

CASE NO. 919-V-18

PRELIMINARY MEMORANDUM

January 10, 2019

Petitioner: **Danny Roy**

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

Authorize 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 in the AG-2 Agriculture Zoning District, per Section 7.2.1 B. of the Zoning Ordinance.

Subject Property: **A 0.56-acre lot that is Lot 46 of the Busboom's Wiltshire Estates 4th Subdivision in Section 13, Township 19 North, Range 10 East of the Third Principal Meridian, in St. Joseph Township and commonly known as the residence at 1309 Bradford Circle, St. Joseph.**

Site Area: **24,394 square feet (0.56 acre)**

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

Prepared by: **Susan Burgstrom**
Senior Planner

John Hall
Zoning Administrator

BACKGROUND

The Petitioner requests a variance for an existing detached shed that has a side yard of 2 feet 4 inches in lieu of the 10 feet minimum required by ordinance. The shed was constructed without a permit sometime between 2008 and 2011.

The petitioner applied for a Zoning Use Permit on July 13, 2018. ZUPA #194-18-01 was approved on August 1, 2018, with the special condition that the petitioner apply for a variance for the detached shed. The petitioner was made aware that the shed would have to be moved if the variance is not approved.

There is a 10 feet wide "utility easement and pedestrian right-of-way" on the north property line adjacent to the shed, per the Plat of Survey for Busboom's Wiltshire Estates 4th Subdivision recorded May 27, 1977. The shed is located 2 feet 4 inches outside the easement. When applying for ZUPA #194-18-01, the petitioner told P&Z Staff that he thought the easement was part of his property, and he has mowed that area for many years under that assumption.

EXTRATERRITORIAL JURISDICTION

The subject property is within the one and one-half mile extraterritorial jurisdiction (ETJ) of the Village of St. Joseph, 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 St. Joseph Township, which has a Plan Commission. Township 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-2 Agriculture
North	Single Family Residence	AG-2 Agriculture
East	Single Family Residence	R-1 Single Family Residential
West	Single Family Residence	AG-2 Agriculture
Southwest	Single Family Residence	AG-2 Agriculture
Southeast	Single Family Residence	R-1 Single Family Residential

PROPOSED SPECIAL CONDITIONS

No special conditions are proposed at this time.

