

CASE NO. 866-V-16

PRELIMINARY MEMORANDUM

April 20, 2017

Petitioner: **Scott Miller**

Request: **Authorize the following variance from the Champaign County Zoning Ordinance in the AG-2 Agriculture Zoning District:**

Authorize an existing detached shed with a side yard of 2 feet in lieu of the minimum required 10 feet side yard for an accessory structure, per Section 7.2.1 of the Zoning Ordinance.

Subject Property: **Lot 13 of the Hudson Acres Subdivision in Section 11, Township 19 North, Range 9 East of the Third Principal Meridian in Urbana Township, and commonly known as the residence with an address of 3408 East University Avenue, Urbana.**

Site Area: **43,625 square feet (1 acre)**

Time Schedule for Development: **Existing**

Prepared by: **Susan Burgstrom**
Senior Planner

John Hall
Zoning Administrator

BACKGROUND

The Petitioner requests a variance to maintain the location of a detached storage shed that has a smaller side yard than the minimum required by ordinance. The shed was constructed under ZUPA #363-88-02 that was approved on December 28, 1988. There is no Zoning Compliance Certificate on file for this shed.

When the petitioner came to apply for a permit to construct an addition to his house in December 2016, staff told him that he must apply for a variance for the side yard in order to receive a Zoning Use Permit for the house addition.

The petitioner indicated on his application that the shed does not match the location indicated on the approved site plan, and he was not aware of any issue when he purchased the property in 2007. Three Zoning Use Permit applications approved for the subject property in 1991, 2000, and 2001, did not mention or include the existing detached structures on the application or site plans. Prior to the adoption of Ordinance No. 650 (Text Amendment Case 326-AT-02) on April 16, 2002, permit applications were not required to indicate all structures on the property. Case 326-AT-02 revised Section 13.2.1 C. to prohibit the approval of a permit on a lot when an outstanding violation of the Ordinance exists on the lot.

**Brookens Administrative
Center**
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708
zoningdept@co.champaign.il.us
www.co.champaign.il.us/zoning

EXTRATERRITORIAL JURISDICTION

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

The subject property is located within Urbana Township, which does not have a Plan Commission.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Single Family Residence	AG-2 Agriculture
North	Agriculture	AG-2 Agriculture
East	Single Family Residence	AG-2 Agriculture
West	Single Family Residence	AG-2 Agriculture
South	Wal-Mart	City of Urbana B-3 General Business

