

CASE NO. 020-V-21

PRELIMINARY MEMORANDUM

September 7, 2021

Petitioner: **Randy Mitsdarffer**

Request: **Authorize the following variance in the AG-1 Agriculture Zoning District:**

Part A: Authorize a variance for an existing lot with a lot area of 1.08 acre with a net lot area of 0.92 acre (excluding road right-of-way) in lieu of the minimum required 1 acre, and an average lot width of 167.5 feet in lieu of the minimum required 200 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.

Part B: Authorize a variance for the use of an existing detached shed with a side yard of 2 feet and a rear yard of 1 feet in lieu of the minimum required 10 feet side and rear yards for detached structures in the AG-1 Agriculture Zoning District, per Section 7.2.1 of the Zoning Ordinance.

Subject Property: **A 1.08-acre lot in the Northwest Quarter of the Northeast Quarter of Section 15, Township 18 North, Range 7 East of the Third Principal Meridian in Colfax Township, with an address of 369 CR 1000N, Ivesdale.**

Site Area: **1.08 acre with a net lot area of 0.92 acre (excluding road right-of-way)**

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

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

BACKGROUND

The Petitioner requested a Zoning Use Permit to construct an addition on his existing detached garage. Staff review indicated that a detached shed in the southwest corner of the property did not meet the side and rear yard minimum requirements, and a variance would be required in order to approve the Zoning Use Permit for the addition.

Staff also found that the lot did not meet the minimum lot area and average lot width requirements. In order to be a good zoning lot, a variance is needed for average lot width and lot area. The requirements for minimum average lot width of 200 feet and a lot area of one acre in the AG-1 Zoning District were established with the adoption of the Zoning Ordinance on October 10, 1973.

The petitioner purchased the subject property in 2008. The lot was created sometime between 1976 and 1979. The lot is completely surrounded by farmland in production.

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 in Colfax Township, which does not have a Plan Commission. Townships with Plan Commissions have protest rights on a variance and are notified of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Single Family Residence	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
East	Agriculture	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture

PROPOSED SPECIAL CONDITIONS

No special conditions are proposed at this time.

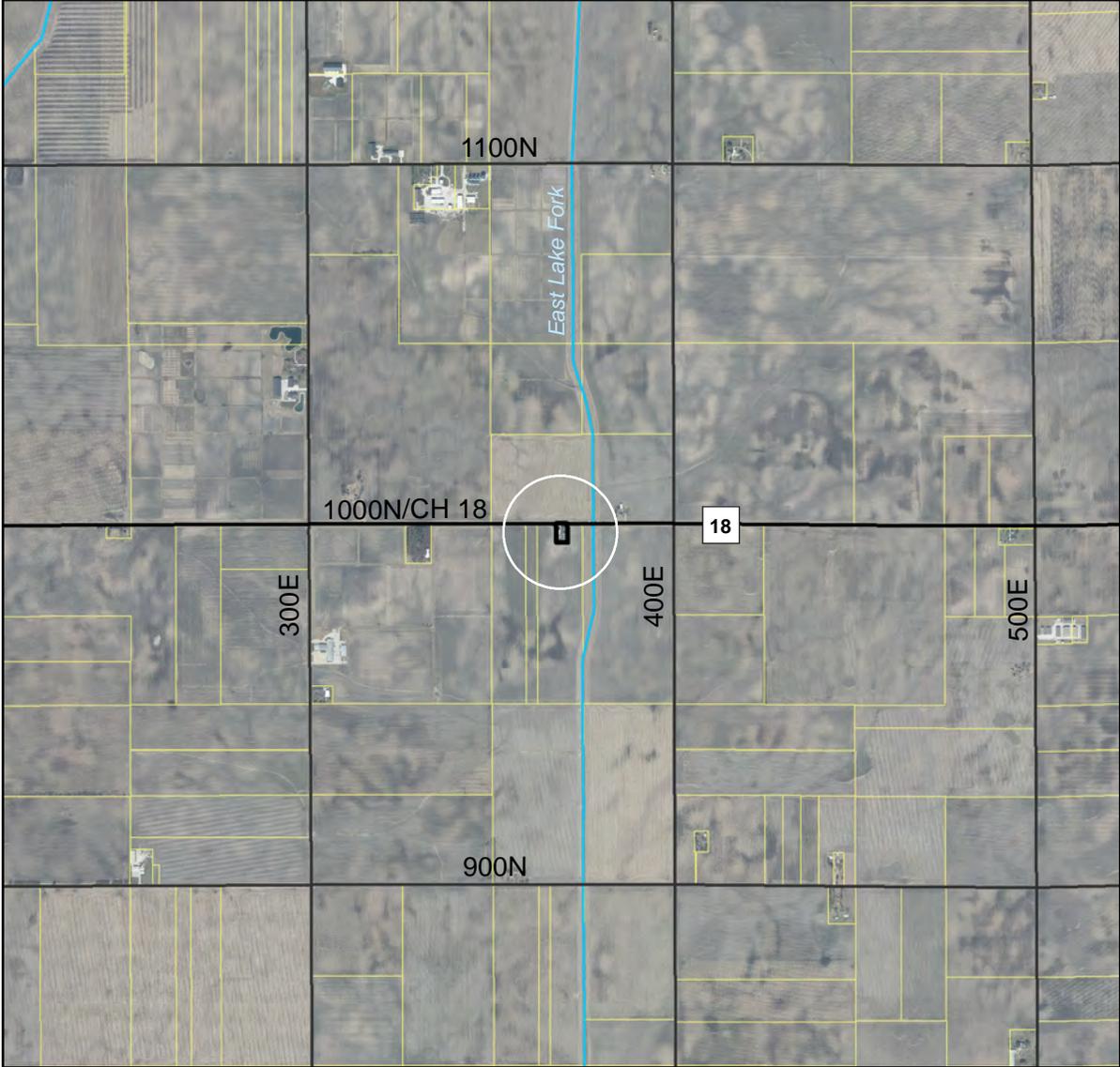
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received August 24, 2021
- C Images of Subject Property taken August 25, 2021
- D Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated September 16, 2021