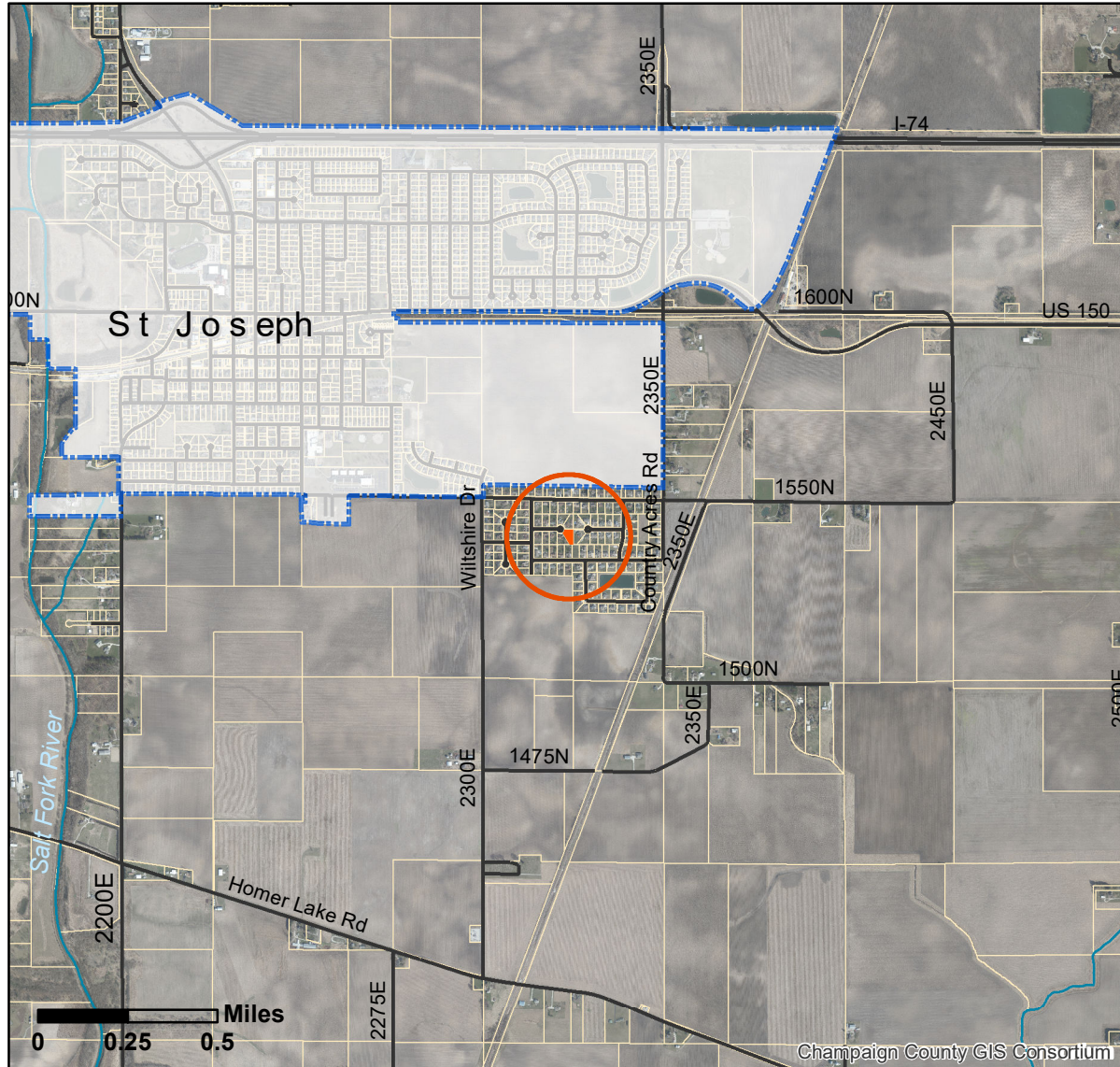
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received July 27, 2018 (same as approved site plan for ZUPA #194-18-01)
- C Images of Subject Property received July 27, 2018
- D Draft Summary of Evidence, Finding of Fact, and Final Determination dated January 17, 2019