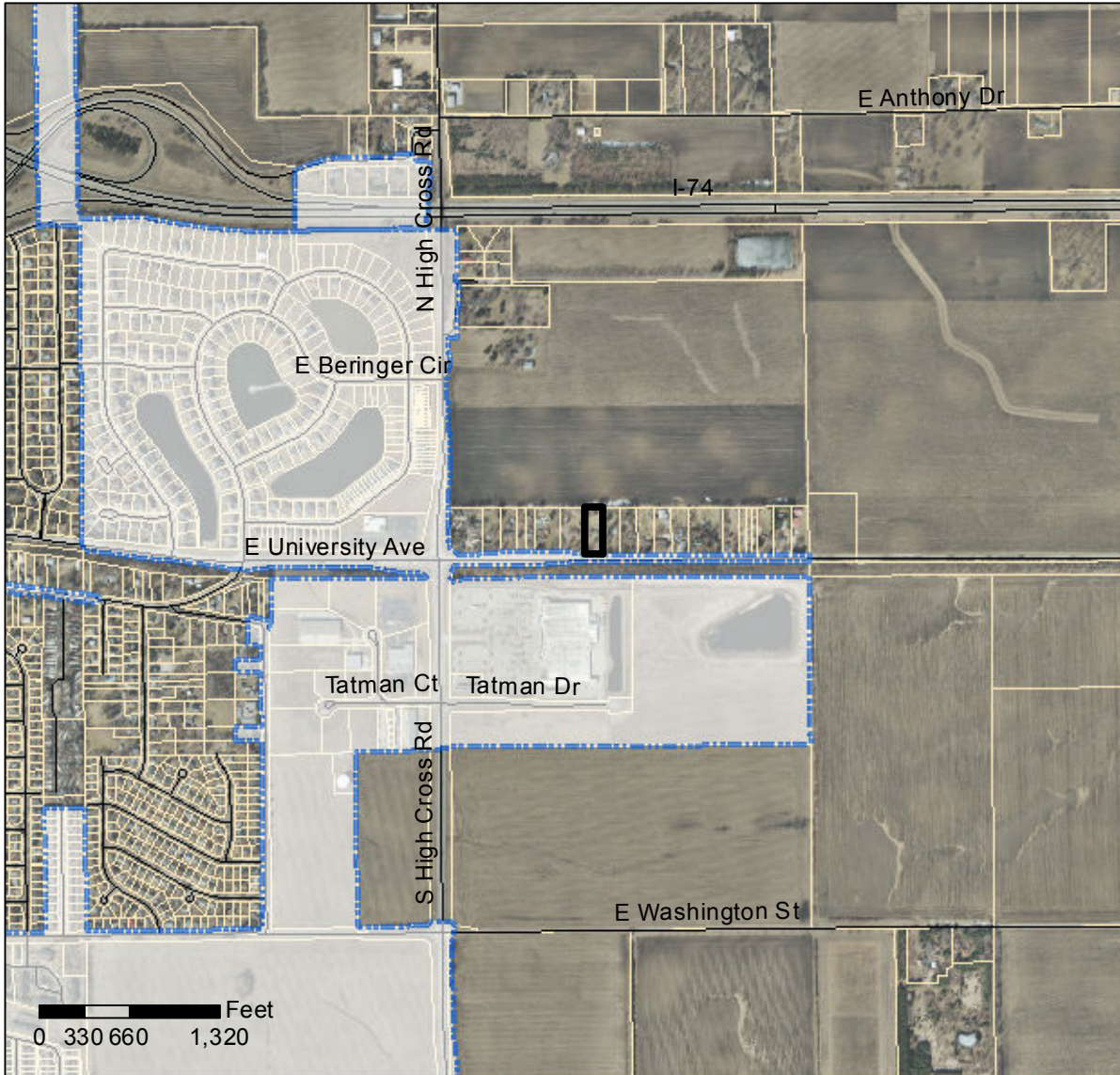
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Approved Site Plan from ZUPA #341-16-01, approved December 22, 2016
- C Site Plan from ZUPA #363-88-02 approved December 28, 1988
- D Images of Subject Property taken April 7, 2017
- E Draft Summary of Evidence, Finding of Fact, and Final Determination

