

CASE NO. 950-V-19

PRELIMINARY MEMORANDUM

August 22, 2019

Petitioners: **Lyle and Harriet Cox**

Request: **Authorize a variance for an existing 5-acre lot in lieu of the maximum allowed 3 acres in area for lots with soils that are best prime farmland, per Section 5.3 of the Champaign County Zoning Ordinance.**

Subject Property: **A 5-acre lot in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 25, Township 22 North, Range 7 East of the Third Principal Meridian in Brown Township, commonly known as the residence with an address of 512 CR 3100N, Fisher.**

Site Area: **5 acres**

Time Schedule for Development: **Existing**

Prepared by: **Susan Burgstrom**, Senior Planner

John Hall, Zoning Administrator

BACKGROUND

The Cox family split the 5-acre subject property from the parent tract in 2006, after the amendment for maximum lot size on Best Prime Farmland was approved on July 22, 2004. The petitioners were unaware of the maximum 3 acre limit on Best Prime Farmland, and would now like to make the lot conforming to the Zoning Ordinance by way of a variance. There are no changes proposed to the property.

The P&Z Department has not received any comments regarding the proposed variance, and staff does not propose any special conditions of approval.

EXTRATERRITORIAL JURISDICTION

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

The subject property is located within Brown Township, which does not have a Planning Commission. Townships with Plan Commissions have protest rights on a variance and do receive notification of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Farmstead	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
East	Residential	AG-1 Agriculture
West	Residential	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture

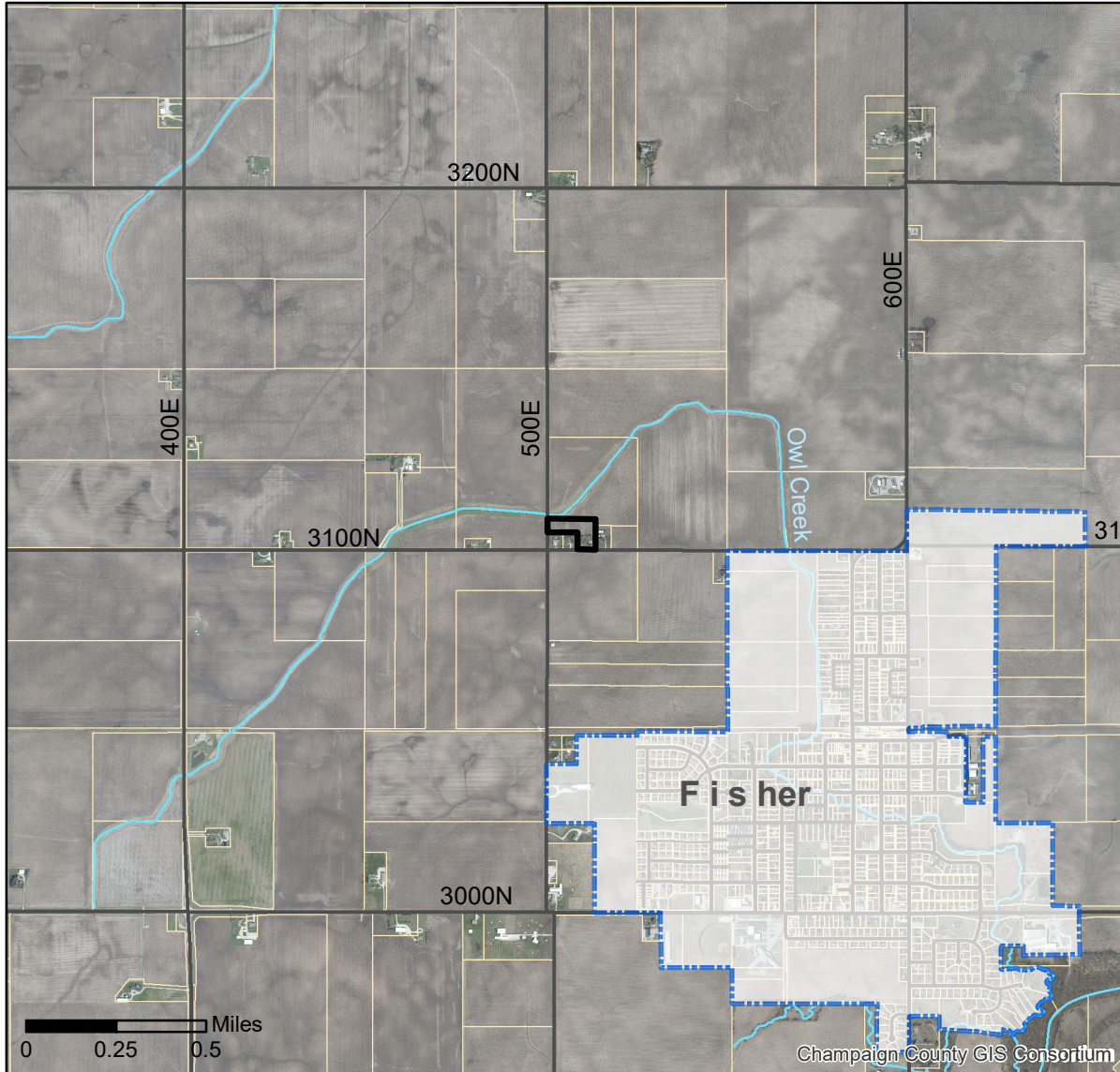
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan: Annotated Aerial created by P&Z staff on July 26, 2019
- C Site Images taken August 20, 2019
- D Summary of Evidence, Finding of Fact, and Final Determination for Case 950-V-19 dated August 29, 2019

