

CASE NO. 982-V-20

PRELIMINARY MEMORANDUM

October 20, 2020

Petitioners: **Doug & Lynda Watterson**

Request: **Authorize the following Variance on a lot in the AG-1 Agriculture Zoning District:**

Authorize the construction and use of a proposed detached garage with a setback of 47 feet from the centerline of CR 3050N in lieu of the minimum required setback of 55 feet, and a front yard of 0 feet in lieu of the minimum required 25 feet, per Section 5.3 of the Zoning Ordinance.

Subject Property: **A 1.55-acre tract in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 7 East of the Third Principal Meridian in Brown Township, and commonly known as the residence at 6 County Road 3050N, Foosland.**

Site Area: **1.55 acres**

Time Schedule for Development: **As soon as possible**

Prepared by: **Susan Burgstrom**, Senior Planner
John Hall, Zoning Administrator

BACKGROUND

The petitioner requests a variance to construct a 24 feet by 24 feet detached garage on the right-of-way line for CR 3050N. A variance is required for front yard and for distance from street centerline. P&Z Staff created an annotated aerial illustrating the measurements (Attachment C).

CR 3050N has an 80 foot road right-of-way, larger than the typical 60 foot right-of-way for rural township roads. The lot is narrow and limited by this expansive right of way.

The petitioner stated on his application that he has spoken with Brown Township Highway Commissioner David Stalter, and said he was fine with the proposed site.

No comments have been received.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Residential	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture
East	Railroad tracks, grain elevator	B-5 Central Business
West	Agricultural (McLean County)	McLean County zoning

EXTRATERRITORIAL JURISDICTION

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

The subject property is located in Brown Township, which does not have a Planning Commission.

ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received August 18, 2020
- C Annotated Aerial created by P&Z Staff on October 14, 2020
- D Images of subject property taken August 21, 2020
- E Draft Summary of Evidence, Finding of Fact, and Final Determination dated October 29, 2020