Location Map

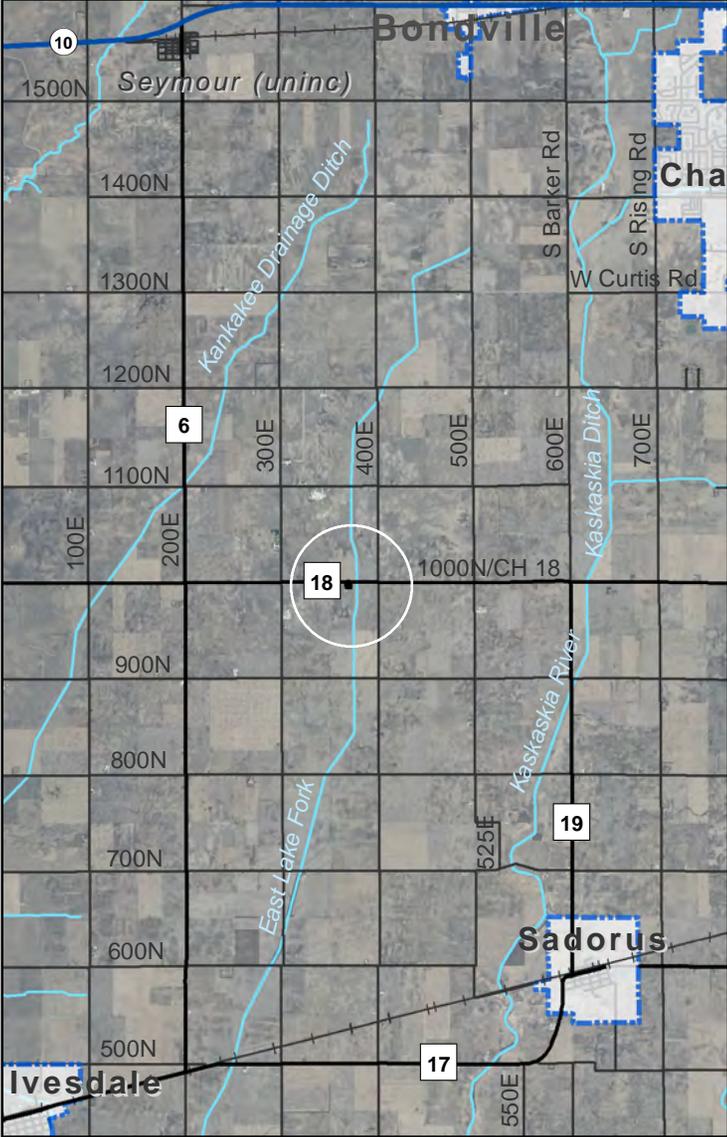
Case 020-V-21
September 16, 2021

Subject Property



- Legend**
-  Subject Property
 -  Municipal Boundary
 -  Parcels

Property location in Champaign County



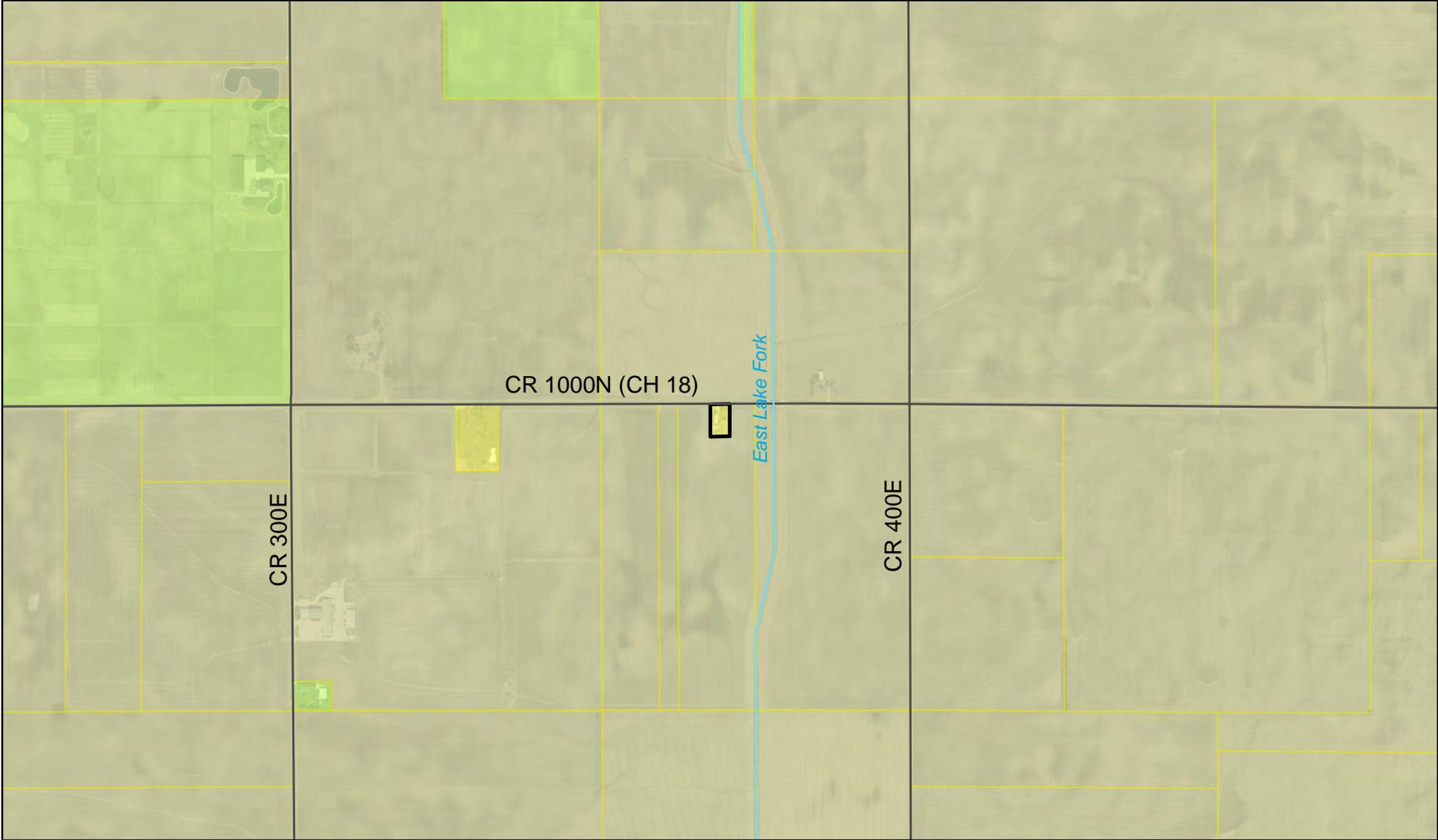
Legend

-  Subject Property
-  Municipal Boundary
-  Parcels

Champaign County
Department of
**PLANNING &
ZONING**

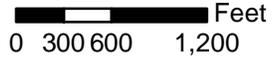
Land Use Map

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Legend

 Subject Property	 Agriculture
 Parcels	 Ag/Residential
	 Residential



Zoning Map

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September 16, 2021



Legend

-  Subject Property
-  Parcels
-  AG-1 Agriculture

0 300 600 1,200 Feet



05-25-15-200-005 2020 aerial 1:50

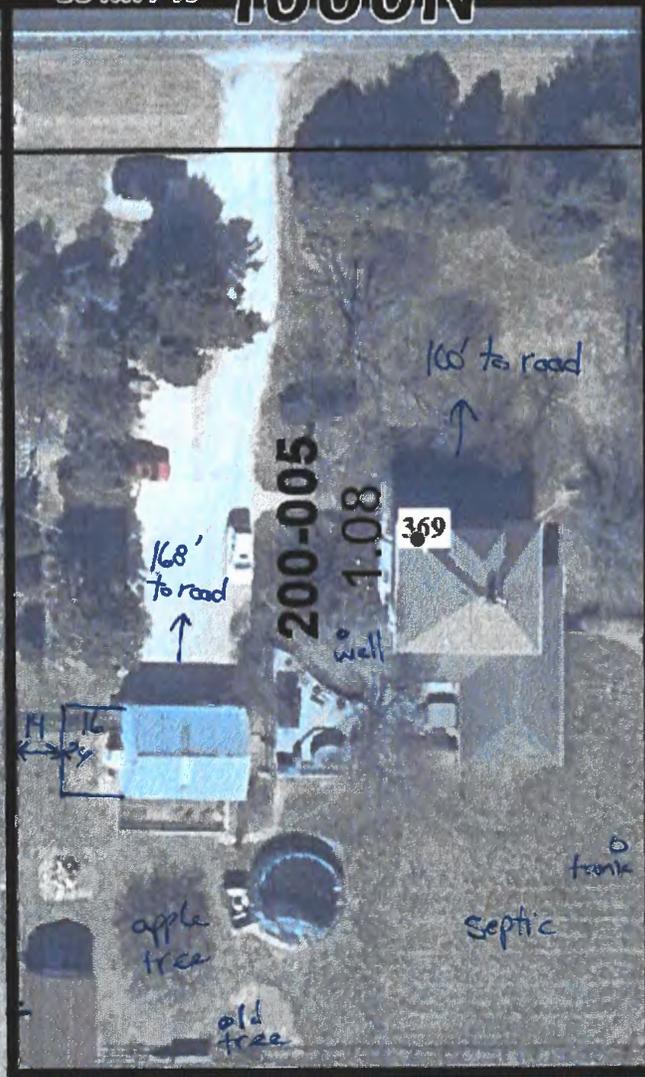
1106.80

CO HWY 18 1000N

5.00

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167.5

