Champaign County
Department of



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

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

CASE NO. 963-V-19

PRELIMINARY MEMORANDUM November 7, 2019

Petitioners: Gordon Deck

Request: Authorize a variance for the construction and use of an accessory

structure with an average height of 18.75 feet in lieu of the maximum allowed average height of 15 feet in the R-3 Two-Family Residence Zoning District, per Section 5.3 of the Champaign County Zoning

Ordinance.

Subject Property: A 0.46 acre lot that is the South Half of Lot 55 in Fred C. Carroll's

Subdivision of the East Half of the Northwest Quarter of the East Half of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian in Urbana Township, commonly known as the

residence with an address of 1109 Carroll Avenue, Urbana.

Site Area: 0.46 acres

Time Schedule for Development: Already in use

Prepared by: Susan Burgstrom, Senior Planner

John Hall, Zoning Administrator

BACKGROUND

The petitioner received approval for Zoning Use Permit Application #149-19-01 to construct a detached shed for personal storage. When the petitioner applied for the permit, he verbally indicated that the walls would be 11 feet tall with a 4:12 roof pitch, equating to an average height of 15.17 feet. The maximum allowed average height of an accessory structure on less than one acre of land is 15 feet.

- (1) Administrative variance Case 944-AV-19 was approved on July 5, 2019, to allow Mr. Deck's shed to have a height of 15.17 feet in lieu of the maximum allowed 15 feet.
- Zoning Administrator John Hall performed a compliance inspection on September 9, 2019, and found the detached shed to have 14 feet tall walls and an estimated average height of 18.75 feet. In a letter dated September 12, 2019, he told Mr. Deck that he could reduce the height of the structure or apply for a variance for height.

The Zoning Ordinance has two different maximum average heights for detached accessory buildings. Lots with an area of less than one acre can have detached accessory buildings up to 15 feet tall. Those on lots of one acre or more in area can be up to 24 feet tall. The subject property has a lot area of 0.46 acres.

The P&Z Department has not received any comments regarding the proposed variance, but has received complaints regarding use of the shed for business purposes, which is not allowed. P&Z Staff proposes one special condition of approval that is the same as the special condition from the ZUPA. More information on the complaint can be found under "No business use permitted" section below.

EXTRATERRITORIAL JURISDICTION

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.

The subject property is located within Urbana 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

Direction	Land Use	Zoning
Onsite	Residential	R-3 Two Family Residence
North	Residential	R-3 Two Family Residence
East	Residential R-3 Two Family Residence	
West	Multi-family residential	City of Urbana zoning
South	Multi-family residential	City of Urbana zoning

Table 1. Land Use and Zoning in the Vicinity

NO BUSINESS USE PERMITTED

Regarding whether practical difficulties result from the actions of the petitioner, Item 9.C. in the Summary of Evidence dated November 14, 2019 states:

- C. ZUPA# 149-19-01 for construction of the shed only allows for personal storage, and the petitioner signed a statement that he would not use this shed for his sewer business.
 - (1) Complaints have been received that Mr. Deck is using the shed for business purposes. The complainant states that business vehicles and equipment are being stored in the shed.
 - On September 9, 2019 and October 23, 2019, P&Z Staff visited the site and found vehicles and equipment for Mr. Deck's business stored in the shed. Mr. Deck has told staff numerous times that the shed will not be used for personal business, and that the vehicles were only being used to fill soil around the shed.
 - a. In a phone call on October 24, 2019, Mr. Deck told Susan Burgstrom that someone brings him soil when they have it, and he uses that little by little to fill around the shed. He cannot predict when they will bring it, but thought it might take another one to two months to finish. The business vehicles will not be stored in the shed once the fill is done, as he has two other sheds where his business equipment and vehicles are kept.

Gordon Deck November 7, 2019

PROPOSED SPECIAL CONDITION

A special condition of approved ZUPA #149-19-01 for the detached storage shed states the following:

A. The tenant of the home shall have the use of at least 50% of the area of the building for personal storage only. The owner of the property shall be able to use the remaining portion of the building for personal storage only. No business activities including storage of materials or parking of vehicles related to a business either inside or outside of the building shall take place without the proper approvals from the Champaign County Department of Planning & Zoning.

