

# CASE NO. 970-V-19

PRELIMINARY MEMORANDUM

July 9, 2020

Petitioner: **Jeff Ault**

Request: **Authorize a variance for a side yard of 8 feet in lieu of the minimum required 15 feet for an existing residence in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.**

Subject Property: **An 8.18 acre joint lot development comprised of a 2.34 acre lot and a 5.84 acre lot in in the East Half of the East Half of Section 18, Township 21 North, Range 14 West of the Second Principal Meridian in Compromise Township, and commonly known as the residence at 2739 CR 2600E, Penfield.**

Site Area: **8.18 acres**

Time Schedule for Development: **Existing**

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

**John Hall, Zoning Administrator**

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## BACKGROUND

Mr. Ault built his house in 1996, and was unaware of the permitting and side yard regulations because he was told that no permit was needed due to an agricultural exemption. The exemption was available to the previous owner because of farming income, but it was not applicable to Mr. Ault. When Mr. Ault applied for a Zoning Use Permit in October 2019 for a new shed, P&Z staff found that the house’s side yard did not meet the minimum required, and told Mr. Ault that a new permit could not be approved for the shed until he applied for a variance for the side yard.

The subject property is surrounded by Rademacher Farms, which is land in production owned by the petitioner’s father-in-law. There is 25 feet of grass between the south side of the house and the land in production, even though there is only 8 feet between the south side of the house and the property line.

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

## EXISTING LAND USE AND ZONING

**Table 1. Land Use and Zoning in the Vicinity**

<b>Direction</b>	<b>Land Use</b>	<b>Zoning</b>
Onsite	Residential	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
East	Agriculture	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture

## **EXTRATERRITORIAL JURISDICTION**

The subject property is not within the one and one-half mile extraterritorial jurisdiction (ETJ) of a municipality with zoning.

The subject property is located within Compromise Township, which has a Planning Commission. Townships with Plan Commissions have protest rights on a variance and are notified of such cases.