RECEIVED

AUG 24 2021



CHAMPAIGN CO. P & Z DEPARTMENT
 Esri Community Maps Contributors, Building Footprint USA, Esri, HERE, Garmin, SafeGraph, INCREMENT P, MET/NA SA, USGS, EPA, NPS, US Census Bureau, USDA, Champaign County GIS Consortium

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This map application was prepared with geographic information system (GIS) data created by the Champaign County GIS Consortium (CCGIS), or other CCGISC member agency. These entities do not warrant or guarantee the accuracy or suitability of GIS data for any purpose. The GIS data within this application is intended to be used as a general index to spatial information and not intended for detailed, site-specific analysis or resolution of legal matters. Users assume all risk arising from the use or misuse of this application and information contained herein. The use of this application constitutes acknowledgement of this disclaimer.



020-V-21 Site Images



From farmland to south facing NW



From farmland to south facing west – about 1' between fence and shed

020-V-21 Site Images



From farmland to south facing east



From west side yard facing south to shed

PRELIMINARY DRAFT

020-V-21

**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: *{September 16, 2021}*

Petitioner: **Randy Mitsdarffer**

Request: **Authorize the following variance in the AG-1 Agriculture Zoning District:**

Part A: Authorize a variance for an existing lot with a lot area of 1.08 acre with a net lot area of 0.92 acre (excluding road right-of-way) in lieu of the minimum required 1 acre, and an average lot width of 167.5 feet in lieu of the minimum required 200 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.

