more than ample setback from
4 the existing right-of-way. He said that unless someone could show that there was formal conveyance
5 through a process, he is not aware of any way of informally establishing the public right-of-way, and the
6 Fifth Amendment to the Constitution prohibits that. He said that unless the township acquired right-of-
7 way there, then the right-of-way is what was indicated on the original town plat, which is the north 32
8 feet.

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10 Mr. Hall stated that the property description does go to that section and not beyond it.

11

12 Mr. DiNovo asked Mr. Hall if he is referring to the quarter section.

13

14 Mr. Hall stated yes, the quarter section line.

15

16 Mr. DiNovo stated that the quarter section line is approximately the mid-point to the street.

17

18 Mr. Hall stated yes.

19

20 Mr. DiNovo stated that the variance is still required, but asked what centerline is to be used, the
21 centerline of the 32 feet.

22

23 Mr. Hall stated that staff always uses the centerline of the pavement, which in this instance coincides
24 with the quarter section.

25

26 Ms. Burgstrom stated that the measurement used is to the street centerline, and staff measured this
27 distance twice. She said that she had difficulty squaring up the section line with other landmarks that
28 would make sure that it was going to be the street centerline, so for that part she cannot agree.

29

30 Mr. DiNovo stated that normally there is no issue with using the pavement centerline as an
31 approximation of the half right-of-way, but when there is only a half right-of-way to begin with there is a
32 problem.

33

34 Ms. Lee stated that it is her understanding that there is no dedication to the village and the right-of-way
35 is based on the township items. She said that when there is a roadway that is used as a roadway there is
36 no actual right-of-way, it is only for the public road for public use.

37

38 Mr. DiNovo stated that the definition of a street refers to a travel way within a right-of-way.

39

40 Ms. Lee stated that the unique thing is whether there is an actual dedication. She said that if there is no
41 actual dedication of the roadway, it is only limited to the actual part that is used for the roadway, and

1 there is no right-of-way along the road itself. She said that the question is whether there was an actual
2 dedication in the older records, and if not, then it is solely for the roadway and nothing else on either
3 side.

4
5 Mr. DiNovo stated that the Champaign County Zoning Ordinance defines a street as follows: “A
6 thoroughfare dedicated to the public within a right-of-way which affords the principal means of access to
7 abutting property.” He said that the Board could say that the right-of-way was the pavement plus the
8 dedicated right-of-way, plus the 32 feet; and could say that the street, for zoning purposes only, is the
9 pavement that falls within the one-half right-of-way, so the centerline would be the centerline of the
10 pavement that falls on the north side of the line.

11
12 Mr. Hall asked Mr. DiNovo if his copy of the Zoning Ordinance includes page 4-11, which illustrates the
13 method of measuring to the centerline of the street.

14
15 Mr. DiNovo stated that normally the centerline of the pavement is the best measuring point.

16
17 Mr. Hall stated that no dedicated right-of-way is the standard situation in the rural area, and the only
18 time there is a dedicated right-of-way is in a platted subdivision.

19
20 Mr. DiNovo stated that in the rural areas the right-of-way is established.

21
22 Ms. Lee stated that there are dedicated right-of-way areas in the rural area, because old abstracts do
23 indicate some places where there are dedicated roads and other instances where there are no dedicated
24 roads. She said that 30 years ago someone wanted to go through with something through the ditch, but
25 there was no dedication of the roadway, so it was only the road area that was available because they did
26 not have access to the right-of-way because it was not a dedicated roadway, and that is where the
27 distinction comes into play. She said that it depends on whether it was ever dedicated or not.

28
29 Mr. DiNovo stated that for the section line roads, most of their records are long gone, but there was
30 some process of designating the right-of-way, because we know that they vary. He said that in some
31 areas the right-of-way is 60 feet, and in other areas the right-of-way is as little as 40 feet.