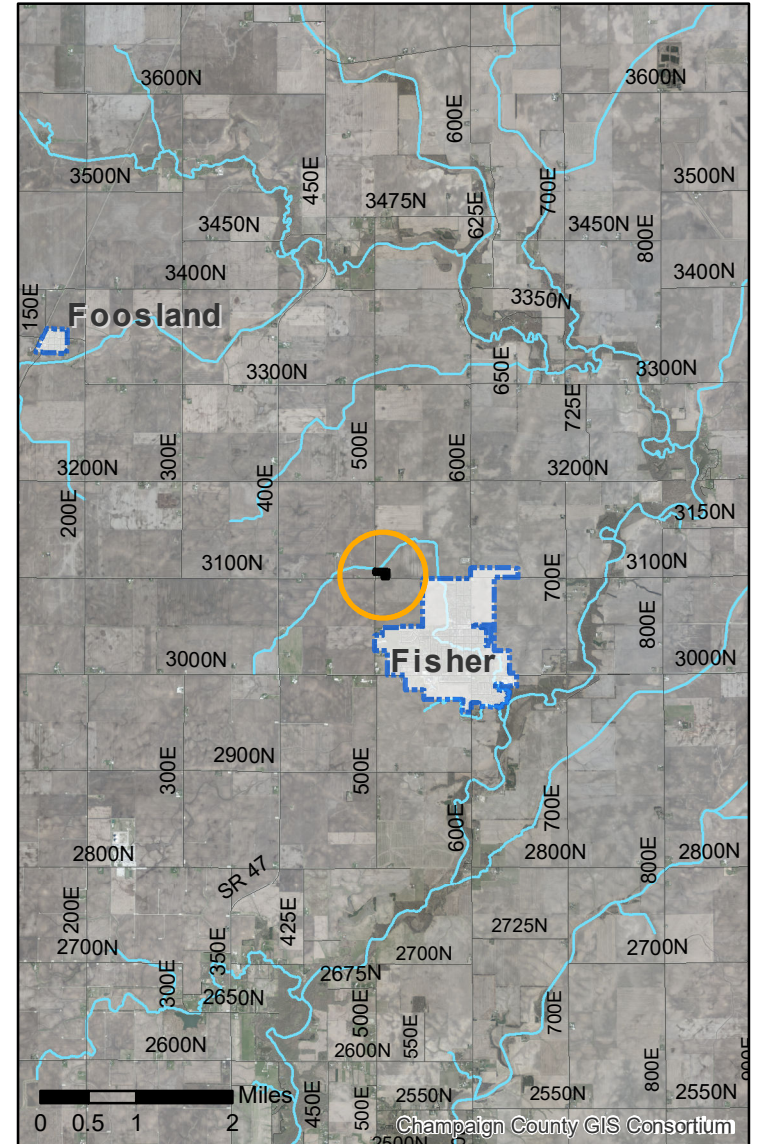
Location Map

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Subject Property



Property location in Champaign County



Legend

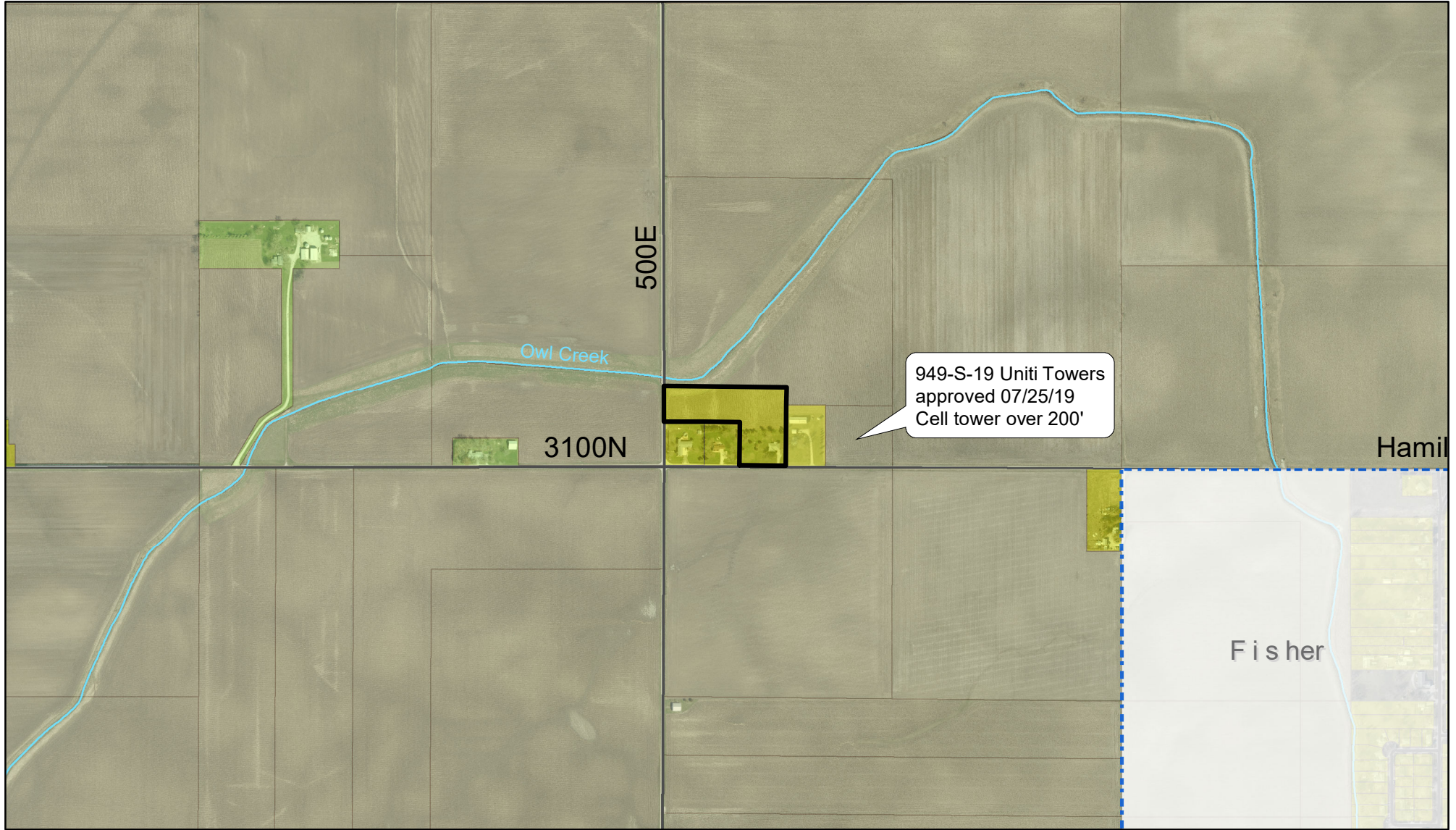
-  Subject Property
-  Municipal Boundary
-  Parcels
-  Streets



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Land Use Map

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Legend

- Subject Property
- Streets
- Agriculture
- Residential
- Municipal Boundary
- Streams
- Ag-Residential