The above special condition is required to ensure the following:

No unauthorized business use can establish on the subject property.

ATTACHMENTS

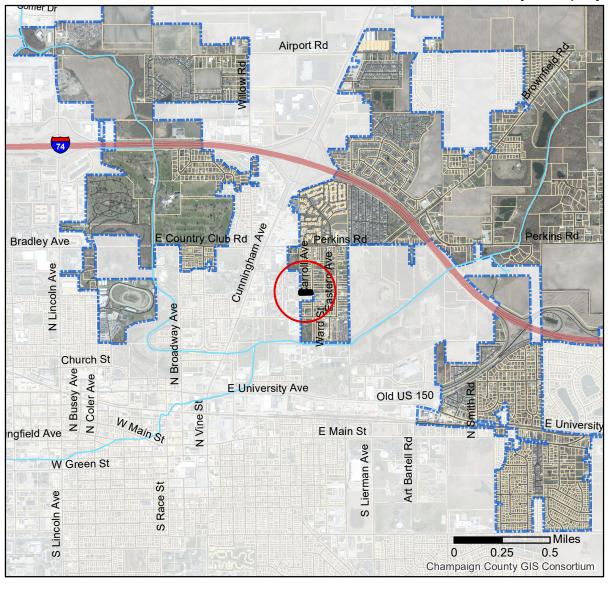
- A Case Maps (Location, Land Use, Zoning)
- B Site Plan: Annotated 2017 aerial photo created by P&Z Staff on October 23, 2019
- C Site Plan for ZUPA 149-19-01 approved July 18, 2019 (2 pages)
- D Images of Subject Property taken October 23, 2019
- E Draft Summary of Evidence, Finding of Fact, and Final Determination dated November 14, 2019