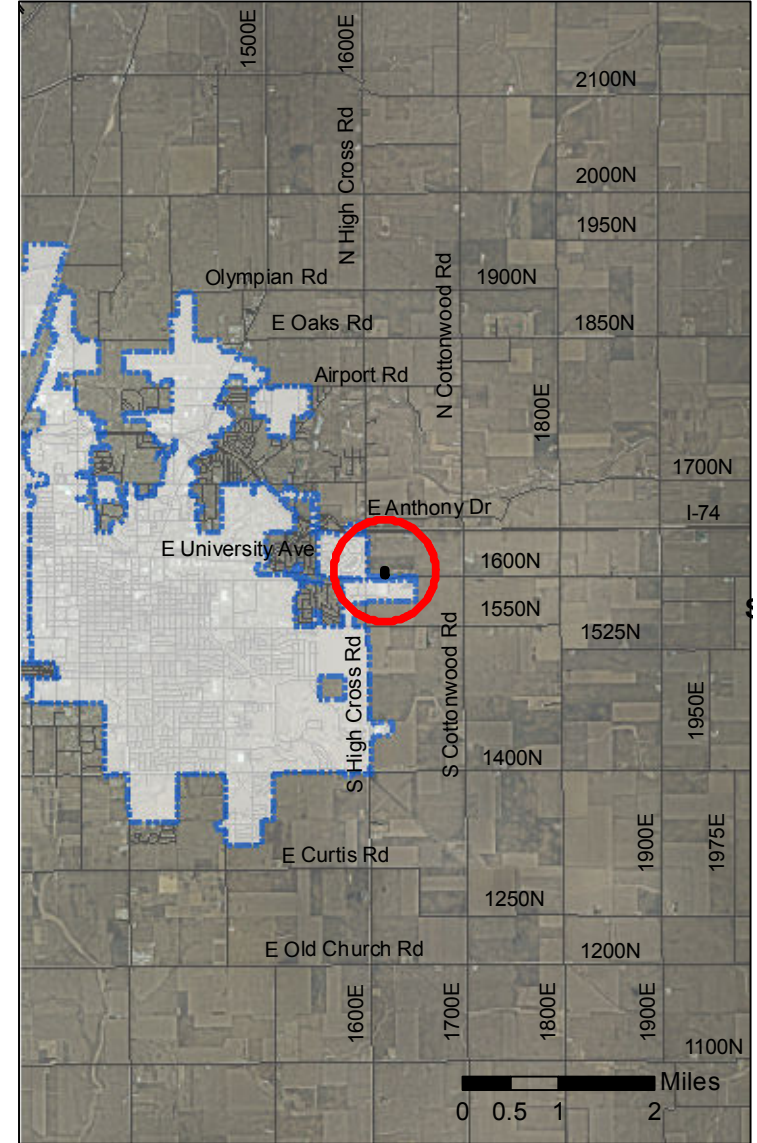
Location Map

Case 866-V-16
April 27, 2017

Subject Property



Property location in Champaign County



Legend

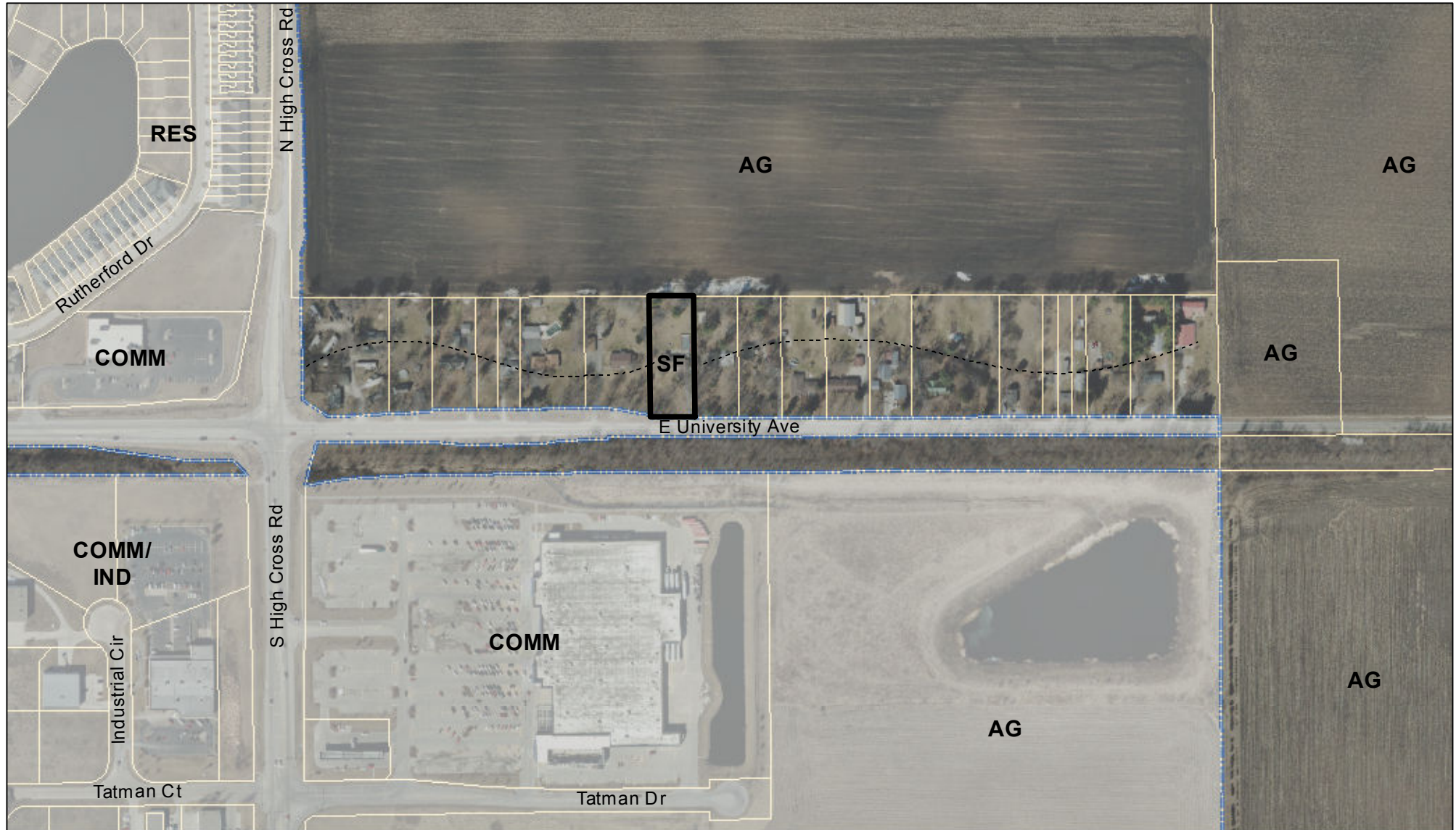
- Subject Property
- Corporate Limits
- Parcels
- Streets