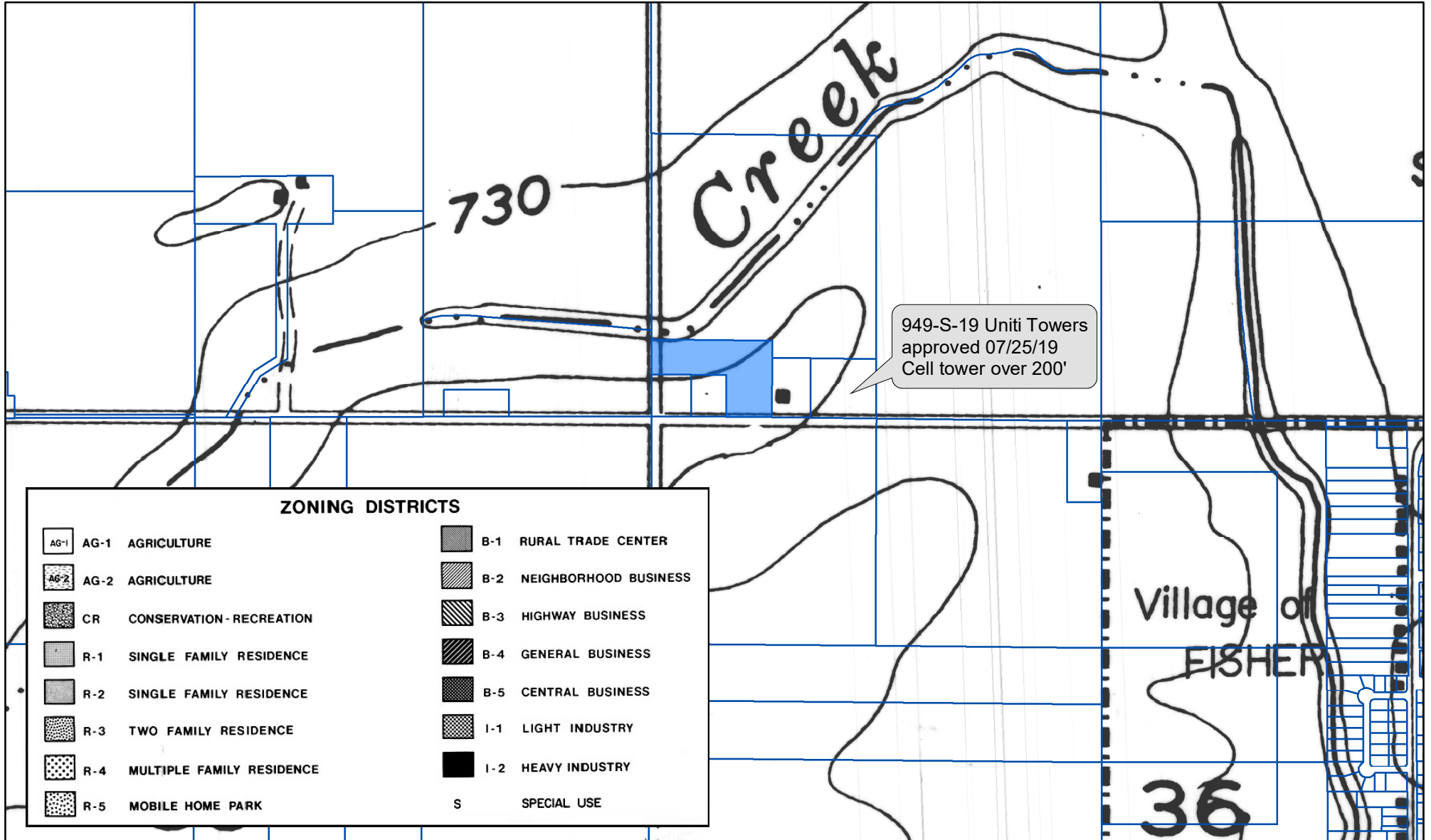
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Champaign County
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Zoning Map

