

CASE NO. 028-V-21

*PRELIMINARY MEMORANDUM
DECEMBER 21, 2021*

Petitioner: Frank and Karen Hardimon

Request: Authorize a variance for a 5.08-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.

Subject Property: An existing 3.11-acre lot plus part of an 83.89-acre tract in the Northeast Quarter of the Northeast Quarter of Section 6, Township 18 North, Range 7 East of the Third Principal Meridian in Colfax Township, commonly known as the residence with an address of 79 CR 1200N, White Heath.

Site Area: 5.08 acres

Time Schedule for Development: As soon as possible

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

BACKGROUND

Petitioner Frank Hardimon would like to add 1.97 acres to an existing 3.11-acre home site from the adjacent 83.89-acre tract that he owns with his siblings in a trust LLC. There are two grain bins and 4 outbuildings on the 1.97 acres that the family would like to transfer to Mr. Hardimon, who lives on the adjacent 3.11-acre residential lot so that he can maintain them. No land would be removed from production, and no on the ground changes are proposed.

The proposed additional 1.97 acres needs a variance from the County for creating a lot greater than three acres on Best Prime Farmland.

Attachment C is a map created by P&Z Staff on December 7, 2021 that shows soil types on the proposed 5.08 acres. Attachment D is a map showing the proposed lot split over a 2020 aerial photo to demonstrate the increase lot size. Attachment E shows the proposed lot over a 1973 aerial.

No comments have been received.

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 Colfax Township, which does not have a Planning Commission. Townships with Plan Commissions have protest rights on a variance and receive notification of such cases.

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
East	Agriculture	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture

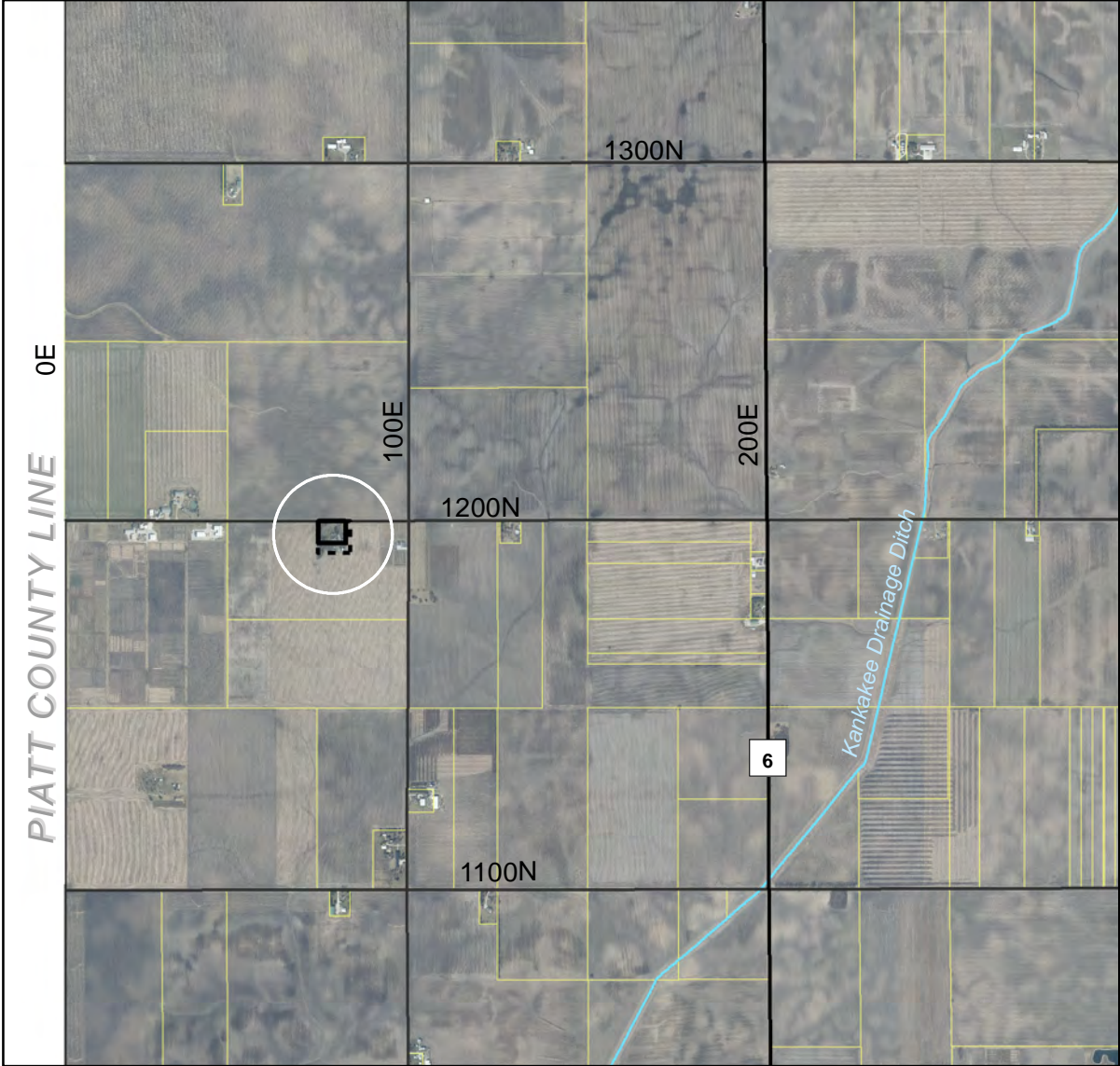
ATTACHMENTS





- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received November 19, 2021
- C 2020 aerial photo with soil types overlay created by P&Z Staff on December 7, 2021
- D 2020 aerial photo with proposed lot split created by P&Z Staff on December 7, 2021
- E 1973 aerial photo with proposed lot split created by P&Z Staff on December 7, 2021
- F Site Images taken November 30, 2021
- G Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 028-V-21 dated December 30, 2021

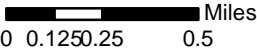
Location Map

Case 028-V-21
December 30, 2021

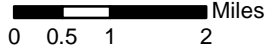
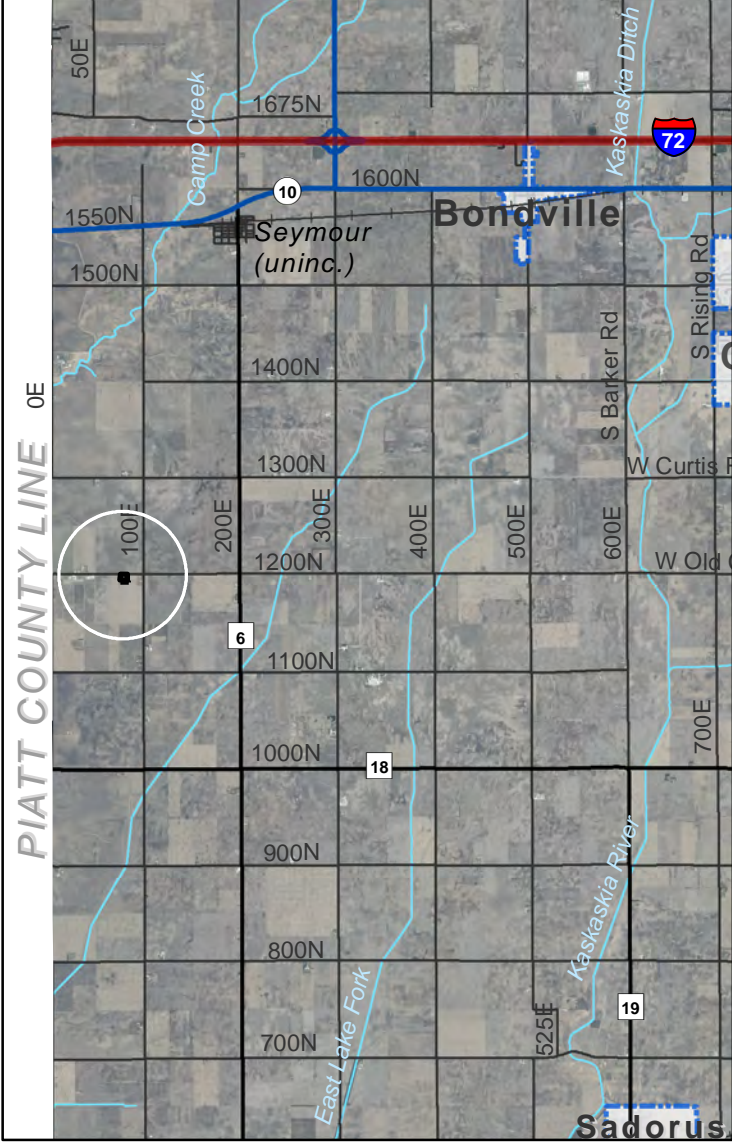
Subject Property