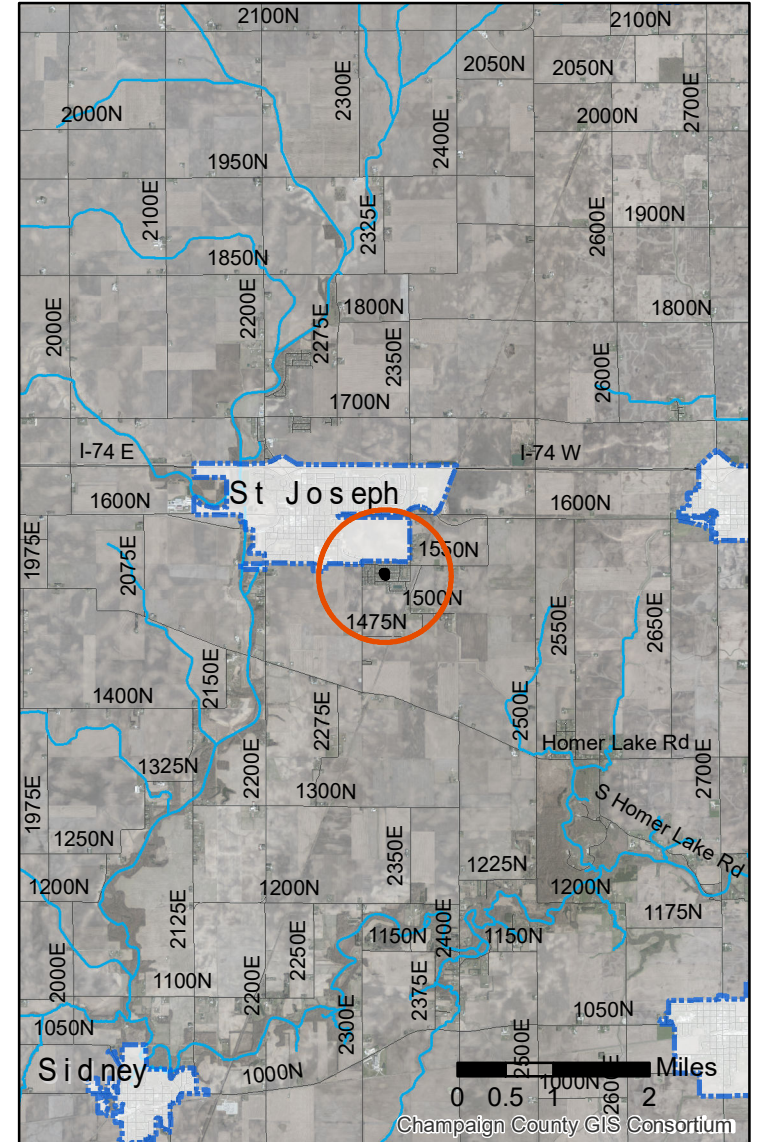
Location Map

Case 919-V-18
January 17, 2019




Subject Property



Property location in Champaign County



Legend

-  Subject Property
-  Municipal Boundary
-  Parcels



Champaign County
Department of
PLANNING &
ZONING

Land Use Map

Case 919-V-18
January 17, 2019



Legend

- Subject Property
- Ag/Residential
- School
- Streets
- Agriculture
- Residential
- Parcels