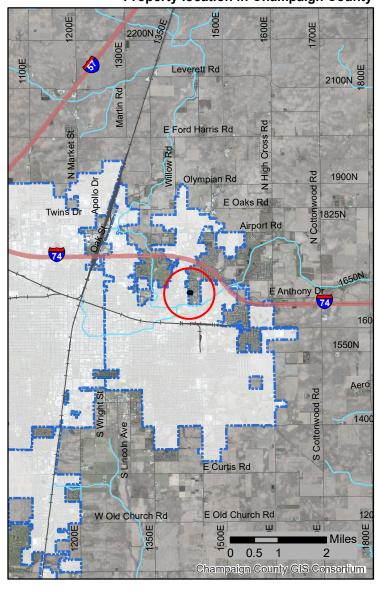
Location Map

Case 963-S-19 November 14, 2019

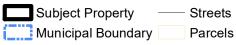
Subject Property

Property location in Champaign County





Legend

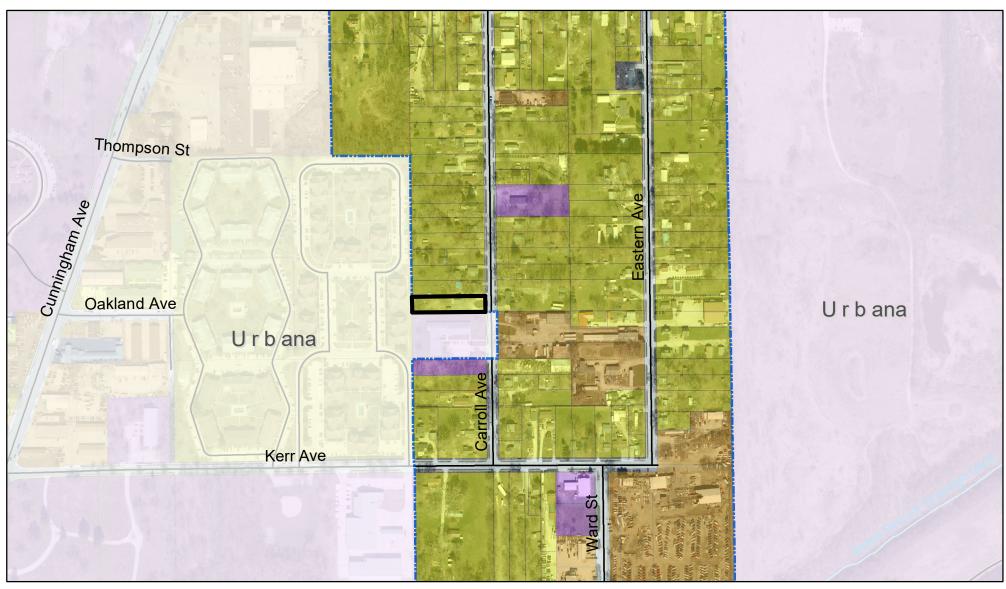






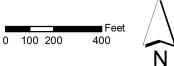
Land Use Map

Case 963-V-19 November 14, 2019



Legend

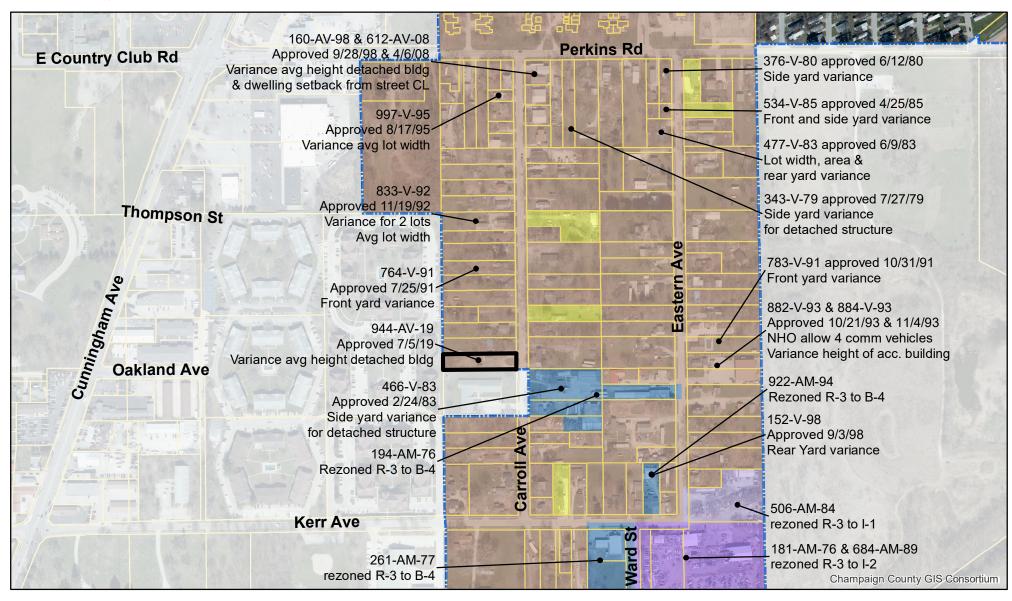






Zoning Map

Case 963-V-19 November 14, 2019











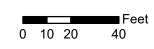
Site Plan: Annotated 2017 Aerial

Case 963-S-19 November 14, 2019



Legend

Subject Property

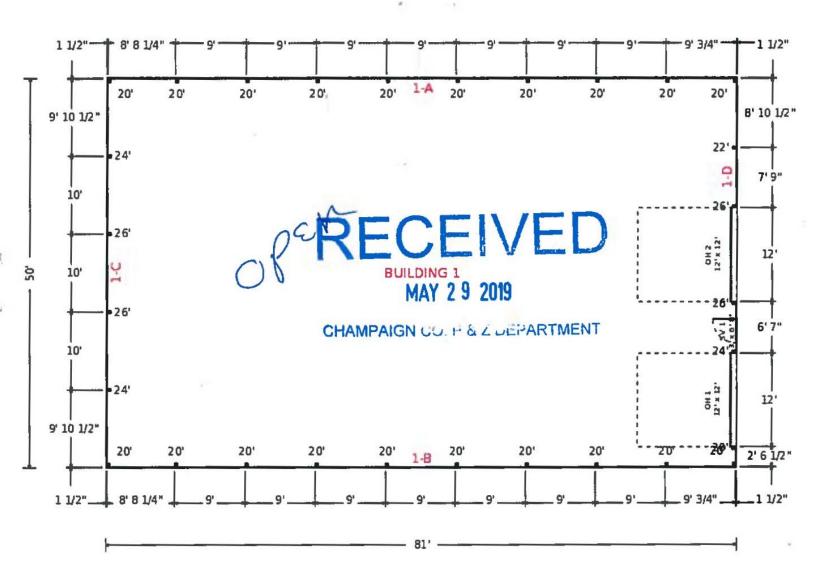






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Gordon Doct	Dates
CCDPZ Form 12/01/14	

FLOOR PLAN



963-V-19 Site Images



Subject property house and new shed



Apartments south of subject property (new shed on right side of slatted fence)

November 14, 2019 ZBA

963-V-19 Site Images



Closer view of shed



North side of shed, facing west to apartments behind shed

PRELIMINARY DRAFT

963-V-19

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: {November 14, 2019}

Petitioner: Gordon Deck

Request: Authorize a variance for the construction and use of an accessory structure with an average height of 18.75 feet in lieu of the maximum allowed average height of 15 feet in the R-3 Two Family Residence Zoning District, 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 **November 14, 2019,** the Zoning Board of Appeals of Champaign County finds that:

- 1. The petitioner, Gordon Deck, 1907 Country Squire Drive, Urbana, owns the subject property.