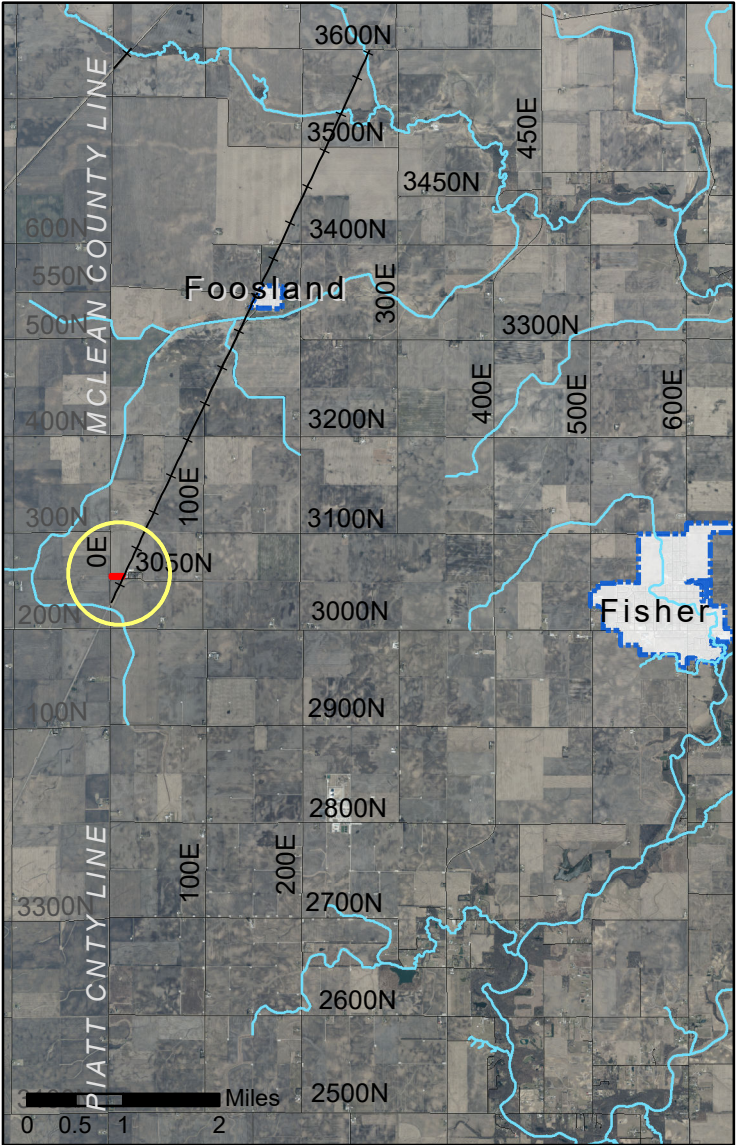
Location Map

Case 982-V-20
October 29, 2020

Subject Property



Property location in Champaign County



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



Champaign County
Department of
**PLANNING &
ZONING**

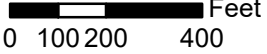
Land Use Map

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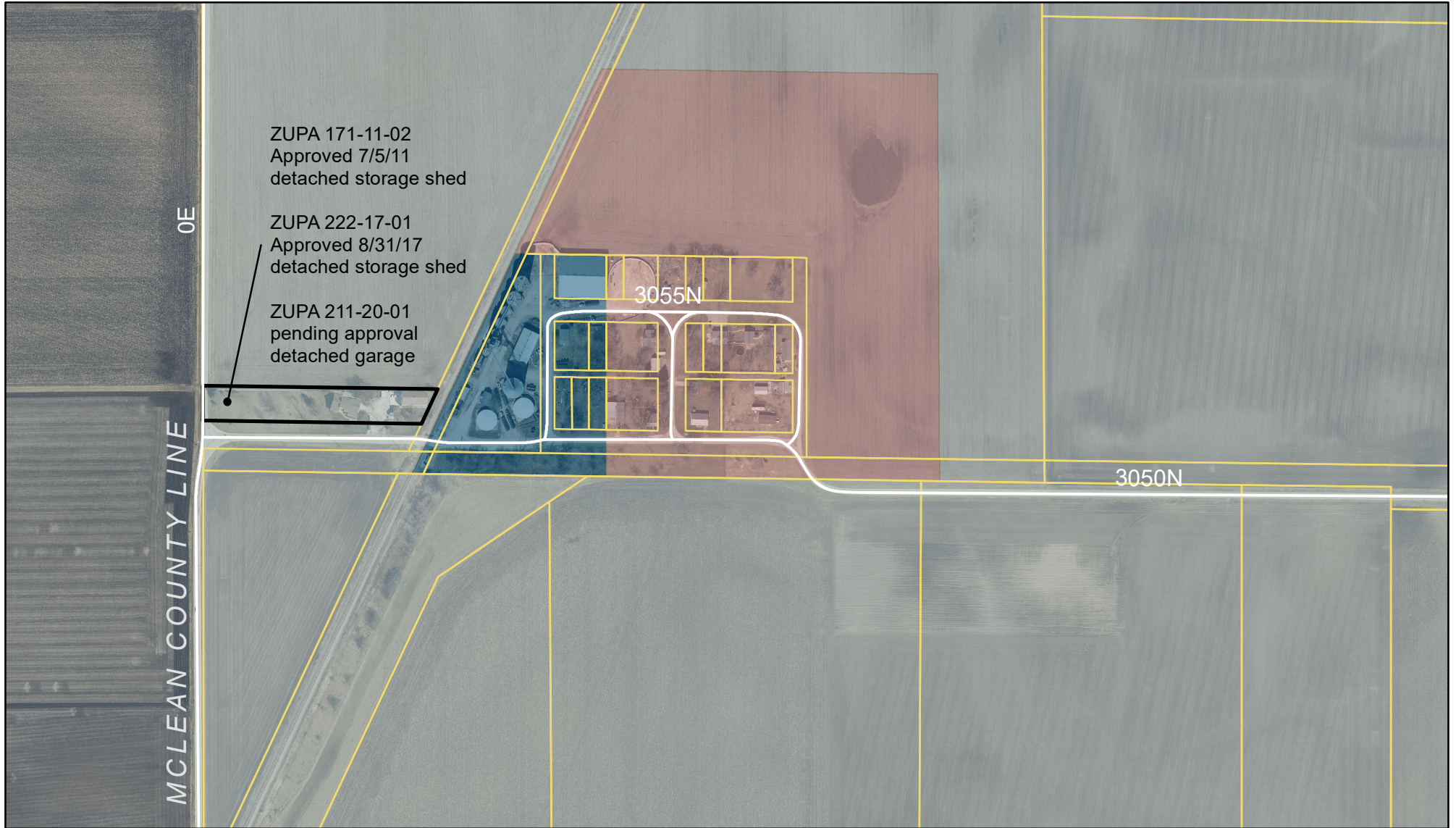
Legend

- Subject Property
- Agriculture
- Residential
- Ag/Residential
- Commercial








Zoning Map

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Legend

-  Subject Property
-  R-1 Single Family Residential
-  Parcels
-  B-5 Central Business
-  AG-1 Agriculture