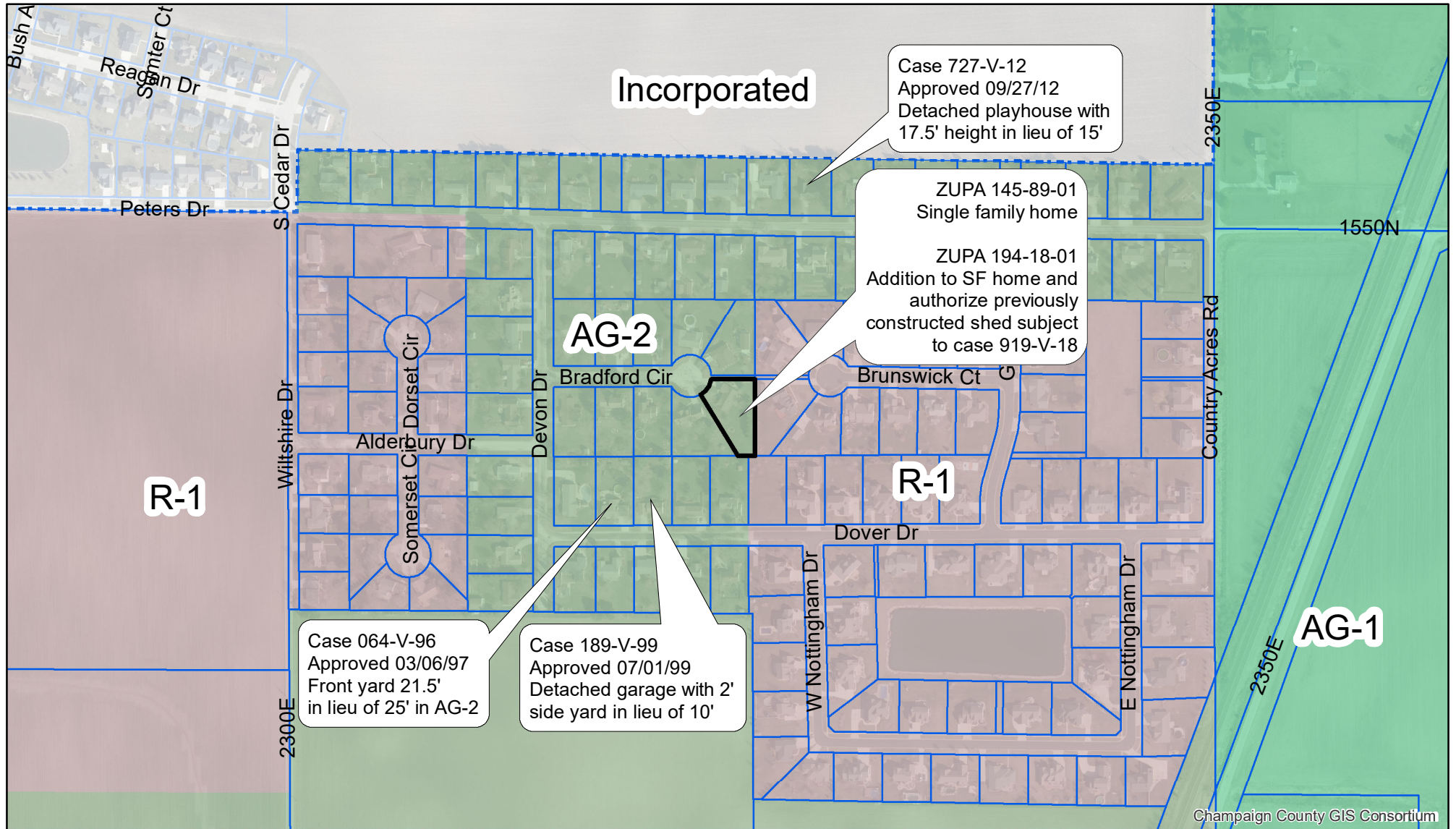
0 200 400 800 Feet



Champaign County
Department of
PLANNING &
ZONING

Zoning Map

Case 919-V-18
January 17, 2019

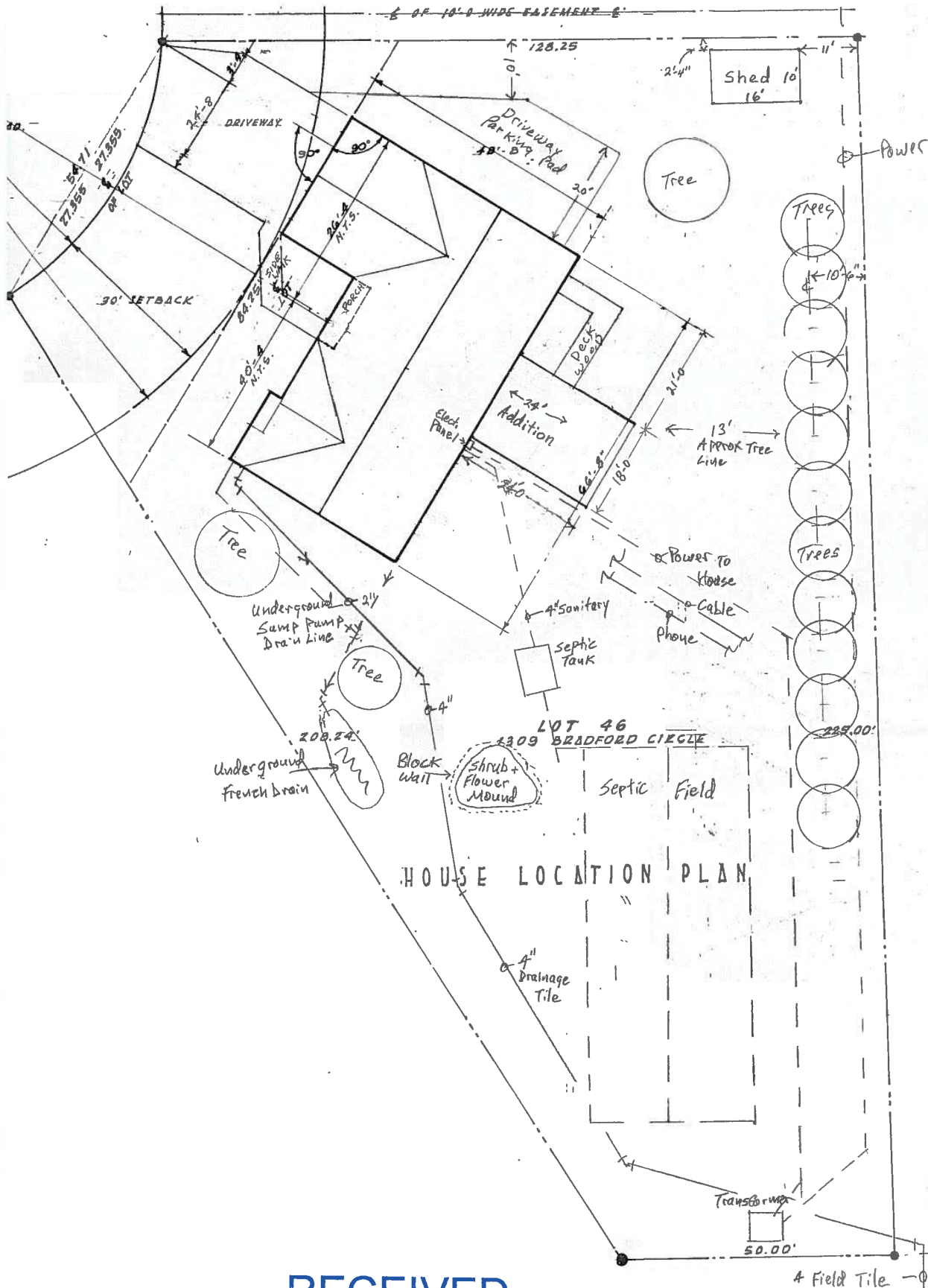


Legend

- Subject Property
- Parcels
- Municipal Boundary
- AG-1
- AG-2
- R-1

0 100 200 400 Feet

Champaign County
Department of
PLANNING &
ZONING



RECEIVED

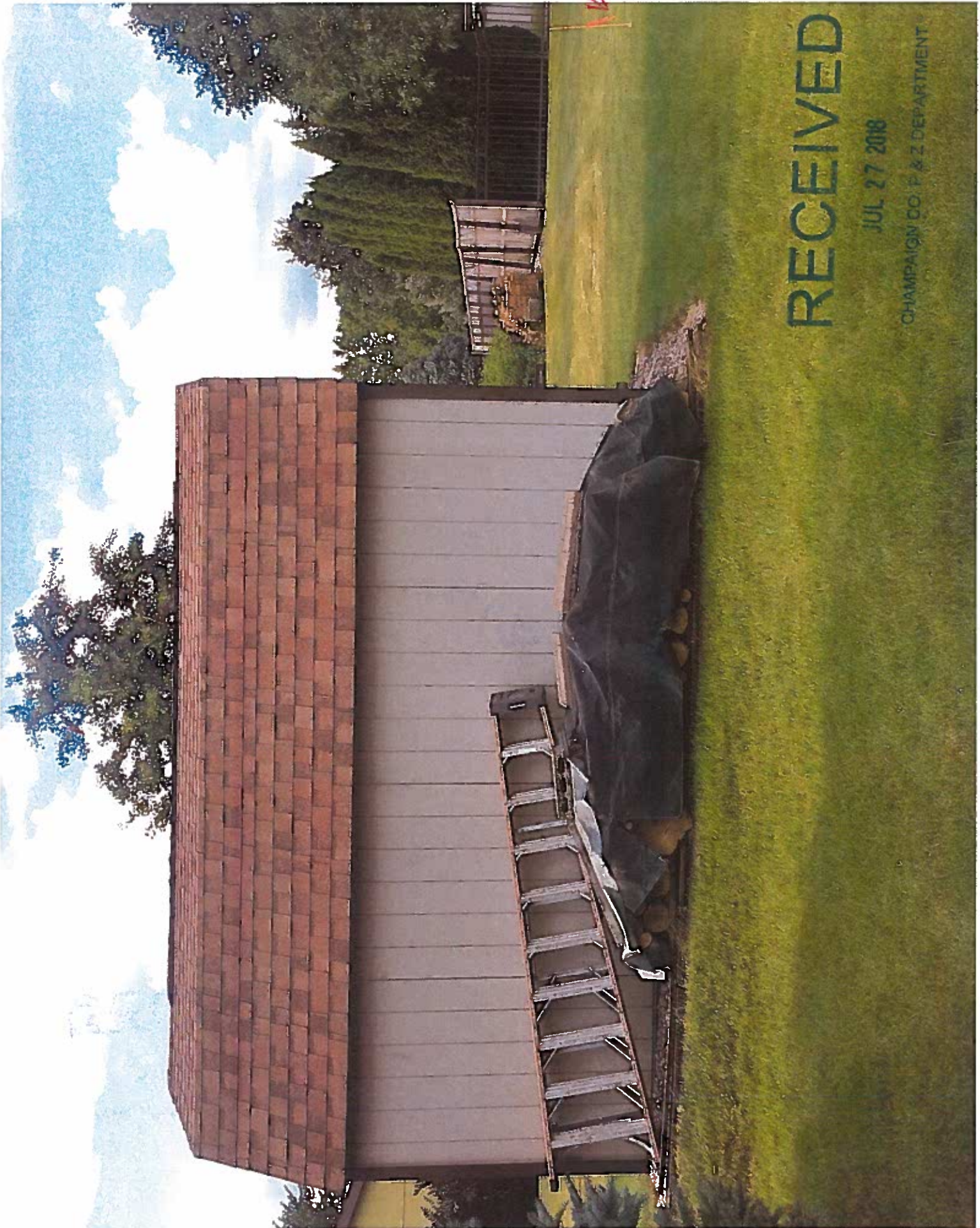
JUL 27 2018

CHAMPAIGN CO P & Z DEPARTMENT

DANNY ROY
1309 BRADFORD CL.
LOT 46
ST. JOSEPH, IL

SCALE : 1/16" = 1'-0"
 217-841-9071 7-27-18

Pin



RECEIVED

JUL 27 2018

CHAMPAIGN CO. P & Z DEPARTMENT



RECEIVED
OCT 27 2018
ZONING & ZONING DEPARTMENT



RECEIVED

JUL 27 2018

CHAMPAIGN CO. P & Z DEPARTMENT

PRELIMINARY DRAFT

919-V-18

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

of

Champaign County Zoning Board of Appeals

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

Date: *{January 17, 2019}*

Petitioner: **Danny Roy**

Request: **Authorize 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 in the AG-2 Agriculture Zoning District, per Section 7.2.1 B. of the Zoning Ordinance.**

Table of Contents

General Application Information..... 2

Required Variance..... 3

Specific Ordinance Requirements..... 3 - 4

Variance Evidence 5 - 7

Documents of Record..... 8

Case 919-V-18 Findings of Fact..... 9

Case 919-V-18 Final Determination 10

PRELIMINARY DRAFT

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **January 17, 2019**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner, Danny Roy, owns the subject property.