- 2. The subject property is a 0.46 acre lot that is the South Half of Lot 55 in Fred C. Carroll's Subdivision of the East Half of the Northwest Quarter of the East Half of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian in Urbana Township, commonly known as the residence with an address of 1109 Carroll 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. 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 subject property is a 0.46-acre lot that is currently zoned R-3 Two Family Residence and is residential in use.
 - B. Land to the north and east is zoned R-3 Two Family Residence and is residential in use.
 - C. Land to the south and west is in the City of Urbana and is residential in use.

GENERALLY REGARDING THE PROPOSED SITE PLAN

- 5. Regarding the site plan for the 0.46-acre subject property:
 - A. P&Z Staff prepared an annotated aerial photo to serve as the official site plan for this case. The following information can be found on the annotated aerial:
 - (1) A single-family residence constructed in 1954; and
 - (2) A 50 feet by 81 feet detached garage constructed under ZUPA# 149-19-01.
 - (3) Dimensions between the new shed and property lines were provided by John Hall based on measurements taken on his September 9, 2019 site visit.
 - B. The Site Plan from Zoning Use Permit 149-19-01, received May 29, 2019 and approved July 18, 2019, includes the following features:
 - (1) A single-family residence constructed in 1954; and
 - (2) A 50 feet by 81 feet detached garage constructed under ZUPA# 149-19-01.
 - a. The approved permit only allows for personal storage, and the petitioner signed a statement that he would not use this shed for his sewer business.