-  Proposed Lot
-  Subject Property
-  Parcels
-  Municipal Boundary

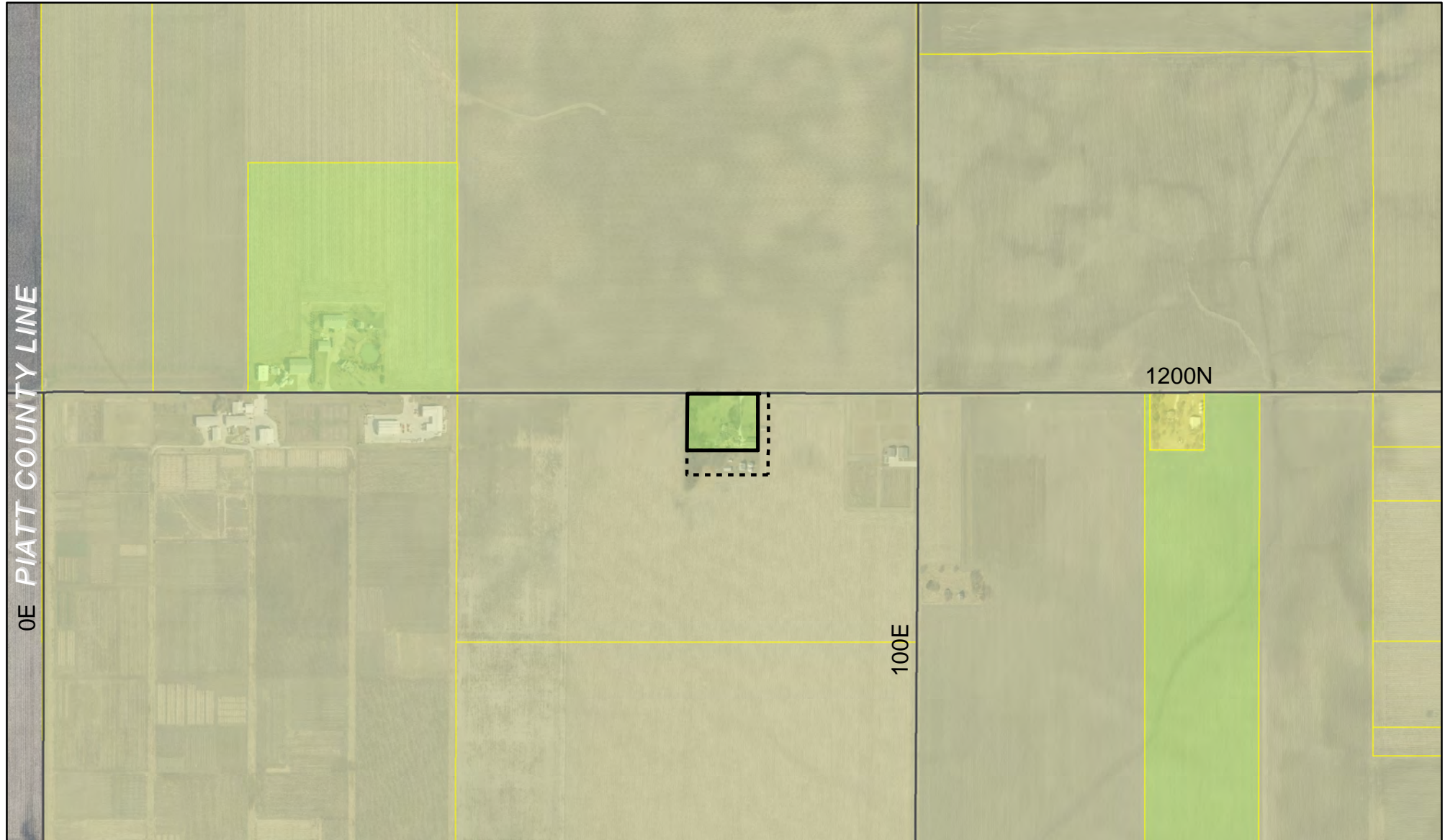


Property location in Champaign County



Land Use Map