32
33 Ms. Lee stated that there are other things that intervene, because there are some rural landowners who
34 refused to give any part of their land for a road, which created jogs in the road. She said that there could
35 be one road that may be entirely on one landowner and nothing on the next landowner’s property. She
36 said that a problem occurs when the surveyors decide that the middle of the road is where the pavement
37 line is located, but that is not always correct, as shown on the illustration on page 4-11.

38
39 Mr. Randol asked Ms. Burgstrom if she had a document indicating the width of South Street.

40
41 Ms. Burgstrom stated that the G & H Rentals Subdivision indicates the road width, but a document

1 indicating the width of the road at 202 South Main has not been found. She said that staff is relying on
2 their onsite measurements to determine what they could use as the most accurate measurement.

3
4 Ms. Lee asked Ms. Burgstrom if the setback measurement was taken from the centerline of the
5 pavement.

6
7 Ms. Burgstrom stated yes.

8
9 Mr. DiNovo stated that the most reasonable thing to do is to stick to the original judgement because even
10 if it isn't technically the legal circumstance, it would make sense to err on the side of caution and there is
11 no reason to change it. He said that Part A. is confusing. He asked if the subject property is the
12 remainder of the parent tract when G & H Rentals Subdivision was created in 1975.

13
14 Mr. Hall stated that the subdivision was created in 1974.

15
16 Ms. Burgstrom stated that Charles Danner signed the plat in 1972.

17
18 Mr. Hall stated that the subdivision went through subdivision review in 1974; therefore, the recorded
19 plat could not be before 1974. He said that staff could obtain the actual recording date of the subdivision
20 if the Board deems that it is necessary.

21
22 Ms. Burgstrom stated that the Planning and Zoning Plat Committee approved the plat on February 7,
23 1974, and the County Clerk signed the plat on February 6, 1974.

24
25 Mr. DiNovo stated that this all occurred less than five months after the adoption of the Zoning
26 Ordinance. He said that the subdivision was in the pipeline at the time that the Zoning Ordinance was
27 being adopted.

28
29 Ms. Burgstrom stated that staff does have preliminary plats for the subdivision dated in 1972, so yes, the
30 subdivision was in the pipeline at the time that the Zoning Ordinance was being adopted.

31
32 Mr. DiNovo stated that one could determine that the Planning and Zoning Plat Committee was aware of
33 the subdivision and concluded that this would have constituted grandfathering in that parcel.

34
35 Ms. Lee stated that the subject property was not part of the subdivision.

36
37 Mr. Hall stated no. He said that the three lots south of the subject property were granted variances for
38 their lot width and area, because they are in the R-1, Single Family Residence Zoning District and at the
39 time required 20,000 square feet of area and 100 feet lot width. He said that it did not occur to them
40 what they were doing to the remainder because it should have been approved as well but they left it as
41 AG-1 as it is today.

1
2 Mr. Randol stated that at that time the outbuildings still existed and the land behind the homesite was
3 being farmed, which is probably the reason why it stayed AG-1.
4

5 Ms. Lee asked if the Board could now proceed with the case as requested, minus Part D.
6

7 Mr. DiNovo stated that he is not outraged by the argument that this parcel was created in the process of
8 plat review by the County, and they were cognizant of this. He said that he has no problem with the
9 variance because he believes that the tract was effectively created in 1972 when the County was
10 reviewing the subdivision. He said that the County was aware of this tract and were cognizant of what
11 they were doing, and they knew that the Zoning Ordinance was in the works, and no one involved in this
12 had any expectation that this lot would later be deemed not conforming. He asked the Board if they
13 were clear that the petitioner's statement regarding Part D. is that they wish to withdraw it.
14

15 Ms. Lee stated that the reason is because it was a nonconforming lot prior to the adoption of the Zoning
16 Ordinance.
17

18 Mr. Hall stated that it was a nonconforming structure that existed prior to the adoption of the Zoning
19 Ordinance.
20

21 Mr. Elwell asked the Board and staff if there were any additional questions for the petitioner, and there
22 were none.
23