Part B: Authorize a variance for the use of an existing detached shed with a side yard of 2 feet and a rear yard of 1 feet in lieu of the minimum required 10 feet side and rear yards for detached structures in the AG-1 Agriculture Zoning District, per Section 7.2.1 of the 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 **September 16, 2021**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner Randy Mitsdarffer owns the subject property.
2. The subject property is a 1.08-acre lot in the Northwest Quarter of the Northeast Quarter of Section 15, Township 18 North, Range 7 East of the Third Principal Meridian in Colfax Township, with an address of 369 CR 1000N, Ivesdale.
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 in Colfax Township, which does not have a Plan Commission. Townships with Plan Commissions have protest rights on a variance and are notified of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. The 1.08-acre subject property is zoned AG-1 Agriculture and is residential in use.
 - B. Land surrounding the subject property is also zoned AG-1 Agriculture and is in agricultural production.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Petitioner's Site Plan received August 24, 2021, indicates the following:
 - (1) Existing buildings include:
 - a. One 2,400 square feet residence;
 - b. One 16 feet by 24 feet (384 square feet) detached shed in the southwest corner;
 - c. One 24 feet by 30 feet (720 square feet) detached garage; and
 - d. A septic tank and field in the southeast corner.
 - (2) Proposed construction includes a 16 feet by 24 feet (384 square feet) addition to the detached garage.
 - B. The following are previous Zoning Use Permits for the subject property:
 - (1) ZUPA #232-21-01 is pending approval contingent upon this variance case. ZUPA #232-21-01 is for an addition to an existing garage, and would retroactively include approval for the detached shed that is the subject of this variance and an above ground swimming pool.

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- (2) ZUPA #260-76-01 and #260-76-02 were approved on September 14, 1976 to move a residence onto the property.
- C. There are no prior zoning cases for the subject property.
- D. The required variance is as follows:
- (1) Part A: Authorize a variance for an existing lot with a lot area of 1.08 acre with a net lot area of 0.92 acre (excluding road right-of-way) in lieu of the minimum required 1 acre, and an average lot width of 167.5 feet in lieu of the minimum required 200 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.
- (2) Part B: Authorize a variance for the use of an existing detached shed with a side yard of 2 feet and a rear yard of 1 feet in lieu of the minimum required 10 feet side and rear yards for detached structures in the AG-1 Agriculture Zoning District, per Section 7.2.1 of the Zoning Ordinance.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding authorization for the proposed variance:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested Variance (capitalized words are defined in the Ordinance):
- (1) “ACCESSORY BUILDING” is a BUILDING on the same LOT within the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either detached from or attached to the MAIN or PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
- (2) “AREA, LOT” is the total area within the LOT LINES.
- (3) “BUILDING, DETACHED” is a BUILDING having no walls in common with other BUILDINGS.
- (4) “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.
- (5) “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.
- (6) “LOT LINE, REAR” is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE or to a tangent to the midpoint of the FRONT LOT LINE. In the case of a triangular or gore shaped LOT or where the LOT comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at the maximum distance from the FRONT LOT LINE or said tangent.

PRELIMINARY DRAFT

- (7) "LOT LINES" are the lines bounding a LOT.
 - (8) "LOT WIDTH, AVERAGE" is the LOT AREA divided by the LOT DEPTH or, alternatively, the diameter of the largest circle that will fit entirely within the LOT LINES.
 - (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.
 - (10) "YARD" is an OPEN SPACE, other than a COURT, of uniform width or depth on the same LOT with a STRUCTURE, lying between the STRUCTURE and the nearest LOT LINE and which is unoccupied and unobstructed from the surface of the ground upward except as may be specifically provided by the regulations and standards herein.
 - (11) "YARD, REAR" is a YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
 - (12) "YARD, SIDE" is a YARD situated between a side LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT and extending from the rear line of the required FRONT YARD to the front line of the required REAR YARD.
- B. The AG-1 Agriculture DISTRICT is intended to protect the areas of the COUNTY where soil and topographic conditions are best adapted to the pursuit of AGRICULTURAL USES and to prevent the admixture of urban and rural USES which would contribute to the premature termination of AGRICULTURE pursuits.
- C. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9 C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - d. That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.