- C. When the petitioner applied for the Zoning Use Permit for the shed, he verbally indicated that the walls would be 11 feet tall with a 4:12 roof pitch, equating to an average height of 15.17 feet.
 - (1) Administrative variance Case 944-AV-19 was approved on July 5, 2019, to allow Mr. Deck's shed to have a height of 15.17 feet in lieu of the maximum allowed 15 feet for a residential accessory structure on a lot less than one acre in area.
 - Zoning Administrator John Hall performed a compliance inspection on September 9, 2019, and found the detached shed to be taller than what was proposed for the Zoning Use Permit. In a letter to Mr. Deck dated September 12, 2019, he told Mr. Deck that he could reduce the height of the structure or apply for a variance for height.
- D. The following are previous Zoning Use Permits for the subject property:
 - (1) ZUPA #149-19-01 was approved on July 18, 2019, to construct a detached storage building for personal use only.
 - (2) ZUPA #309-15-01 was approved on November 12, 2015, to move a detached garage on the subject property and construct a covered front porch.
 - (3) ZUPA #247-91-04 was approved on September 6, 1991, to construct a porch addition.
- E. There is one previous zoning case for the subject property: Case 944-AV-19 as detailed in 5.B.(1) above.
- F. The required variance is to allow an accessory structure with an average height of 18.75 feet in lieu of the maximum allowed average height of 15 feet in the R-3 Two Family Residence 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" is an enclosed STRUCTURE having a roof supported by columns, walls, arches, or other devices and used for the housing, shelter, or enclosure of persons, animal, and chattels.
 - (3) "BUILDING, DETACHED" is a BUILDING having no walls in common with other BUILDINGS.
 - (4) "HEIGHT" as applied to a story is the vertical measurement between the surface of any floor and the surface of the floor next above it, or if there is no floor above, then the vertical measurement between the surface of the floor and the ceiling next above it.

PRELIMINARY DRAFT

As applied to a BUILDING is the vertical measurement from GRADE to a point midway between the highest and lowest points of the roof.

As Applied to an Enclosed or Unenclosed STRUCTURE: STRUCTURE, DETACHED: The vertical measurement from the average level of the surface of the ground immediately surrounding such STRUCTURE to the uppermost portion of such STRUCTURE.

STRUCTURE, ATTACHED: Where such STRUCTURE is attached to another STRUCTURE and is in direct contact with the surface of the ground, the vertical measurement from the average level of the surface of the ground immediately adjoining such STRUCTURE to the uppermost portion of such STRUCTURE shall be the HEIGHT. Where such STRUCTURE is attached to another STRUCTURE and is not in direct contact with the surface of the ground, the vertical measurement from the lowest portion of such STRUCTURE to the uppermost portion shall be the HEIGHT.

- (5) "SPECIAL CONDITION" is a condition for the establishment of a SPECIAL USE.
- (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.
- B. Paragraph 5.1.6 states: The R-3, Two Family Residence DISTRICT is intended to provide areas for SINGLE and TWO FAMILY DWELLINGS, set on medium sized building LOTS and is intended for application within or adjoining developed areas where community facilities exist.
- 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. Maximum average HEIGHT for a residential ACCESSORY BUILDING in the R-3 Two Family District is established in Section 5.3, Footnote 4 of the Zoning Ordinance as 15 feet on lots less than one acre in area and 24 feet on lots one acre or more in area.
 - (1) Average height for a building is calculated as the vertical measurement from grade to a point midway between the highest and lowest points of the roof as per Section 3.0 of the Zoning Ordinance, under definition of HEIGHT.

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, "It will bring the value of property up, it blocks disturbance from apartments behind, looks better."
 - B. Regarding the proposed Variance for an average HEIGHT of 18.75 feet in lieu of the maximum allowed 15 feet for an accessory structure:
 - (1) A lot of 1 or more acres can have a detached building with an average height of up to 25 feet; there is at least one such shed on a lot of one acre or more in the neighborhood that the petitioner referred to in a discussion with John Hall on September 11, 2019.

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, "Won't be able to store nothing inside.

 Property will look downgraded and is very expensive to lower or tear down."
 - B. Regarding the proposed Variance for exceeding the maximum allowed average height of a residential accessory structure: without the proposed variance, the petitioner would have to remove the new shed or reduce the height by several feet, which would be expensive.

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, "Yes, done as much as I can to bring value to property."
 - B. The petitioner verbally told P&Z Staff that he did not know why the walls came in at 14 feet tall, as he thought he had purchased 11 feet tall walls, which would have been compliant with the height variance he received in case 944-AV-19.