24 Mr. Randol asked Mr. Roland if he would like to provide any additional comments regarding his request.
25

26 Mr. Roland asked if, regarding Part A, would it be better to rezone his lot to R-1, Single Family.
27

28 Mr. Hall stated that the zoning of the property is not being changed.
29

30 Mr. Roland stated that there appears to be difficulty with the requested variance, so what is the other
31 option.
32

33 Mr. Hall stated that even if the property was zoned R-1, a variance would still be required. He said the
34 variance would be similar to lots to the south of the subject property, but the amount of variance would
35 be less. He said that there are variances required and the Board and the petitioner now understand how
36 this situation came to be, and Mr. DiNovo has suggested that at the time, this is how people were
37 thinking anyway. He said that neither the Board nor staff is contemplating that the property needs to be
38 rezoned.
39

40 Mr. Elwell asked the Board and staff if there were any additional questions for Mr. Roland, and there
41 were none.

1
2 Mr. Elwell asked the audience if anyone desired to cross-examine Mr. Roland, and there was no one.

3
4 Mr. Elwell called Philip Carper to testify.

5
6 Mr. Philip Carper declined to testify.

7
8 Mr. Elwell asked the audience if anyone else desired to sign the witness register to present testimony
9 regarding this case, and there was no one.

10
11 Mr. Elwell closed the witness register.

12
13 Mr. Elwell entertained a motion to move to the Findings of Fact.

14
15 **Ms. Lee moved, seconded by Mr. Randol, to move to the Findings of Fact for Case 921-V-18.**

16
17 Mr. DiNovo stated that he has a very strong reservation with respect to Part B. of the variance. He said
18 that he does not feel that Part B. is required because the existing house is a lawful nonconforming
19 structure that can continued to be used, and this Board does not have the legal authority to grant a
20 variance to simply make a nonconforming structure conforming. He said that his feeling regarding this
21 issue is strong; therefore, he would like to complete Parts A and C separately from Part B. He said that
22 Section 9.1.9 of the Champaign County Zoning Ordinance indicates that the Board is prohibited from
23 granting variances for nonconforming structures except for those that are specifically provided for in
24 Section 8, which provides for granting variances for expansions of nonconforming uses and provides for
25 granting variances for the reconstruction of nonconforming uses that have been destroyed. He said that
26 the home is still there, so there is no provision in the Zoning Ordinance for granting a variance for an
27 existing structure just because it is nonconforming. He said that the Board is not authorized to erase the
28 nonconforming status of existing structures; we can provide for their expansion and reconstruction, but
29 the Board is not authorized to change their status and that is what Part B. proposes to do and would be
30 violating Section 9.1.9 of the Ordinance.

31
32 Mr. Hall stated that if the Board waits until the house is destroyed by fire or tornado a variance could be
33 entertained.

34
35 Mr. DiNovo stated yes. He said that we all might agree that this might seem unreasonable, but the point
36 is, where the Ordinance is vague or ambiguous, the Board is empowered to give it meaning. He said that
37 when the Ordinance is clear and unambiguous, the Board is stuck, and if there is a bad provision in the
38 Ordinance, the Board cannot grant a variance just because they disagree with a provision in the
39 Ordinance.

40
41 Ms. Lee asked that assuming what Mr. DiNovo is stating is true for Part B, what is the difference

1 between Part A and Part B.

2
3 Mr. DiNovo stated that there is a provision in the Ordinance for nonconforming lots.

4
5 Ms. Lee asked Mr. Hall to indicate his position regarding this matter.