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- 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. LOT AREA in the AG-1 Agriculture Zoning District is established in Section 5.3 of the Zoning Ordinance as 1 acre.
- E. AVERAGE LOT WIDTH in the AG-1 Agriculture Zoning District is established in Section 5.3 of the Zoning Ordinance as 200 feet.
- F. Minimum SIDE YARD for an accessory structure in the AG-1 Agriculture District is established in Section 7.2.1.B. of the Zoning Ordinance as 10 feet.
- G. Minimum REAR YARD for an accessory structure in the AG-1 Agriculture District is established in Section 7.2.1.C. of the Zoning Ordinance as 10 feet.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

- 7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
 - A. The Petitioner has testified on the application, **“The septic system and leach field is on the other side of the property which prohibited me from putting the shed on that side. I also didn’t want to cut down a very nice apple tree or a pine tree that has since died. The property is surrounded by ag.”**

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, **“I have no way to move the shed without hiring someone with heavy equipment. I would have to cut down the apple tree I really don’t want to do that.”**
 - B. Regarding the proposed Variance:
 - (1) Without proposed variance Part A for lot area and lot width, the petitioner would have to purchase land from the adjacent owner.
 - (2) Without proposed variance Part B for side and rear yards, the petitioner would have to move the shed at significant expense or demolish it.

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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, **“I was not aware of the zoning requirements. The manufacturer of the shed and farmers I spoke with misinformed me of the zoning regulations. The shed is inside the fence that was built before I bought the property. The lot was created in the 70s prior to our purchase in 2008.”**
 - B. Tax Maps indicate the lot was created sometime between 1976 and 1979.
 - C. The shed manufacturer was out of Douglas County, which has no zoning, and would have no expected knowledge of zoning in Champaign County.
 - D. The farmers who misinformed the petitioner are exempt from the Zoning Ordinance, and the petitioner said he was told that because he was in a rural area surrounded by agricultural land, no permit would be needed for the shed.

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, **“Adequate light and air, and it does not interfere with the farming around the property, there are no complaints from the landowner/farmer.”**
 - B. Regarding proposed variance Part A, for a lot area of 1.08 acre (0.92 acre exclusive of right-of-way) in lieu of the minimum required 1 acre: the requested variance is 92% of the minimum required, for a variance of 8%.
 - C. Regarding proposed variance Part A, for an average lot width of 167.5 feet in lieu of the minimum required 200 feet: the requested variance is 83.8% of the minimum required, for a variance of 16.2%.
 - D. Regarding proposed variance Part B, for an accessory building with a side yard of 2 feet and a rear yard of 1 foot in lieu of the minimum required 10 feet side and rear yards for detached structures: the requested variance for the 2 feet side yard is 20% of the minimum required, for a variance of 80%, and the requested variance for the 1 foot rear yard is 10% of the minimum required, for a variance of 90%.
 - E. Regarding proposed variance Part A for lot area and average lot width:
 - (1) Since the adoption of the Zoning Ordinance on October 10, 1973, the AG-1 District has always required a minimum lot area of one acre and a minimum average lot width of 200 feet.
 - (2) In regards to accommodating onsite wastewater treatment and disposal:

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- a. There is an existing septic system in the southeast corner of the subject property.
- (3) Besides the importance of accommodating onsite wastewater treatment and disposal as part of the basis for the minimum lot area and average lot width requirement, other considerations are as follows:
- a. Adequate light and air: The subject property is residential in use. The surrounding land is in agricultural production.
 - b. Separation of structures to prevent conflagration: The subject property is within the Ivesdale Fire Protection District and the station is approximately 8.7 road miles from the subject property. The nearest residence is approximately 780 feet to the northeast on the other side of CH 18.
 - c. Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.
- F. Regarding proposed variance Part B for side and rear yards, the Zoning Ordinance does not clearly state the considerations that underlie the side and rear yard requirements. In general, the side and rear yards are presumably intended to ensure the following:
- (1) Adequate light and air: The subject property is in residential use. The surrounding properties are in agricultural production.
 - (2) Separation of structures to prevent conflagration: The subject property is within the Ivesdale Fire Protection District and the station is approximately 8.7 road miles from the subject property. There are no structures on adjacent property.
 - (3) Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.