2. The subject property is a 0.56-acre lot that is Lot 46 of the Busboom's Wiltshire Estates 4th Subdivision in Section 13, Township 19 North, Range 10 East of the Third Principal Meridian, in St. Joseph Township and commonly known as the residence at 1309 Bradford Circle, St. Joseph.
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 Village of St. Joseph, 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 St. Joseph Township, which has a Plan Commission. Township 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 subject property is currently zoned AG-2 Agriculture. Land use is a single family residence.
 - B. Land to the north and west is zoned AG-2 Agriculture, with single family residences.
 - C. The lot to the southwest is zoned AG-2 Agriculture and has a single family residence.
 - D. The lot to the southeast is zoned R-1 Single Family Residential and has a single family residence.
 - E. The lot to the east is zoned R-1 Single Family Residential and has a single family residence.
 - F. Adjacent to the shed, there is a 10 feet wide "utility easement and pedestrian right-of-way" on the north property line per the Plat of Survey for Busboom's Wiltshire Estates 4th Subdivision recorded May 27, 1977.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Petitioner's Site Plan, received July 27, 2018, indicates the following:
 - (1) Existing buildings consist of the following:
 - a. One 2,355 square feet residence;
 - b. One 16 feet by 10 feet shed in the northeast corner of the property;
 - c. One leach field and septic tank in the south-center of the back yard; and
 - d. Several large trees and bushes throughout the property.

PRELIMINARY DRAFT**Case 919-V-18**

Page 3 of 10