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 - (1) The petitioner has not provided documentation from the shed manufacturer to support this statement.
 - C. ZUPA# 149-19-01 for construction of the shed only allows for personal storage, and the petitioner signed a statement that he would not use this shed for his sewer business.
 - (1) Complaints have been received that Mr. Deck is using the shed for business purposes. The complaints are that business vehicles and equipment are being stored in the shed.
 - (2) On September 9, 2019 and October 23, 2019, P&Z Staff visited the site and found vehicles and equipment for Mr. Deck's business stored in the shed. Mr. Deck has told staff numerous times that the shed will not be used for personal business, and that the vehicles were only being used to fill soil around the shed.
 - a. In a phone call on October 24, 2019, Mr. Deck told Susan Burgstrom that someone brings him soil when they have it, and he uses that little by little to fill around the shed. He cannot predict when they will bring it, but thought it might take another one to two months to finish. The business vehicles will not be stored in the shed once the fill is done, as he has two other sheds where his business equipment and vehicles are kept.

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 property is well taken care of, is not an eyesore."
 - B. Regarding the proposed variance for exceeding the maximum allowed average height of 15 feet: the requested variance is 125% of the maximum average height allowed, for a variance of 25%.
 - (1) Presumably, the height requirements are to ensure that there are no shadow or visual impediments for adjacent neighbors. The nearest neighboring residential structure is 50 feet to the south.

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: "There are other buildings in the area and there will be no nuisance to the neighborhood."
 - B. The Urbana Township Road Commissioner has been notified of this variance and no comments have been received.
 - C. The Carroll 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 has testified on the application: "Need the building for storage and the property."

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

- 13. Regarding proposed special conditions of approval, a special condition of ZUPA #149-19-01 for the detached storage shed states the following:
 - A. The tenant of the home shall have the use of at least 50% of the area of the building for personal storage only. The owner of the property shall be able to use the remaining portion of the building for personal storage only. No business activities including storage of materials or parking of vehicles related to a business either inside or outside of the building shall take place without the proper approvals from the Champaign County Department of Planning & Zoning.

The above special condition is required to ensure the following:

No unauthorized business use can establish on the subject property.

DOCUMENTS OF RECORD

- 1. Variance Application received September 26, 2019, with attachments:
- 2. Site Plan: Annotated 2017 aerial photo created by P&Z Staff on October 23, 2019
- 3. Site Plan for ZUPA 149-19-01 approved July 18, 2019 (2 pages)
- 4. Preliminary Memorandum dated November 7, 2019, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan: Annotated 2017 aerial photo created by P&Z Staff on October 23, 2019
 - C Site Plan for ZUPA 149-19-01 approved July 18, 2019 (2 pages)
 - D Images of Subject Property taken October 23, 2019
 - E Draft Summary of Evidence, Finding of Fact, and Final Determination dated November 14, 2019

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **963-V-19** held on **November 14, 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:}
 - A. The tenant of the home shall have the use of at least 50% of the area of the building for personal storage only. The owner of the property shall be able to use the remaining portion of the building for personal storage only. No business activities including storage of materials or parking of vehicles related to a business either inside or outside of the building shall take place without the proper approvals from the Champaign County Department of Planning & Zoning.

The above special condition is required to ensure the following:

No unauthorized business use can establish on the subject property.

PRELIMINARY DRAFT

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SIGNED:

Date

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 **963-V-19** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioner, **Gordon Deck**, to authorize the following variance in the R-3 Single Family Residence Zoning District:

Authorize a variance for the construction and use of an accessory structure with an average height of 18.75 feet in lieu of the maximum allowed average height of 15 feet in the R-3 Two Family Residence Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

A. The tenant of the home shall have the use of at least 50% of the area of the building for personal storage only. The owner of the property shall be able to use the remaining portion of the building for personal storage only. No business activities including storage of materials or parking of vehicles related to a business either inside or outside of the building shall take place without the proper approvals from the Champaign County Department of Planning & Zoning.

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

Ryan Elwell, Chair Champaign County Zoning Board of Appeals
ATTEST:

Secretary to the Zoning Board of Appeals