Champaign County
Department of
**PLANNING &
ZONING**

Land Use Map

Case 866-V-16
April 27, 2017



- Legend**
- Subject Property
 - Parcels
 - Corporate Limits




0 100 200 400 Feet

Champaign County
Department of
PLANNING &
ZONING


Zoning Map

Case 866-V-16
April 27, 2017

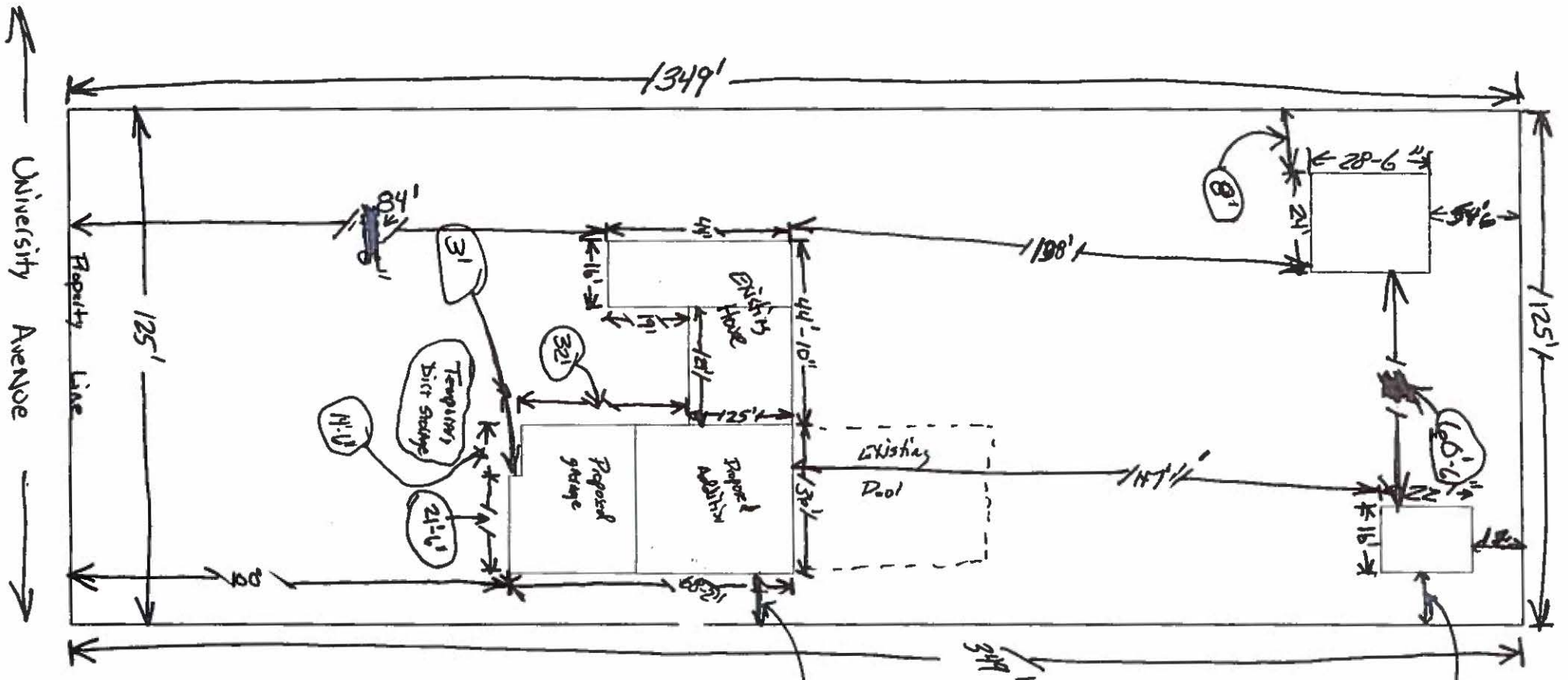


- Legend**