0 100 200 400 Feet



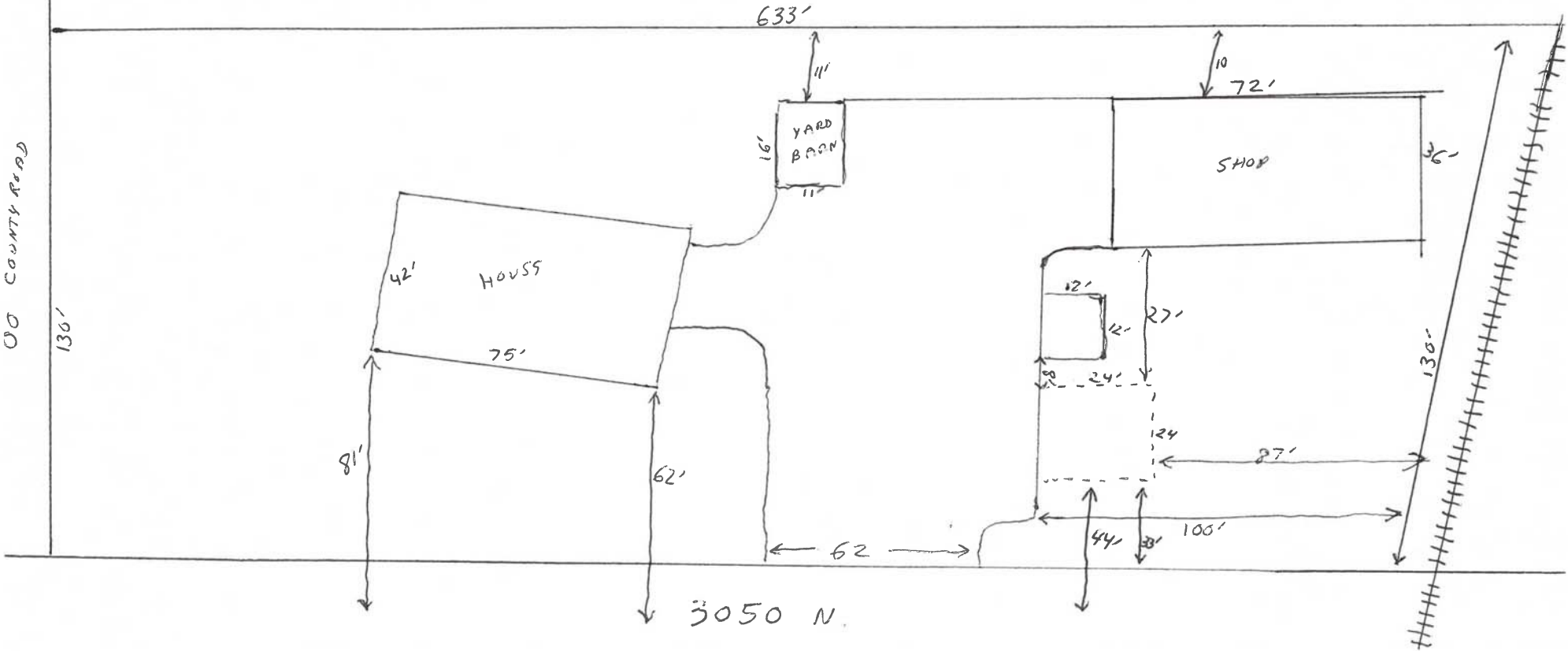
FARMERS
FIELD

RECEIVED

AUG 18 2020

CHAMPAIGN CO P & Z DEPARTMENT

OO COUNTY ROAD



Annotated 2020 Aerial

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Measurements shown were verified by P&Z Staff



982-V-20 Site Images



Proposed garage construction site from CR 3050N facing NE



Proposed garage construction site from CR 3050N facing N

982-V-20 Site Images



Proposed garage construction site from RR tracks facing W



Proposed garage construction site from subject property driveway facing E

PRELIMINARY DRAFT

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

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

Date: ***{October 29, 2020}***

Petitioner: Doug & Lynda Watterson

Request: Authorize the following Variance on a lot in the AG-1 Agriculture Zoning District:

Authorize the construction and use of a proposed detached garage with a setback of 47 feet from the centerline of CR 3050N in lieu of the minimum required setback of 55 feet, and a front yard of 0 feet in lieu of the minimum required 25 feet, 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 **October 29, 2020**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Doug & Lynda Watterson own the subject property.
2. The subject property is a 1.55-acre tract in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 7 East of the Third Principal Meridian in Brown Township, and commonly known as the residence at 6 County Road 3050N, Foosland.
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 Brown 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 1.55 acre lot and is currently zoned AG-1 Agriculture. Land use is a single family residence.
 - B. Land to the north and south is zoned AG-1 Agriculture and is land in production.
 - C. Land to the west is in McLean County zoning jurisdiction, and is agricultural land in production.
 - D. Land to the east is in the unincorporated town of Lotus. Zoning is B-5 Central Business, and the adjacent land use is a grain elevator.
 - E. The subject property has an active rail line to the east, and an inactive railroad right-of-way to the south on the south side of CR 3050N.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Petitioner's Site Plan, received August 18, 2020, indicates the following existing and proposed features:
 - (1) The following are existing features on the subject property:
 - a. One residence, approximately 3,150 square feet;
 - b. One 11 feet by 16 feet (176 square feet) detached yard barn northeast of the house;
 - c. One 36 feet by 72 feet (2,592 square feet) shop located in the northeast corner of the property; and
 - d. One 12 feet by 12 feet shed located southwest of the shop.

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- (a) This shed measured 10 feet by 13 feet when P&Z Staff measured during a site visit.
- (2) Proposed construction consists of one 24 feet by 24 feet detached garage to be located between the shop and CR 3050N.
- B. There are two previous Zoning Use Permits for the subject property. The residence was built prior to the adoption of the Zoning Ordinance on October 10, 1973.
 - (1) ZUPA #171-11-02 was approved on July 5, 2011 to construct the 36 feet by 72 feet detached shed (shop).
 - (2) ZUPA #222-17-01 was approved on August 31, 2017 to construct the 11 feet by 16 feet detached storage shed (yard barn).
 - (3) ZUPA #211-20-01 was applied for on July 29, 2020, and is pending approval subject to this variance case. The petitioners propose a 24 feet by 24 feet detached garage.
- C. There are no prior Zoning Cases for the subject property or its surrounding area.
- D. The requested variance is as follows:
 - (1) Authorize the construction and use of a proposed detached garage with a setback of 47 feet from the centerline of CR 3050N in lieu of the minimum required setback of 55 feet, and a front yard of 0 feet in lieu of the minimum required 25 feet, 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) “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) “COVERAGE” is the percentage of the LOT AREA covered by the BUILDING AREA.
 - (4) “FRONTAGE” is that portion of a LOT abutting a STREET or ALLEY.
 - (5) “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.

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- (6) “LOT LINE, FRONT” is a line dividing a LOT from a STREET or easement of ACCESS. On a CORNER LOT or a LOT otherwise abutting more than one STREET or easement of ACCESS only one such LOT LINE shall be deemed the FRONT LOT LINE.
 - (7) “RIGHT-OF-WAY” is the entire dedicated tract or strip of land that is to be used by the public for circulation and service.
 - (8) “SETBACK LINE” is the BUILDING RESTRICTION LINE nearest the front of and across a LOT establishing the minimum distance to be provided between a line of a STRUCTURE located on said LOT and the nearest STREET RIGHT-OF-WAY line.
 - (9) “SPECIAL CONDITION” is a condition for the establishment of a SPECIAL USE.
 - (10) “STREET” is a thoroughfare dedicated to the public within a RIGHT-OF-WAY which affords the principal means of ACCESS to abutting PROPERTY. A STREET may be designated as an avenue, a boulevard, a drive, a highway, a lane, a parkway, a place, a road, a thoroughfare, or by other appropriate names. STREETS are identified on the Official Zoning Map according to type of USE, and generally as follows:
 - (a) MAJOR STREET: Federal or State highways.
 - (b) COLLECTOR STREET: COUNTY highways and urban arterial STREETS.
 - (c) MINOR STREET: Township roads and other local roads.
 - (11) “USE” is the specific purpose for which land, a STRUCTURE or PREMISES, is designed, arranged, intended, or for which it is or may be occupied or maintained. The term “permitted USE” or its equivalent shall not be deemed to include any NONCONFORMING USE.
 - (12) “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.
 - (13) “YARD” is an OPEN SPACE, other than a COURT, of uniform width or depth on the same LOT with a STRUCTURE, lying between the STRUCTURE and the nearest LOT LINE and which is unoccupied and unobstructed from the surface of the ground upward except as may be specifically provided by the regulations and standards herein.
 - (14) “YARD, FRONT” is a YARD extending the full width of a LOT and situated between the FRONT LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT. Where a LOT is located such that its REAR and FRONT LOT LINES each abut a STREET RIGHT-OF-WAY both such YARDS shall be classified as FRONT YARDS.
- 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 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. Regarding the proposed variance:
- (1) Minimum setback from the centerline of a minor street for an accessory structure in the AG-1 Agriculture District is established in Section 5.3 of the *Zoning Ordinance* as 55 feet.
 - (2) Minimum front yard from the street right of way to the proposed structure in the AG-1 Agriculture District is established in Section 5.3 of the *Zoning Ordinance* as 25 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, “**Narrow lot, pre-existing structures.**”
 - B. Regarding the proposed variance for a reduced setback from the centerline of CR 3050N:
 - (1) CR 3050N has an 80 foot road right-of-way, which is larger than the typical 60 feet right-of-way for rural township roads.