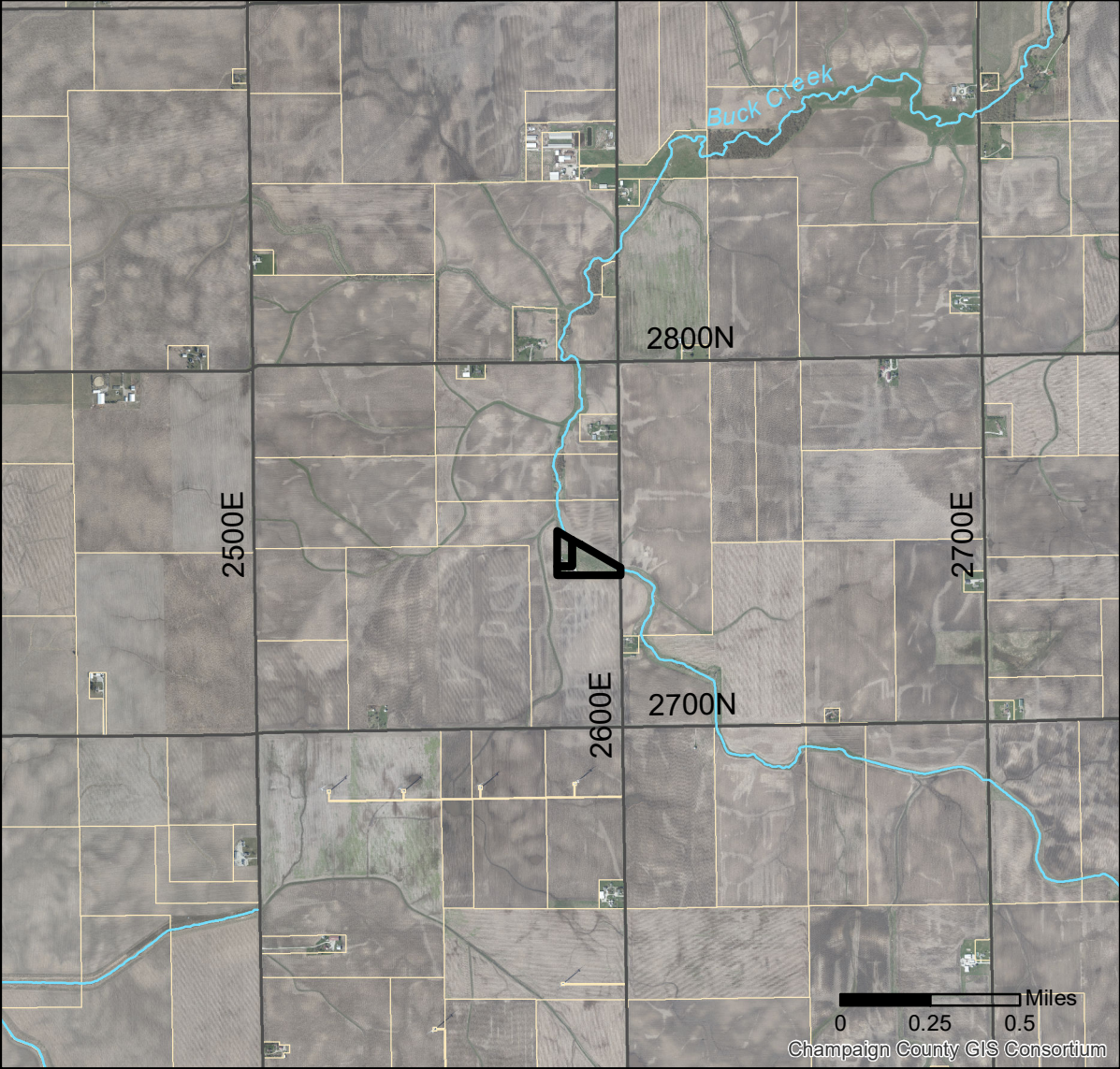
## **ATTACHMENTS**

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan approved on November 27, 2019 for Zoning Use Permit 294-19-03
- C Images of Subject Property taken January 21, 2020
- D Draft Summary of Evidence, Finding of Fact, and Final Determination dated July 16, 2020