-  Subject Property
 -  Parcels
 -  Corporate Limits

0 100 200 400 Feet



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PLANNING &
ZONING



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CHAMPAIGN CO. P & Z DEPARTMENT

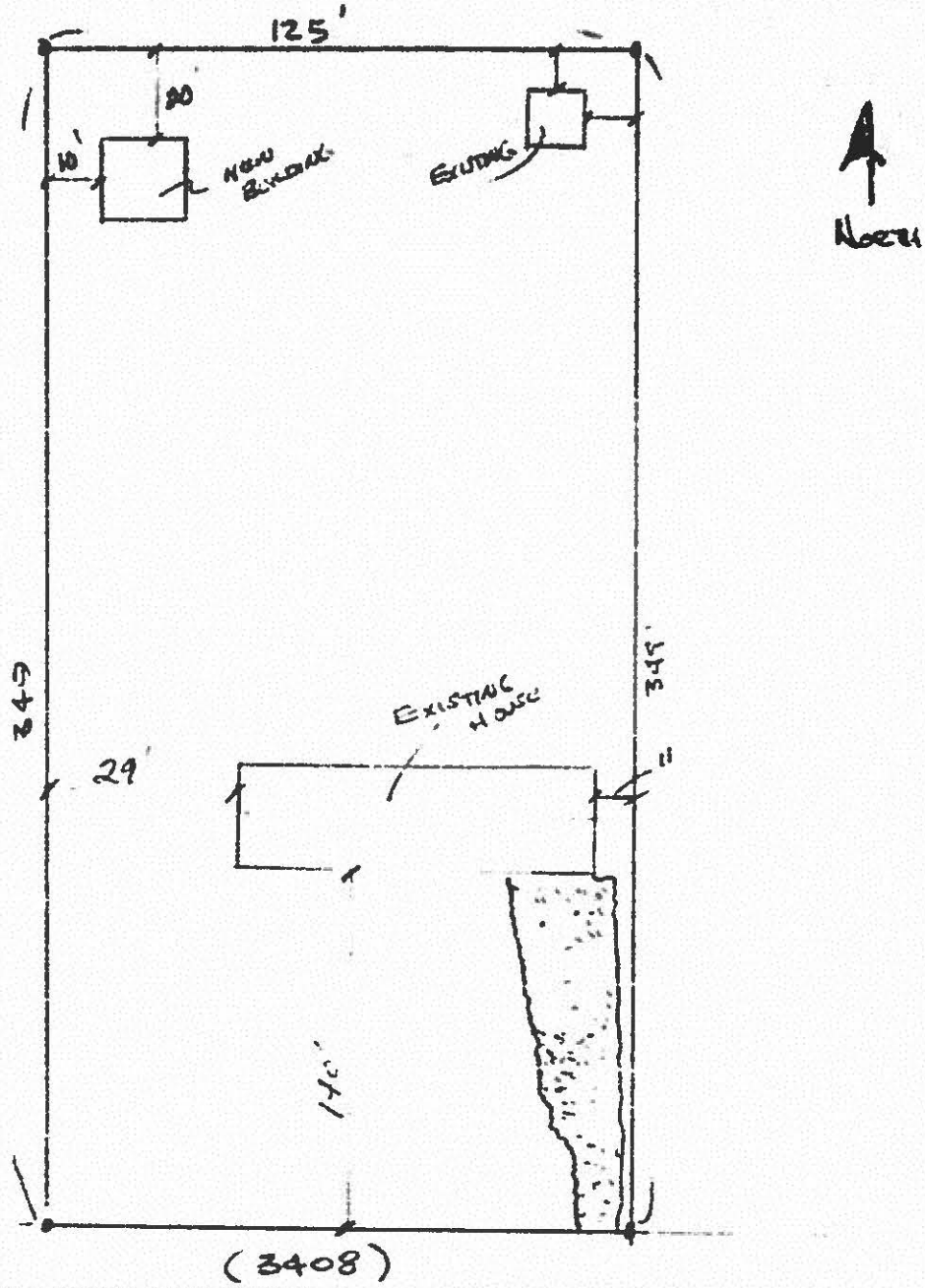
Champaign County
Planning & Zoning Department