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Legend

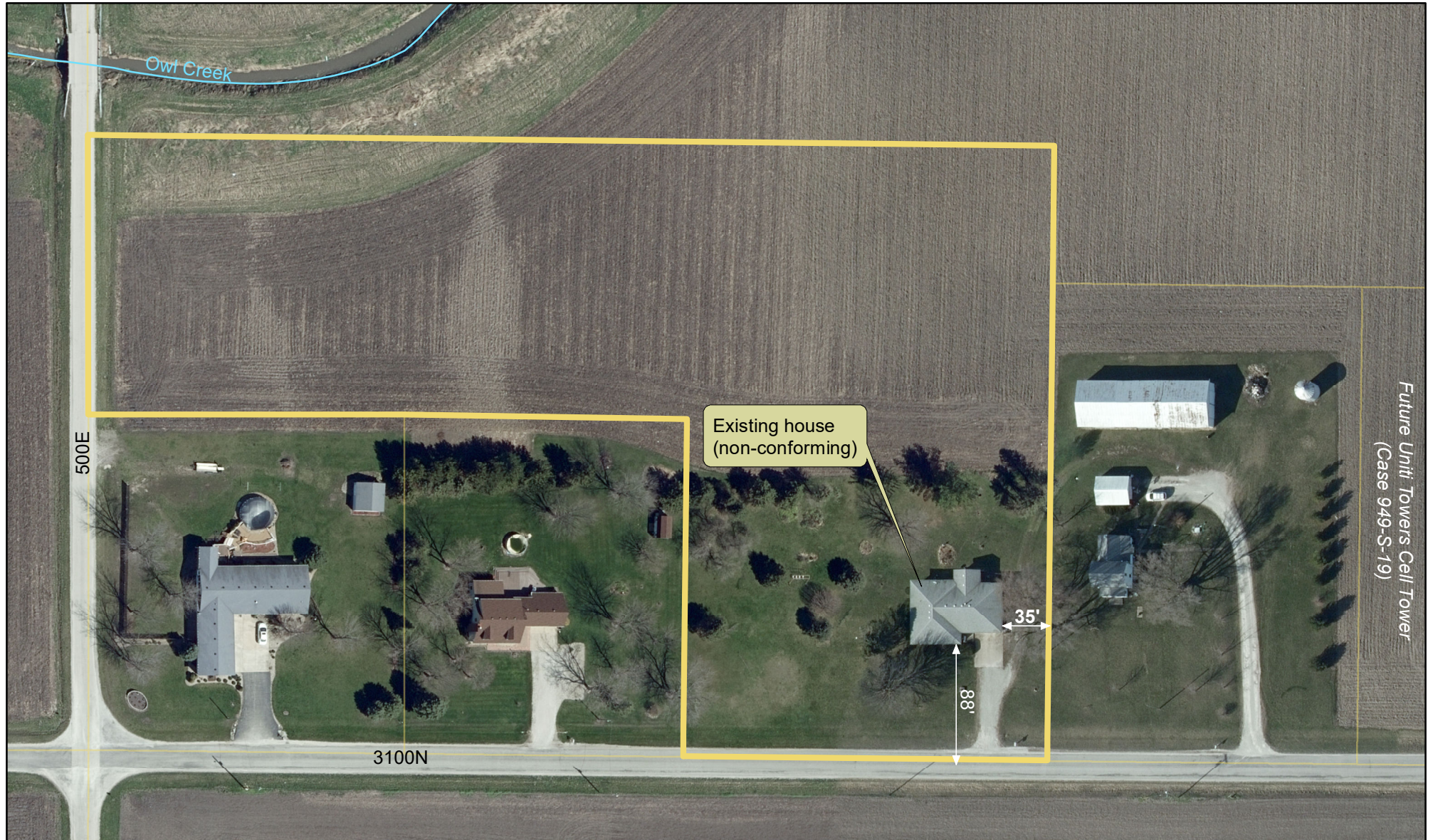
- Subject Property
- Parcels

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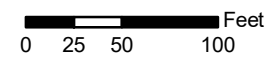
Site Plan: Annotated Aerial

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Legend

- Subject Property
- Parcels
- Streets
- Streams



950-V-19 Site Images



From CR 3100N facing NW



From CR 500E facing SW showing ag land on subject property

PRELIMINARY DRAFT

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**FINDING OF FACT
AND FINAL DETERMINATION
of the
Champaign County Zoning Board of Appeals**