- (2) The petitioner proposes a 24 feet by 18 feet addition to the southeast side of the house, as shown on the site plan for ZUPA #194-18-01 approved August 1, 2018.
- B. Previous Zoning Use Permits for the subject property are:
- (1) ZUPA #194-18-01 was approved on August 1, 2018, to construct an addition to the existing residence and authorize a previously constructed detached storage shed.
- a. A special condition of the approved permit was that the petitioner has to submit a variance application, and if not granted by the ZBA, they would have to move the shed.
- (2) ZUPA 145-89-01 was approved on May 25, 1989, to construct a single family residence with attached garage.
- C. There are no previous zoning cases for the subject property, but there are three zoning cases in the vicinity:
- (1) Case 064-V-96 was approved on March 6, 1997, for use of an addition to a single family home with a front yard of 21.5 feet in lieu of 25 feet at 1304 Dover Drive in the AG-2 Agriculture Zoning District, one block south of the subject property.
- (2) Case 189-V-99 was approved on July 1, 1999, for construction and use of a detached garage with a 2 feet side yard in lieu of 10 feet at 1305 Dover Drive in the AG-2 Agriculture Zoning District, one block south of the subject property.
- (3) Case 727-V-12 was approved on September 27, 2012, for an existing detached playhouse with a height of 17.5 in lieu of 15 feet at 1408 Peter Drive in the AG-2 Agriculture Zoning District, one block north of the subject property.
- D. The required variance is 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 in the AG-2 Agriculture Zoning District.