Approved Site Plan

Permit # 541-1601

Date: 12/22/2016
(w/conditions)

Site Plan from ZUPA #363-88-02 approved December 28, 1988



866-V-16 Site Images



Subject shed, taken from west side of house facing north



Shed side yard, facing north

866-V-16 Site Images



Shed side yard, facing south



Subject shed, taken from east side of back yard, facing west

PRELIMINARY DRAFT

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**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: ***{April 27, 2017}***

Petitioner: **Scott Miller**

Request: **Authorize the following variance from the Champaign County Zoning Ordinance in the AG-2 Agriculture Zoning District:**

Authorize an existing detached shed with a side yard of 2 feet in lieu of the minimum required 10 feet side yard for an accessory structure, 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 **April 27, 2017**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner Scott Miller owns the subject property.
2. The subject property is Lot 13 of the Hudson Acres Subdivision in Section 11, Township 19 North, Range 9 East of the Third Principal Meridian in Urbana Township, and commonly known as the residence with an address of 3408 East University Avenue, Urbana.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is within the one and one-half mile extraterritorial jurisdiction (ETJ) of the City of Urbana, a municipality with zoning. Municipalities do not have protest rights on a variance and are not notified of such cases.
 - B. The subject property is located within Urbana Township, which does not have a Plan Commission.

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 subject property is a currently zoned AG-2 Agriculture and is in use as a single family residence.
 - B. Land to the north is zoned AG-2 Agriculture and is in agricultural production.
 - C. Land to the west and east is zoned AG-2 Agriculture and is in use as a single family residence.
 - D. Land to the south is within the City of Urbana and is zoned B-3 General Business; it is in use as a Wal-Mart.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Petitioner's Site Plan, received December 6, 2016, is the Approved Site Plan for Zoning Use Permit # 341-16-01, and indicates the following:
 - (1) Existing buildings include:
 - a. One 1,458 square feet residence;
 - b. One 16 feet by 22 feet detached shed (to be demolished);
 - c. One 24 feet by 28 feet 6 inches detached shed (subject of variance); and
 - d. An existing swimming pool.
 - (2) The proposed 2,304 square feet addition to the residence is under construction and includes an attached garage.