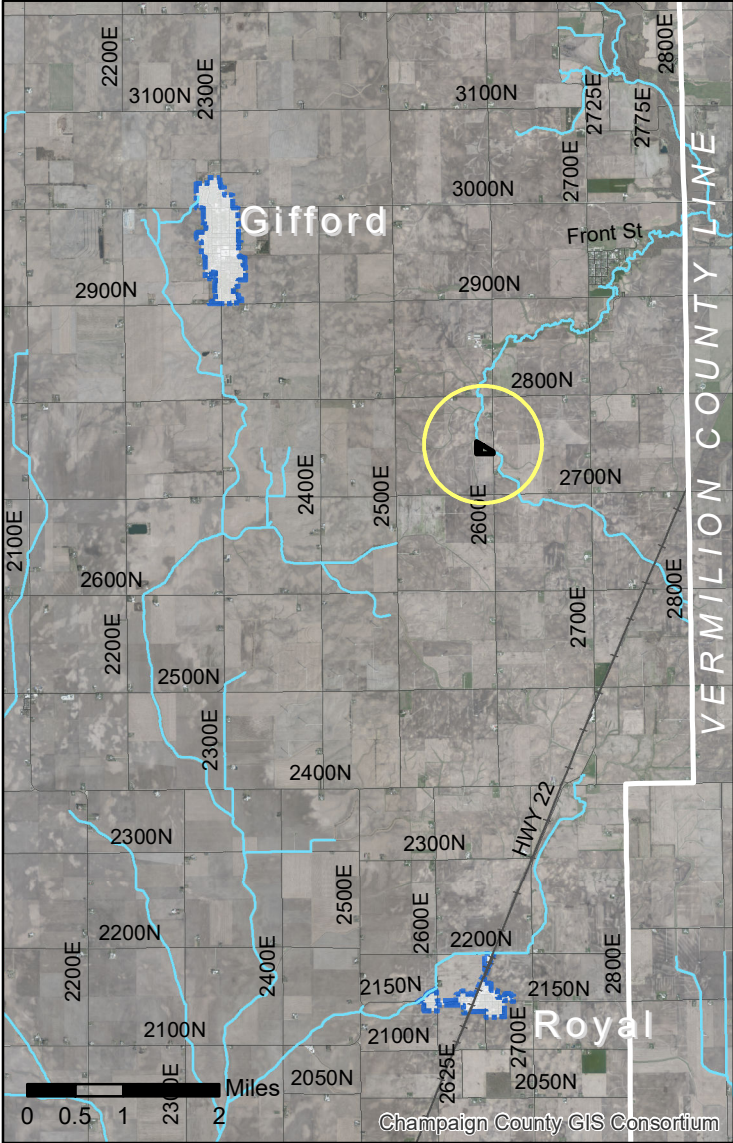
# Location Map

Case 970-V-19  
July 16, 2020

Subject Property



Property location in Champaign County



- Legend**
- Subject Properties
  - Streets
  - Municipal Boundary
  - Parcels









Champaign County  
Department of  
**PLANNING &  
ZONING**

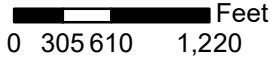
# Land Use Map

Case 970-V-19  
July 16, 2020



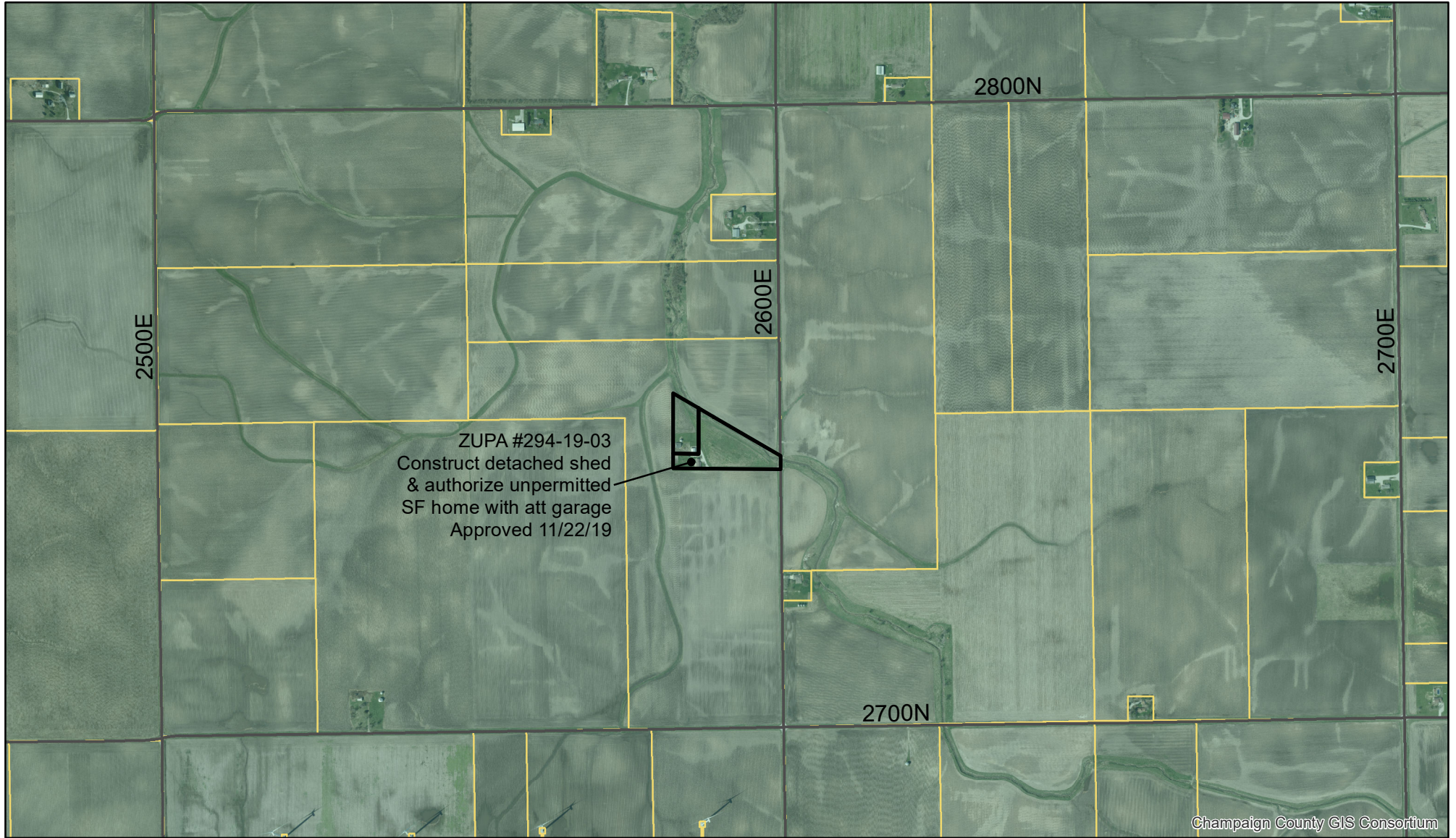
### Legend

-  Subject Properties
-  Streams
-  Ag-Residential
-  Streets
-  Agriculture
-  Residential







# Zoning Map

Case 970-V-19  
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## Legend

-  Subject Properties
-  Parcels
-  Municipal Boundary
-  AG-1 Agriculture

0 300 600 1,200 Feet



061218400003/004 2017 1:100

RECEIVED

NOV 21 2019

CHAMPAIGN CO P & Z DEPARTMENT



Champaign County GIS Consortium



### 970-V-19 Site Images



**From CR2600E facing NW**



**Side yard requiring variance – grass extends farther south than property line**

### 970-V-19 Site Images



**From south side of house facing W**



**From SW corner of house facing east**



**PRELIMINARY DRAFT**

**970-V-19**

**SUMMARY OF EVIDENCE, FINDING OF FACT  
AND FINAL DETERMINATION  
of  
Champaign County Zoning Board of Appeals**

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

Date: *{July 16, 2020}*

Petitioner: **Jeff Ault**

Request: **Authorize a variance for a side yard of 8 feet in lieu of the minimum required 15 feet for an existing residence in the AG-1 Agriculture Zoning District, per Section 5.3 of the 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 **July 16, 2020**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner Jeff Ault, 2739 CR 2600E, Penfield, owns the subject property.
2. The 8.18 acre subject property is a joint lot development comprised of a 2.34 acre lot and a 5.84 acre lot in in the East Half of the East Half of Section 18, Township 21 North, Range 14 West of the Second Principal Meridian in Compromise Township, and commonly known as the residence at 2739 CR 2600E, Penfield.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