6
7 Mr. Hall stated that if someone had to come before this Board for a variance for a structure that is
8 nonconforming, it is silly to not be able to deal with that nonconformity. He said that if a
9 nonconforming structure is destroyed for any reason, such as a tornado or fire, or even if it is torn down
10 and rebuilt, the variance that is being requested, even though it could have been written better indicating
11 that it was to allow the reconstruction of a nonconforming structure, is the situation that Mr. DiNovo is
12 describing. He said that there is some ambiguity in the Ordinance, and he would be happy to obtain
13 direction from the County Board to amend it because it is necessary. He said that legally there is no
14 reason why the Ordinance could not be amended, and if this Board is opposed to things being done this
15 way then he would be happy to do a text amendment.

16
17 Mr. DiNovo stated that the Board could sit here tonight and indicate that this sounds unreasonable, but
18 that is making a value judgement about what the underlining intent is, and the Board knows that
19 nonconformities are supposed to go away. He said that if a nonconforming building is destroyed then a
20 new building is constructed that conforms to the Zoning Ordinance, and the County Board could have
21 reasonably said that if someone is the victim of a catastrophe, then the County could grant them a
22 variance to rebuild. He said that it is not entirely illogical for this provision to be in the Ordinance and if
23 it were not ambiguous it would not be a problem, but the problem is that it is not ambiguous and is very
24 clear cut and the Board cannot disagree with something that is clear cut because the Board does not
25 believe that it makes sense.

26
27 Ms. Lee asked Mr. Hall to indicate his position. She asked Mr. Hall if the Board should proceed with
28 Part B, or does he agree with Mr. DiNovo.

29
30 Mr. Hall stated he understands Mr. DiNovo's point, but as the Zoning Administrator, he sees the
31 Ordinance having unintentional bad effects, and every day he minimizes those as much as he possibly
32 can, and this is another aspect of that, but this is a decision by this Board. He said that variances like this
33 are advertised in parts so that they can be dealt with individually.

34
35 Mr. DiNovo stated that he has complete sympathy with trying to make the Ordinance make sense and it
36 is a blessing when the language in the Ordinance is vague and ambiguous because it provides room to
37 maneuver, but for this particular case the Ordinance is not vague or ambiguous. He said that it isn't fatal
38 to the petitioner and Part B is not necessary for the Board to deal with aspects of the case and Parts A
39 and C could be finalized without dealing with Part B.

40
41 Mr. Hall stated that he is sympathetic with Mr. Roland and would offer that the Board could proceed

1 with Part B and attach a special condition indicating that it would be approved if it is consistent with a
2 future text amendment regarding replacement of nonconforming structures.

3
4 Mr. DiNovo stated that it would be easier to withdraw Part B, because until the Ordinance is amended
5 Mr. Roland would not get the benefit of the Ordinance.

6
7 Mr. Hall stated that this is one of the most common variances. He asked the Board to recall how many
8 variances they have received with this part to it, so he would consider this a critical amendment. He said
9 that he does not like doing text amendments because they always end up taking up more time than can
10 be imagined, but this is something that is fundamental.

11
12 Ms. Lee stated that it is her opinion that Part B should remain in the variance request because Mr. Hall
13 has indicated that the Board has dealt with this type of request in other cases. She said that the Board
14 should be consistent and not make a different rule for this case.

15
16 Mr. Hall stated that the Board may want to vote on Part B separately so that those who disagree with Part
17 B can indicate such in their vote.

18
19 Ms. Burgstrom asked what would happen if Part B is kept in the variance and the vote denies the
20 request, and then something happens to the nonconforming structure, would no variance opportunity be
21 allowed in the future.

22
23 Mr. Hall stated that Mr. Roland could reapply due to the changed condition.

24
25 Mr. DiNovo stated that the Board should just go ahead and deal with Parts A, B and C, as proposed. He
26 said that he would not be too worried about Ms. Burgstrom's scenario.

27
28 Ms. Lee stated that she and Mr. Randol previously moved to proceed to the Findings of Fact.