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- B. The following are previous Zoning Use Permits for the subject property:
- (1) ZUPA #363-88-02 was approved on December 28, 1988, to construct the detached storage shed that is the subject of the proposed variance.
 - (2) ZUPA #281-91-02 was approved on October 9, 1991, to construct an addition to the residence.
 - (3) ZUPA #165-00-01 was approved on June 14, 2000, to construct an above ground pool.
 - (4) ZUPA #54-01-02 was approved on February 26, 2001, to construct an addition to the residence.
 - (5) ZUPA #341-16-01 was approved on December 22, 2016, to construct an addition to the residence.
 - a. The Zoning Use Permit was approved contingent upon the petitioner submitting an application for the proposed variance.
- C. The required variance is as follows: A detached shed with a side yard of 2 feet in lieu of the minimum required 10 feet.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding authorization for the proposed variance:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested Variance (capitalized words are defined in the Ordinance):
- (1) “ACCESSORY BUILDING” is a BUILDING on the same LOT within the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either detached from or attached to the MAIN or PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
 - (2) “BUILDING, DETACHED” is a BUILDING having no walls in common with other BUILDINGS.
 - (3) “DWELLING” is a BUILDING or MANUFACTURED HOME designated for non-transient residential living purposes and containing one or more DWELLING UNITS and/or LODGING UNITS.
 - (4) “LOT” is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (5) “LOT LINES” are the lines bounding a LOT.
 - (6) “SPECIAL CONDITION” is a condition for the establishment of a SPECIAL USE.
 - (7) “STRUCTURE” is anything CONSTRUCTED or erected with a fixed location on the surface of the ground or affixed to something having a fixed location on the

PRELIMINARY DRAFT

surface of the ground. Among other things, STRUCTURES include BUILDINGS, walls, fences, billboards, and SIGNS.

- (8) “STRUCTURE, DETACHED” is a STRUCTURE not connected to another STRUCTURE.
 - (9) “USE” is the specific purpose for which land, a STRUCTURE or PREMISES, is designed, arranged, intended, or for which it is or may be occupied or maintained. The term “permitted USE” or its equivalent shall not be deemed to include any NONCONFORMING USE.
 - (10) “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.
 - (11) “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.
 - (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-2, Agriculture DISTRICT is intended to prevent scattered indiscriminate urban development and to preserve the AGRICULTURAL nature within areas which are predominately vacant and which presently do not demonstrate any significant potential for development. This DISTRICT is intended generally for application to areas within one and one-half miles of existing communities in the COUNTY.
- C. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9 C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.

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- 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. The adoption of Ordinance No. 650 (Text Amendment Case 326-AT-02) on April 16, 2002, amended the Zoning Ordinance to include Section 13.2.1 C.2., which establishes that the BOARD or the GOVERNING BODY shall not approve VARIANCES, and the Zoning Administrator shall not issue Zoning Use Permits or Zoning Compliance Certificates, when there is an outstanding violation of the Zoning Ordinance, except when the BOARD finds that granting a VARIANCE will facilitate correction of any non-*Zoning Ordinance* violations.
- E. Minimum SIDE YARD for an accessory structure in the AG-2 Agriculture District is established in Section 7.2.1.B. 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, **“Building does not match original permit. I bought property and found out building is too close to the property line in December 2016.”**
 - B. The detached shed was constructed by a previous owner under ZUPA #363-88-02, approved December 28, 1988; the Site Plan for that permit showed a 10 feet side yard. No Zoning Compliance Certificate was issued for the shed.
 - C. Staff estimated the side yard using the original subdivision plat and aerial photography, and believe the shed’s side yard is approximately 2 feet.
 - D. The petitioner purchased the lot in September 2007.
 - E. The lot was created prior to Zoning Ordinance adoption on October 10, 1973.
 - F. Regarding the subject property:
 - (1) The lot is only 125 feet wide, which is less than the 150 feet that would be required for a new lot in order to accommodate the dimensional requirements for a septic system.
 - (2) The subject property is not served by a sanitary sewer.
 - (3) The septic system is not indicated on the site plan.