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December 30, 2021



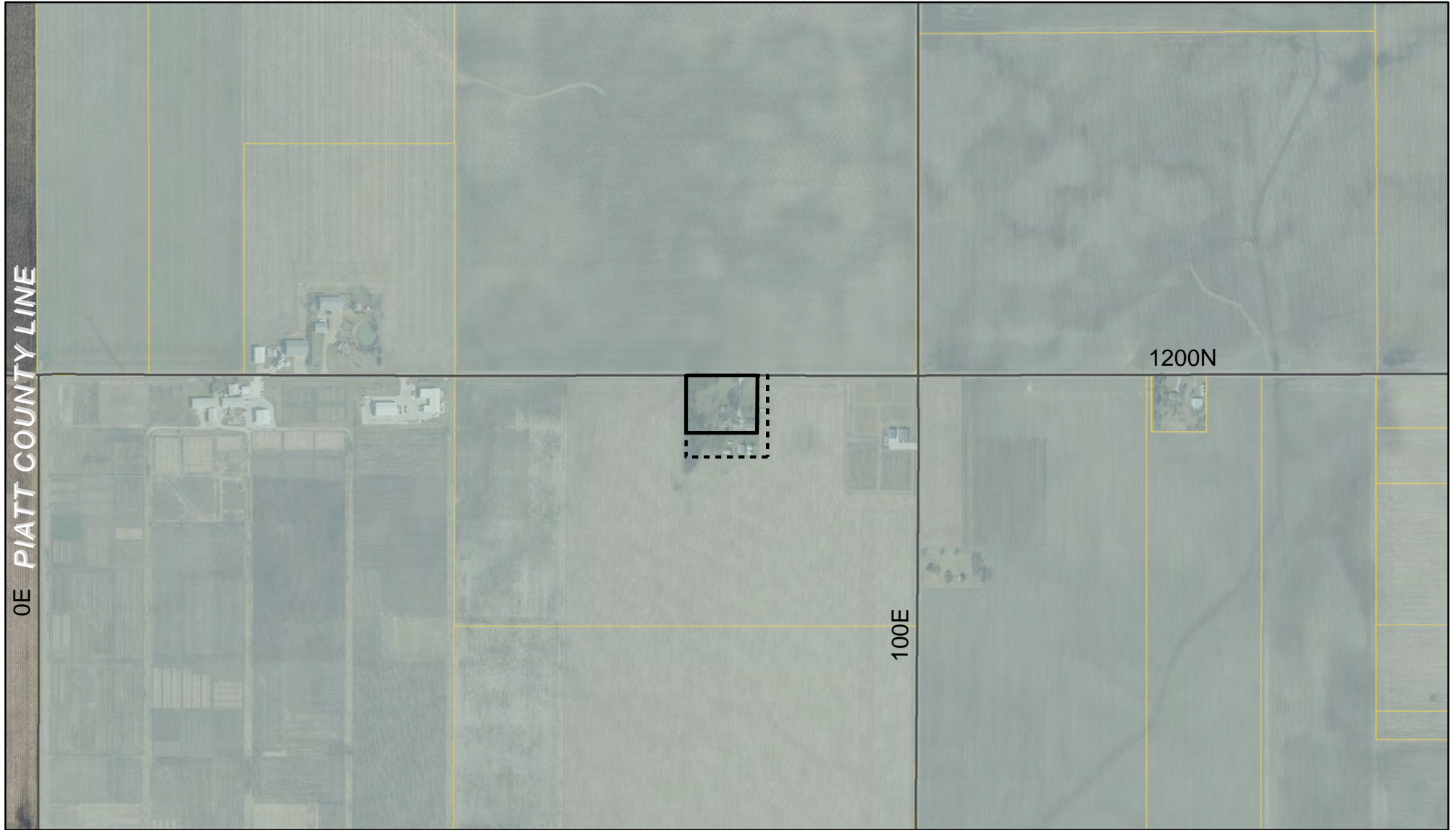
- Proposed Lot
- Ag/Residential
- Residential
- Subject Property
- Agriculture
- Parcels