  - A. The subject property is not within the one and one-half mile extraterritorial jurisdiction (ETJ) of a municipality with zoning.
  - B. The subject property is located within Compromise Township, which has a Planning 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 8.18 acre subject property is zoned AG-1 Agriculture and is residential in use.
  - B. Land surrounding the subject property is also zoned AG-1 Agriculture and is in agricultural production.

**GENERALLY REGARDING THE PROPOSED SITE PLAN**

5. Regarding the site plan for the subject site:
  - A. The Site Plan approved on November 27, 2019 for Zoning Use Permit 294-19-03 indicates the following existing and proposed features:
    - (1) Existing features include:
      - a. A 2,350 square foot residence;
      - b. A 30 feet by 40 feet (1,200 square feet) shed;
      - c. A 36 feet by 64 feet (2,304 square feet) pole barn;
      - d. A well on the north side of the house;
      - e. A septic tank and leach field on the west side of the house; and
      - f. A note that a 45 feet by 45 feet shed was removed due to wind damage.
    - (2) The petitioner proposes to construct a 30 feet by 40 feet (1,200 square feet) shed.
  - B. There is one previous Zoning Use Permit on the subject property:
    - (1) Zoning Use Permit 294-19-03 approved on November 22, 2019, was for construction of a detached shed for personal storage and to authorize a previously

**PRELIMINARY DRAFT**

constructed single family home with attached garage. A special condition of the permit states, "This is a joint lot development and neither tract may be used or sold off independently of the other."

- C. There are no previous Zoning Cases on or in the vicinity of the subject property.
- D. The required variance is as follows:
  - (1) Authorize a variance for a side yard of 8 feet in lieu of the minimum required 15 feet for an existing residence in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.

**GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES**

- 6. Regarding authorization for the proposed variance:
  - A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested Variance (capitalized words are defined in the Ordinance):
    - (1) "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.
    - (2) "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.
    - (3) "LOT LINES" are the lines bounding a LOT.
    - (4) "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.
    - (5) "YARD" is an OPEN SPACE, other than a COURT, of uniform 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.
    - (6) "YARD, SIDE" is a YARD situated between a side LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT and extending from the rear line of the required FRONT YARD to the front line of the required REAR YARD.
  - B. The AG-1 Agriculture DISTRICT is intended to protect the areas of the COUNTY where soil and topographic conditions are best adapted to the pursuit of AGRICULTURAL USES and to prevent the admixture of urban and rural USES which would contribute to the premature termination of AGRICULTURE pursuits.
  - C. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
    - (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9 C. of the *Zoning Ordinance* states that a variance from

**PRELIMINARY DRAFT**

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 in the AG-1 Agriculture District is established in Section 5.3 of the *Zoning Ordinance* as 15 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, **“Family owns surrounding farm ground. The house was built in 1996 by father-in-law Ernest Rademacher. He did not see a problem.”**
  - B. Regarding the required Variance, for a proposed side yard of 8 feet in lieu of the minimum required 15 feet:
    - (1) Rademacher Farms surrounds the subject property; the 8 feet side yard is adjacent to farm ground.
    - (2) There is approximately 25 feet of grass between the house and the farm ground despite the property line being only 8 feet from the residence.

**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, **“The new building proposed is not the issue, it is the 15 feet needed to the property line – hope we could work this out with family.”**

**PRELIMINARY DRAFT**

- B. Regarding the proposed Variance:
- (1) Without the proposed variance, the petitioner would have to either purchase adjacent land.

**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, **“When this was built, I was not aware of zoning regulations and was told because of acreage a permit was not required.”**
  - B. Rademacher Farms conveyed the 5.84 acres to the petitioner on March 14, 1996. The house was constructed in 1996 according to tax records.

**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, **“This is in the country 1/8 of a mile off the road.”**
  - B. Regarding the Variance for a proposed side yard of 8 feet in lieu of the minimum required 15 feet: the requested variance is 53% of the minimum required, for a variance of 47%.
  - C. Regarding the Variance:
    - (1) The Zoning Ordinance does not clearly state the considerations that underlie the side yard requirement. In general, side yards are presumably intended to ensure the following:
      - a. Adequate light and air: The subject property is residential use. The surrounding properties are in agricultural production.
      - b. Separation of structures to prevent conflagration: The subject property is in the Gifford Fire Protection District and the station is approximately 5.7 road miles from the subject property. The nearest structure is the pole barn located 30 feet northwest of the house. The nearest structure on a neighboring property is one-quarter mile to the southeast on the other side of CR 2600E.
      - c. 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: **“No issues.”**
- B. The Compromise Township Road Commissioner has been notified of this variance and no comments have been received.
- C. The Gifford Fire Protection District has been notified of this variance and no comments have been received.
- D. The nearest building on neighboring property is one-quarter mile to the southeast on the other side of CR 2600E.

***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 currently proposed.**

**DOCUMENTS OF RECORD**

1. Variance Application received November 21, 2019, with attachments:
  - A Site Plan (later approved on November 27, 2019 for Zoning Use Permit 294-19-03)
  - B Land Description and survey field notes from Moore Surveying dated January 23, 1996 and October 24, 2001, and received November 21, 2019
  
2. Preliminary Memorandum dated July 9, 2020, with attachments:
  - A Case Maps (Location, Land Use, Zoning)
  - B Site Plan approved on November 27, 2019 for Zoning Use Permit 294-19-03
  - C Images of Subject Property taken January 21, 2020
  - D Draft Summary of Evidence, Finding of Fact, and Final Determination dated July 16, 2020

**FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **970-V-19** held on **July 16, 2020**, 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:}**



**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 following Variance requested in Case **970-V-19** is hereby *{GRANTED / GRANTED WITH CONDITIONS/ DENIED}* to the petitioner, **Jeff Ault**:

**Authorize a variance for a side yard of 8 feet in lieu of the minimum required 15 feet for an existing residence in the AG-1 Agriculture Zoning District, per Section 5.3 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:

ATTEST:

Ryan Elwell, Chair  
Champaign County Zoning Board of Appeals

Secretary to the Zoning Board of Appeals

Date