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- (4) There is reason to believe that the “OPEN SPACE” on the subject property should be maximized so as to prevent encroachment into either the existing septic system or any area that is available for a replacement septic system should a replacement be necessary in the future.

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, **“Yes, I would have to move the garage or tear it down.”**
 - B. Regarding the proposed Variance: without the proposed variance, future Zoning Use Permits could not be approved.
 - C. It is not clear if the petitioner sought to purchase land from the adjacent property, which does exceed the minimum required lot area and minimum required average lot width.

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, **“No, I purchased the property believing it was all up to current regulations.”**
 - B. Three Zoning Use Permit applications approved for the subject property in 1991, 2000, and 2001, did not mention or include the existing detached structures on the application or site plans.
 - (1) Prior to the adoption of Ordinance No. 650 (Text Amendment Case 326-AT-02) on April 16, 2002, permit applications were not required to indicate all structures on the property. Case 326-AT-02 revised Section 13.2.1 C. to prohibit the approval of a permit on a lot when an outstanding violation of the Ordinance exists on the lot.
 - C. The detached shed was constructed by a previous owner under ZUPA #363-88-02, approved December 28, 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, **“The building appears to be 2 feet short of the current zoning restrictions. I bought the property in this condition.”**

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- B. Regarding the proposed Variance for an accessory building with a side yard of 2 feet in lieu of the minimum required 10 feet in the AG-2 Agriculture District: the requested variance is 20% of the minimum required, for a variance of 80%.
- C. Regarding the proposed Variance, the Zoning Ordinance does not clearly state the considerations that underlie the side yard requirements. In general, the side yard is presumably intended to ensure the following:
- (1) Adequate light and air: The subject property is in residential use. The surrounding properties are in residential use or agricultural production.
 - (2) Separation of structures to prevent conflagration: The subject property is within the Edge-Scott Fire Protection District and the station is approximately 1.1 road miles from the subject property. The nearest structure to the detached shed on adjacent property is the residence to the west of the subject property that is approximately 110 feet away.
 - (3) Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.
- D. Regarding the subject property:
- (1) The lot is only 125 feet wide, which is less than the 150 feet that would be required for a new lot in order to accommodate the dimensional requirements for a septic system.
 - (2) The subject property is not served by a sanitary sewer.
 - (3) The septic system is not indicated on the site plan.
 - (4) There is reason to believe that the "OPEN SPACE" on the subject property should be maximized so as to prevent encroachment into either the existing septic system or any area that is available for a replacement septic system should a replacement be necessary in the future.

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: **"None."**
 - B. The Township Road Commissioner has been notified of this variance but no comments have been received.
 - C. The Edge-Scott Fire Protection District has been notified of this variance but no comments have been received.
 - D. No comments have been received to date regarding the proposed variance.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

12. Generally regarding and other circumstances which justify the Variance:
 - A. The Petitioner has testified on the application: **“The zoning office cannot find any evidence of a revised permit. I would like to get the variance approved so I can repair my house.”**
 - B. Staff could find no Zoning Compliance Certificate on file for the shed constructed under ZUPA #363-88-02.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:

No special conditions are proposed at this time.

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DOCUMENTS OF RECORD

1. Variance Application received December 22, 2016
2. Approved Site Plan from ZUPA #341-16-01, approved December 22, 2016
3. Site Plan from ZUPA #363-88-02 approved December 28, 1988
4. Preliminary Memorandum dated April 6, 2017, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Approved Site Plan from ZUPA #341-16-01, approved December 22, 2016
 - C Site Plan from ZUPA #363-88-02 approved December 28, 1988
 - D Images of Subject Property taken April 7, 2017
 - E Draft Summary of Evidence, Finding of Fact, and Final Determination

PRELIMINARY DRAFT

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **866-V-16** held on **April 27, 2017**, 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:}**

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 **866-V-16** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioner **Scott Miller** to authorize the following variance in the AG-2 Agriculture Zoning District:

A detached shed with a side yard of 2 feet in lieu of the minimum required 10 feet for detached accessory structures.

{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:

Eric Thorsland, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date