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- (2) The proposed detached garage would need to be built at least 47 feet from the centerline of CR 3050N in order to avoid building in the road right-of-way.

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, **“No adjacent land available for purchase. Reduction of proposed construction size would make it unusable for our purposes.”**
- B. Regarding the proposed variance for a minimum setback from the centerline of a minor street of 47 feet in lieu of 55 feet and a front yard of 0 feet in lieu of 25 feet: without the proposed variance, the Petitioner would not be able to build the garage due to limitations with the location of other structures.

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, they are due to lot dimensions and pre-existing structures.”**
- B. The Petitioner purchased the subject property in 1999.
- (1) The residence was built prior to adoption of the Zoning Ordinance on October 10, 1973.
- (2) The 10 feet by 13 feet shed directly north of the proposed garage existed prior to 1999. This structure’s roof is 16 feet by 18 feet, which further impacts the area where the petitioner can build.

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, **“Besides being more visually appealing at requested site, would also minimize possible visual obstruction of nearby railroad crossing.”**
- B. Regarding the proposed variance for a minimum setback from the centerline of a minor street of 47 feet in lieu of 55 feet: the requested variance is 85.5% of the minimum required, for a variance of 14.5%.
- C. Regarding the proposed variance for a front yard of 0 feet in lieu of the minimum required 25 feet: the requested variance is 100%.

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- D. Regarding the proposed variance, the Zoning Ordinance does not clearly state the considerations that underlie the minimum setback requirements and front yard requirements. Presumably the setback from street centerline and front yard minimum is intended to ensure the following:
- (1) Adequate separation from roads.
 - (2) Allow adequate area for road expansion and right-of-way acquisition.
 - a. There are no known plans to expand CR 3050N at this location.
 - (3) Parking, where applicable.

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: **“Rail crossing has arms and lights which would protect oncoming traffic. Proposed site would not alter any surface drainage.”**
 - B. The Township Road Commissioner has been notified of this variance but no comments have been received.
 - C. The Sangamon Valley Fire Protection District has been notified of this variance but no comments have been received.
 - D. The nearest structure on adjacent property to the proposed garage is a grain storage bin located over 200 feet east of the subject property, on the other side of the railroad tracks.

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: **“Other structures in town, although grandfathered in, sit several feet closer to the road than my proposed structure. Spoke with Road Commissioner David Stalter, said he was fine with proposed site.”**

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:
- A. **The petitioner shall submit a signed approval from the Brown Township Road Commissioner with the Zoning Use Permit application that states exactly how far the building may extend into the CR 3050N right-of-way.**

The special condition stated above is required to ensure the following:
That there is sufficient road right-of-way on CR 3050N.

DOCUMENTS OF RECORD

1. Variance Application received on August 18, 2020, with attachments:
 - A Site Plan
 - B Legal description

2. Annotated Aerial created by P&Z Staff on October 14, 2020

3. Preliminary Memorandum dated October 20, 2020 with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received August 18, 2020
 - C Annotated Aerial created by P&Z Staff on October 14, 2020
 - D Images of subject property taken August 21, 2020
 - E Draft Summary of Evidence, Finding of Fact, and Final Determination dated October 29, 2020

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **982-V-20** held on **October 29, 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:}***
 - A. **The petitioner shall submit a signed approval from the Brown Township Road Commissioner with the Zoning Use Permit application that states exactly how far the building may extend into the CR 3050N right-of-way.**

The special condition stated above is required to ensure the following:

That there is sufficient road right-of-way on CR 3050N.

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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 982-V-20 is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Doug and Lynda Watterson**, to authorize the following variance in the AG-1 Agriculture Zoning District:

Authorize the construction and use of a proposed detached garage with a setback of 47 feet from the centerline of CR 3050N in lieu of the minimum required setback of 55 feet, and a front yard of 0 feet in lieu of the minimum required 25 feet, per Section 5.3 of the Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

- A. **The petitioner shall submit a signed approval from the Brown Township Road Commissioner with the Zoning Use Permit application that states exactly how far the building may extend into the CR 3050N right-of-way.**

The special condition stated above is required to ensure the following:

That there is sufficient road right-of-way on CR 3050N.

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