GENERALLY PERTAINING TO THE EFFECTS OF THE REQUESTED VARIANCE ON THE NEIGHBORHOOD AND THE PUBLIC HEALTH, SAFETY, AND WELFARE

11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
- A. The Petitioner has testified on the application: **“The farmer that farms the fields around me has never given me the indication that this shed interferes with him farming the fields, it’s inside the fenced in yard. He even gave me permission to have the movers drive through his field to place the shed where it is.”**
 - B. The Colfax Township Road Commissioner has been notified of this variance, and no comments have been received.
 - C. The County Highway Department has been notified of this variance because the property is adjacent to a County highway; no comments have been received.

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- D. The Ivesdale 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. No special conditions are proposed at this time.

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DOCUMENTS OF RECORD

1. Variance Application received August 24, 2021, with attachment:
 - A Site Plan

2. Preliminary Memorandum dated September 7, 2021, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received August 24, 2021
 - C Images of Subject Property taken August 25, 2021
 - D Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated September 16, 2021

PRELIMINARY DRAFT**SUMMARY DRAFT FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **020-V-21** held on **September 16, 2021**, the Zoning Board of Appeals of Champaign County finds that:

1. Special conditions and circumstances **{DO / DO NOT}** exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because:
 - a. *The petitioner was unaware of the 10-foot side and rear yard ordinance until they applied to construct a garage addition in August 2021.*
 - b. *There is a septic field in the southeast corner, so the shed could not be located there.*
 - c. *There is a living apple tree that would have to be cut down to place the shed.*
 - d. *The property is completely surrounded by farmland in production.*

2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied **{WILL / WILL NOT}** prevent reasonable or otherwise permitted use of the land or structure or construction because:
 - a. *Without proposed variance Part A for lot area and lot width, the petitioner would have to purchase land from the adjacent owner.*
 - b. *Without proposed variance Part B for side and rear yards, the petitioner would have to move the shed at significant expense or demolish it.*

3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
 - a. *Tax Maps indicate the lot was created sometime between 1976 and 1979.*
 - b. *The petitioner purchased the property in 2008.*
 - c. *The petitioner was not aware of zoning requirements when he placed the shed.*
 - d. *The petitioner was misinformed about needing a permit for the shed by the shed manufacturer and farmers he spoke with.*

4. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}** in harmony with the general purpose and intent of the Ordinance because:
 - a. *The variance for lot area is 92% of the minimum required, for a variance of 8%.*
 - b. *The variance for average lot width is 83.8% of the minimum required, for a variance of 16.2%.*
 - c. *The variance for an accessory building with a side yard of 2 feet foot is 20% of the minimum required, for a variance of 80%, and the requested variance for the 1 foot rear yard is 10% of the minimum required, for a variance of 90%.*
 - d. *There is adequate light and air around the shed.*
 - c. *The nearest residence is approximately 780 feet to the northeast.*

5. The requested variance **{SUBJECT TO THE PROPOSED CONDITION} {WILL / WILL NOT}** be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because:
 - a. *Relevant jurisdictions have been notified of this variance, and no comments have been received.*

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- b. No complaints have been received from the farmer or owner of the surrounding farmland.*
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:}**

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PRELIMINARY DRAFT

FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements for approval in Section 9.1.9.C *{HAVE/HAVE NOT}* been met, and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Variance requested in Case **020-V-21** is hereby *{GRANTED / GRANTED WITH CONDITIONS/ DENIED}* to the petitioner, **Randy Mitsdarffer**, to authorize the following variance in the AG-1 Agriculture Zoning District:

Part A: Authorize a variance for an existing lot with a lot area of 1.08 acre with a net lot area of 0.92 acre (excluding road right-of-way) in lieu of the minimum required 1 acre, and an average lot width of 167.5 feet in lieu of the minimum required 200 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.

Part B: Authorize a variance for the use of an existing detached shed with a side yard of 2 feet and a rear yard of 1 feet in lieu of the minimum required 10 feet side and rear yards for detached structures in the AG-1 Agriculture Zoning District, per Section 7.2.1 of the Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Ryan Elwell, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date