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.

PRELIMINARY DRAFT

- (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) “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.
 - (7) “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 predominantly 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.
 - 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. 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.

PRELIMINARY DRAFT**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, **“Established grown trees and underground power blocking the relocation of the shed. Lot is pie-shaped.”**
- B. There is a 10 feet wide “utility easement and pedestrian right-of-way” on the north property line per the Plat of Survey for Busboom’s Wiltshire Estates 4th Subdivision recorded May 27, 1977.
- (1) The shed is located 2 feet 4 inches outside the easement, and with no pedestrian use, it is effectively an extra 10 feet buffer from the property on the other side of the easement.

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, **“Moving the shed will delay and conflict with proposed new addition to the house. Cannot be over the underground utilities or cutting down large trees.”**
- B. Regarding the proposed Variance: without the proposed variance, the petitioner would have to move the shed to a less desirable area of the property or remove the shed.

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, other areas considered have established mature trees or underground utilities or large septic field.”**
- B. The subject property was a vacant lot in the 1988 aerial photography.
- C. According to the Assessor’s property records, the Petitioner purchased the property in 1989.
- D. The shed was constructed sometime between 2008 and 2011 without a permit from the Department of Planning & Zoning.
- E. Structures 150 square feet or more have required permits from the Department of Planning & Zoning since its adoption on October 10, 1973.

PRELIMINARY DRAFT

- F. When applying for ZUPA #194-18-01, the petitioner told P&Z Staff that he thought the 10 foot wide easement along the north property line was part of his property, and he has mowed that area for many years under that assumption.

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 existing shed location does not conflict with any utilities or to their access.”**
 - B. Regarding the proposed Variance for an accessory building with a side yard of 2 feet 4 inches in lieu of the minimum required 10 feet in the AG-2 Agriculture District: the requested variance is 23% of the minimum required, for a variance of 77%.
 - C. The Zoning Ordinance does not clearly state the considerations that underlay 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.
 - (2) Separation of structures to prevent conflagration: The subject property is within the St. Joseph-Stanton Fire Protection District and the station is approximately 1.5 road miles from the subject property. The nearest structure on adjacent property is a detached garage that is approximately 20 feet away; the nearest residence on adjacent property is approximately 60 feet away.
 - (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: **“Shed location is consistent with other sheds installed in the neighborhood.”**
 - B. The St. Joseph Township Road Commissioner has been notified of this variance but no comments have been received.
 - C. The St. Joseph-Stanton Fire Protection District has been notified of this variance but no comments have been received.
 - D. The nearest structure on adjacent property is a detached garage that is approximately 20 feet away; the nearest residence on adjacent property is approximately 60 feet away.

PRELIMINARY DRAFT

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: **“Relocation to other place on the lot would either be over the septic field or in obvious view of more neighbors.”**

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:

No special conditions are proposed at this time.

PRELIMINARY DRAFT

DOCUMENTS OF RECORD

1. Variance Application received July 26, 2018, with attachments:
 - A Site Plan received July 27, 2018 (same as approved site plan for ZUPA #194-18-01)
 - B Photos of shed received July 27, 2018
2. Plat of Survey for Busboom's Wiltshire Estates 4th Subdivision recorded May 27, 1977
3. Champaign County aerial photography from 1988, 2008, 2011, and 2017
4. Preliminary Memorandum dated January 10, 2019, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received July 27, 2018 (same as approved site plan for ZUPA #194-18-01)
 - C Images of Subject Property received July 27, 2018
 - D Draft Summary of Evidence, Finding of Fact, and Final Determination dated January 17, 2019

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **919-V-18** held on **January 17, 2019**, 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:}**

Case 919-V-18
Page 10 of 10

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 **919-V-18** is hereby **{GRANTED / GRANTED WITH CONDITIONS / DENIED}** 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.

{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:

_____, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date