29
30 **Motion carried.**

31
32 **FINDINGS OF FACT FOR CASE 921-V-18:**

33 **From the documents of record and the testimony and exhibits received at the public hearing for**
34 **zoning case 921-V-18 held on January 17, 2019, the Zoning Board of Appeals of Champaign**
35 **County finds that:**

- 36 **1. Special conditions and circumstances DO exist which are peculiar to the land or structure**
37 **involved, which are not applicable to other similarly situated land and structures elsewhere**
38 **in the same district.**
39

1 Mr. DiNovo stated that the special conditions and circumstances DO exist which are peculiar to the land
 2 or structure involved, which are not applicable to other similarly situated land and structures elsewhere
 3 in the same district because with respect to part A, the process that led to the creation of this parcel of
 4 land was initiated before the County Board, prior to the adoption of the Zoning Ordinance. He said that
 5 with respect to Part C, this is a lot that was created under unusual circumstances and has existed long
 6 before the purchase by the petitioner, and the dimensions of the lot and the location of the cistern
 7 severely restrain what can be done on the property.

8
 9 Ms. Lee stated that with respect to Part B, the structure existed prior to Zoning Ordinance adoption in
 10 1973, and was part of a larger tract that was being farmed. With the division of the land, it became part
 11 of the issue that exists today.

12
 13 **2. Practical difficulties or hardships created by carrying out the strict letter of the regulations**
 14 **sought to be varied WILL prevent reasonable or otherwise permitted use of the land or**
 15 **structure or construction.**

16
 17 Mr. DiNovo stated that practical difficulties or hardships created by carrying out the strict letter of the
 18 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or
 19 structure or construction because there is no practical way to correct the deficiencies of the lot and no
 20 practical alternative location for the garage.

21
 22 Ms. Lee stated that with respect to Part B, the structure existed prior to Zoning Ordinance adoption in
 23 1973, and was part of a larger tract that was being farmed. With the division of the land, it became part
 24 of the issue that exists today.

25
 26 **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT result**
 27 **from actions of the applicant.**

28
 29 Mr. DiNovo stated that the special conditions, circumstances, hardships, or practical difficulties DO
 30 NOT result from actions of the applicant because all the conditions at issue in this case result from the
 31 location of the cistern, the septic, trees, result from conditions that existed prior to the petitioner’s
 32 purchase of the property and the addition to the house.

33
 34 **4. The requested variance IS in harmony with the general purpose and intent of the**
 35 **Ordinance.**

36
 37 Mr. DiNovo stated that the requested variance IS in harmony with the general purpose and intent of the
 38 Ordinance because with respect to Parts A and B, the conditions at issue have been in existence on the
 39 parcel for decades, and this constitutes no change, and with respect to Part C, this involves a customary
 40 structure and it would be a hardship in not having an attached garage.

41

1 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
2 **detrimental to the public health, safety, or welfare.**

3
4 Mr. Randol stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise
5 detrimental to the public health, safety, or welfare because for all parts of the variance, the variance
6 would not be injurious to anyone because the structures predate zoning, and the garage addition does not
7 create a safety hazard for the intersections or the front yard.

8
9 **6. The requested variance IS the minimum variation that will make possible the reasonable**
10 **use of the land/structure.**

11
12 Mr. DiNovo stated that the requested variation that will make possible the reasonable use of the
13 land/structure because there is no practical way to alter the location of the existing house or the size of
14 the lot, and there is no practical alternative location for the addition to the garage.

15
16 **7. NO SPECIAL CONDITIONS ARE HEREBY IMPOSED**

17
18 Mr. Elwell asked staff if there were required additions to the Summary of Evidence or Documents of
19 Record.

20
21 Mr. Hall stated that a new item 5 should be added to the Documents of Record as follows:
22 Supplemental Memorandum #1 dated January 17, 2019, with attachments.

23
24 Mr. Elwell entertained a motion to adopt the Summary of Evidence, Documents of Record, and Findings
25 of Fact, as amended.

26
27 **Ms. Lee moved, seconded by Mr. DiNovo, to adopt the Summary of Evidence, Documents of**
28 **Record, and Findings of Fact, as amended. The motion carried by voice vote.**

29
30 Mr. Elwell entertained a motion to move to the Final Determination for Case 921-V-18.