Final Determination: ***{GRANTED/GRANTED WITH SPECIAL CONDITION(S)/DENIED}***

Date: ***{AUGUST 29, 2019}***

Petitioners: **Lyle and Harriet Cox, via agent Victoria Cox**

Request: **Authorize a variance for an existing 5-acre lot in lieu of the maximum allowed 3 acres in area for lots with soils that are best prime farmland, per Section 5.3 of the Champaign County Zoning Ordinance.**

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SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **August 29, 2019**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Lyle and Harriet Cox, 512 CR 3100N, Fisher, own the subject property. Their daughter, Victoria Cox, is agent on behalf of the petitioners.
2. The subject property is a 5-acre lot in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 25, Township 22 North, Range 7 East of the Third Principal Meridian in Brown Township, commonly known as the residence with an address of 512 CR 3100N, Fisher.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is located within the one and one-half mile extraterritorial jurisdiction of the Village of Fisher, a municipality with zoning. Municipalities do not have protest rights on a variance and are typically not notified of such cases.
 - B. The subject property is located within Brown Township, which does not have a Planning Commission. Townships with Plan Commissions have protest rights on a variance and do receive notification of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. The 5 acre subject property is zoned AG-1 Agriculture and is a farmstead.
 - B. Land to the north and south of the subject property is zoned AG-1 Agriculture and is in agricultural production.
 - C. Land to the east and west of the subject property is zoned AG-1 Agriculture and is residential in use.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The site plan is an annotated aerial photo, and indicates the following:
 - (1) The 5-acre lot was created in 2006 in compliance with the *Illinois Plat Act (765 ILCS 205)*, but not in compliance with the Zoning Ordinance requirement for a maximum 3 acre lot on Best Prime Farmland.
 - (2) The only existing structure on the property is a residence that was constructed prior to the adoption of the Zoning Ordinance on October 10, 1973.
 - (3) There is no construction proposed.
 - B. There are no Zoning Use Permits for the subject property.
 - C. The requested variance is for a lot size of 5 acres in lieu of the maximum area of 3 acres for lots with soils that are best prime farmland, per Section 5.3 of the Zoning Ordinance.

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GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variances (capitalized words are defined in the Ordinance):
- (1) “AGRICULTURE” is the growing, harvesting and storing of crops including legumes, hay, grain, fruit and truck or vegetable crops, floriculture, horticulture, mushroom growing, orchards, forestry and the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, pony and horse production, fur farms, and fish and wildlife farms; farm BUILDINGS used for growing, harvesting and preparing crop products for market, or for use on the farm; roadside stands, farm BUILDINGS for storing and protecting farm machinery and equipment from the elements, for housing livestock or poultry and for preparing livestock or poultry products for market; farm DWELLINGS occupied by farm OWNERS, operators, tenants or seasonal or year-round hired farm workers. It is intended by this definition to include within the definition of AGRICULTURE all types of agricultural operations, but to exclude therefrom industrial operations such as a grain elevator, canning or slaughterhouse, wherein agricultural products produced primarily by others are stored or processed. Agricultural purposes include, without limitation, the growing, developing, processing, conditioning, or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds.
 - (2) “AREA, LOT” is the total area within the LOT LINES.
 - (3) “BEST PRIME FARMLAND” is Prime Farmland Soils identified in the Champaign County Land Evaluation and Site Assessment (LESA) System that under optimum management have 91% to 100% of the highest soil productivities in Champaign County, on average, as reported in the *Bulletin 811 Optimum Crop Productivity Ratings for Illinois Soils*. Best Prime Farmland consists of the following:
 - (a) Soils identified as Agriculture Value Groups 1, 2, 3 and/or 4 in the Champaign County Land Evaluation and Site Assessment (LESA) System;
 - (b) Soils that, in combination on a subject site, have an average LE of 91 or higher, as determined by the Champaign County LESA System; or
 - (c) Any development site that includes a significant amount (10% or more of the area proposed to be developed) of Agriculture Value Groups 1, 2, 3 and/or 4 soils, as determined by the Champaign County LESA System.
 - (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.