31
32 **Ms. Lee moved, seconded by Mr. Elwell, to move to the Final Determination for Case 921-V-18.**
33 **The motion carried by voice vote.**

34
35 **FINAL DETERMINATION FOR CASE 921-V-18:**

36 **Mr. Randol moved, seconded by Ms. Lee, that the Champaign County Zoning Board of Appeals**
37 **finds that, based upon the application, testimony, and other evidence received in this case, that the**
38 **requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority**
39 **granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of**
40 **Appeals of Champaign County determines that:**

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The Variance requested in Case 921-V-18 is hereby GRANTED to the petitioners, Stephen and Jennifer Roland, to authorize the following variance in the AG-1 Agriculture Zoning District:

Part A: Authorize a variance for the separate use of an existing non-conforming lot that was in common ownership with adjacent property that has an average lot width of 161 feet in lieu of the required minimum 200 feet, and a lot area of 12,558 square feet (0.288 acre) in lieu of the minimum required 1 acre, per Section 5.3 of the Zoning Ordinance.

Part B: A variance for an existing non-conforming dwelling with a setback of 44 feet from the street centerline of East South Street in lieu of 55 feet, and a front yard of 16 feet in lieu of 25 feet, per Section 5.3 of the Zoning Ordinance; and

Part C: A variance for a garage addition to an existing non-conforming dwelling with a setback of 52 feet from the street centerline of East South Street in lieu of 55 feet, and a front yard of 24 feet in lieu of 25 feet, per Section 5.3 of the Zoning Ordinance.

Mr. Elwell requested a roll call vote.

The roll was called as follows:

Wood – yes	DiNovo – yes, but with strong reservations	Lee-yes
Randol – yes	Elwell - yes	

Mr. Hall informed Mr. and Ms. Roland that they have received an approval for their requested variance, and staff would be in contact regarding final paperwork.

7. Staff Report

Mr. Hall informed the Board that on January 15th the Committee of the Whole recommended Ryan Elwell as ZBA Chair. He said that the final approval of Mr. Elwell’s appointment will occur at the January 24th County Board meeting.

Mr. DiNovo asked Mr. Hall if any new applications have been received for the two vacant ZBA Board seats.

Mr. Hall stated that staff has not received any new applications for the two vacant ZBA Board seats.

8. Other Business

A. Review of Docket

Mr. Hall stated that Case 898-S-18 was recommended for approval by Environment and Land Use

1 Committee at their January 10th meeting, and forwarded to the County Board for final approval at
2 their January 24th meeting.

3
4 Mr. Hall noted that Case 901-S-18 has been withdrawn. He said that Case 922-S-18, SolAmerica is
5 currently the only solar farm case on the docket.

6
7 Mr. Hall asked the Board if there were any meeting absences that should be noted on the docket.

8
9 Mr. Elwell stated that he has been called to report to the federal courthouse on January 31st for jury duty.
10 He said that he is not sure what this duty will entail or if he would be available for the February meetings.

11
12 **B. Approval of 2019 ZBA Calendar**

13
14 Mr. Elwell entertained a motion to approve the 2019 ZBA Calendar, as submitted.

15
16 **Mr. Randol moved, seconded by Ms. Lee, to approve the 2019 ZBA Calendar, as submitted. The**
17 **motion carried by voice vote.**

18
19 **9. Audience participation with respect to matters other than cases pending before the Board**

20
21 None

22
23 **10. Adjournment**

24
25 Mr. Elwell entertained a motion to adjourn the meeting.

26
27 **Mr. Wood moved, seconded by Mr. Elwell, to adjourn the meeting. The motion carried by voice vote.**

28
29 The meeting adjourned at 8:27 p.m.

30
31 Respectfully submitted

32
33
34 Secretary of Zoning Board of Appeals