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- B. Section 5.3 of the Zoning Ordinance Footnote 13 states:
13. The following maximum LOT AREA requirements apply in the CR, AG-1 and AG-2 DISTRICTS:
 - A) LOTS that meet all of the following criteria may not exceed a maximum LOT AREA of three acres:
 - 1) The LOT is RRO-exempt;
 - 2) The LOT is made up of soils that are BEST PRIME FARMLAND; and
 - 3) The LOT is created from a tract that had a LOT AREA greater than or equal to 12 acres as of January 1, 1998.
- 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 9.1.9C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - d. That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.
 - e. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
 - (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9 D.2.
- D. Paragraph 9.1.9 E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
 - A. The Petitioners testified the following on the application: **“The lot was created without knowledge of zoning rule regarding prime farm ground.”**

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- B. Regarding the soils that make up the subject property:
- (1) The soil on the 5-acre lot is BEST PRIME FARMLAND and consists of Drummer silty clay loam 152A and Elliott silty clay loam 146B2, and has an average LE of 90. Although the average LE is less than 91, more than 10% of the lot is comprised of soils in Agricultural Value Group 2, meeting the definition of BEST PRIME FARMLAND.

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 Petitioners testified the following on the application: **“Without the variance the lot would be illegal and building or rebuilding could not occur.”**
 - B. The existing non-conforming dwelling cannot be reconstructed in this location should it become damaged or destroyed without first obtaining the requested variance from the Champaign County Zoning Board of Appeals. Approving this variance in advance of possible damage or destruction will decrease the process and time needed before the petitioners could rebuild by at least one to two months.
 - C. The situation prompting the requested variance was found by P&Z Staff during lot history research for Case 949-S-19, the Uniti Towers cell tower approved on July 25, 2019. The co-petitioner for that case was landowner Victoria Cox, daughter to Harriet and Lyle Cox. Given the option by P&Z Staff to request the variance now, or wait until the variance might be prompted by destruction or damage to the house, Victoria Cox requested it now so it would not be a concern for her parents.

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 Petitioners testified the following on the application: **“No.”**
 - B. The 5-acre lot was lawfully created prior to the 2006 tax maps, which was within 18 months of adoption of the maximum lot size on best prime farmland requirement.
 - (1) The lot did not require subdivision approval through the P&Z Department, so there is no reason the petitioners would have known of this requirement when creating the lot.

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 Petitioners testified the following on the application: **“There will be no change to the land use or structures on the property.”**

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- B. The maximum lot size on best prime farmland requirement was first established by Ordinance No. 726 (Case 444-AT-04) on July 22, 2004. It was made permanent with Ordinance No. 773 approved December 20, 2005.
- C. Ordinance No. 914 (Case 711-AT-12) approved on November 27, 2012, revised the best prime farmland definition to have a Land Evaluation (LE) rating of 91 or higher rather than the previous rating of 85 or higher.
- D. The 5 acre lot area is 167% of the required three acre maximum, for a variance of 167%.
- E. The requested variance is not prohibited by the *Zoning Ordinance*.

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

- 11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
 - A. The Petitioners testified the following on the application: **“There will be no change to the land use or structures on the property.”**
 - B. The Owl Creek Drainage District has been notified of this variance, but no comments have been received.
 - C. The Brown Township Highway Commissioner has been notified of this variance, but no comments have been received.
 - D. The Brown Township Supervisor has been notified of this variance, but no comments have been received.
 - E. The Sangamon Valley Fire Protection District has been notified of this variance, but no comments have been received.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

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

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

- 13. Regarding proposed special conditions of approval:

No special conditions are proposed at this time.

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DOCUMENTS OF RECORD

1. Application for Variance Permit received July 17, 2019
2. Site Plan: Annotated Aerial created by P&Z staff on July 26, 2019
3. Preliminary Memorandum dated August 22, 2019, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan: Annotated Aerial created by P&Z staff on July 26, 2019
 - C Site Images taken August 20, 2019
 - D Summary of Evidence, Finding of Fact, and Final Determination for Case 950-V-19 dated August 29, 2019

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **950-V-19** held on **August 29, 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:}*

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FINAL DETERMINATION

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

The Variance requested in Case **950-V-19** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Lyle and Harriet Cox**, to authorize the following variance in the AG-1 Agriculture Zoning District:

Authorize a variance for an existing 5-acre lot in lieu of the maximum allowed 3 acres in area for lots with soils that are best prime farmland, per Section 5.3 of the Champaign County 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