0 200 400 800 Feet

Champaign County
Department of
PLANNING &
ZONING

Zoning Map

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December 30, 2021



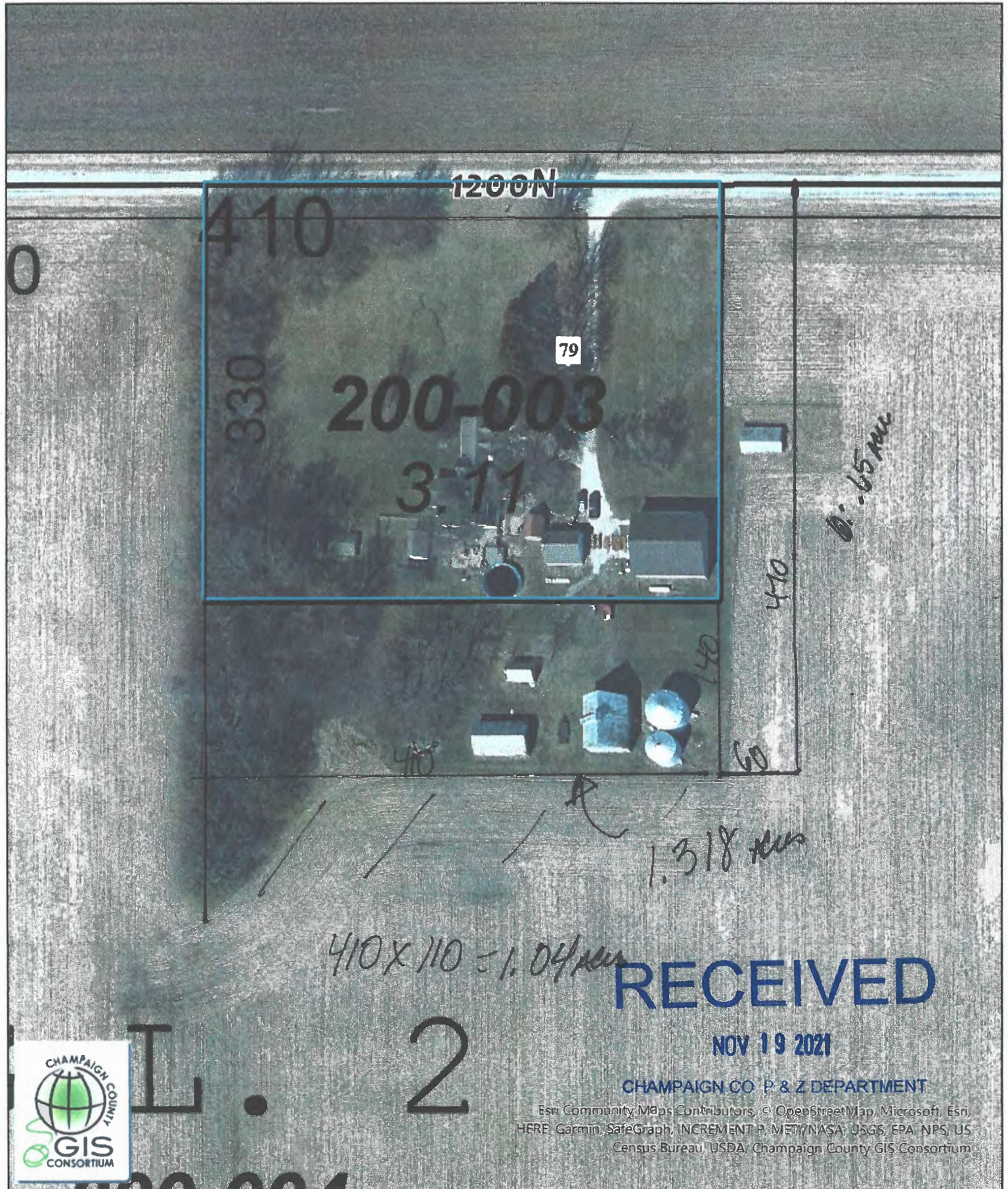
-  Proposed Lot
-  Subject Property
-  Parcels
-  AG-1 Agriculture

0 200 400 800 Feet



Champaign County
Department of
**PLANNING &
ZONING**

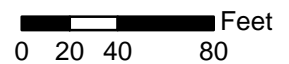
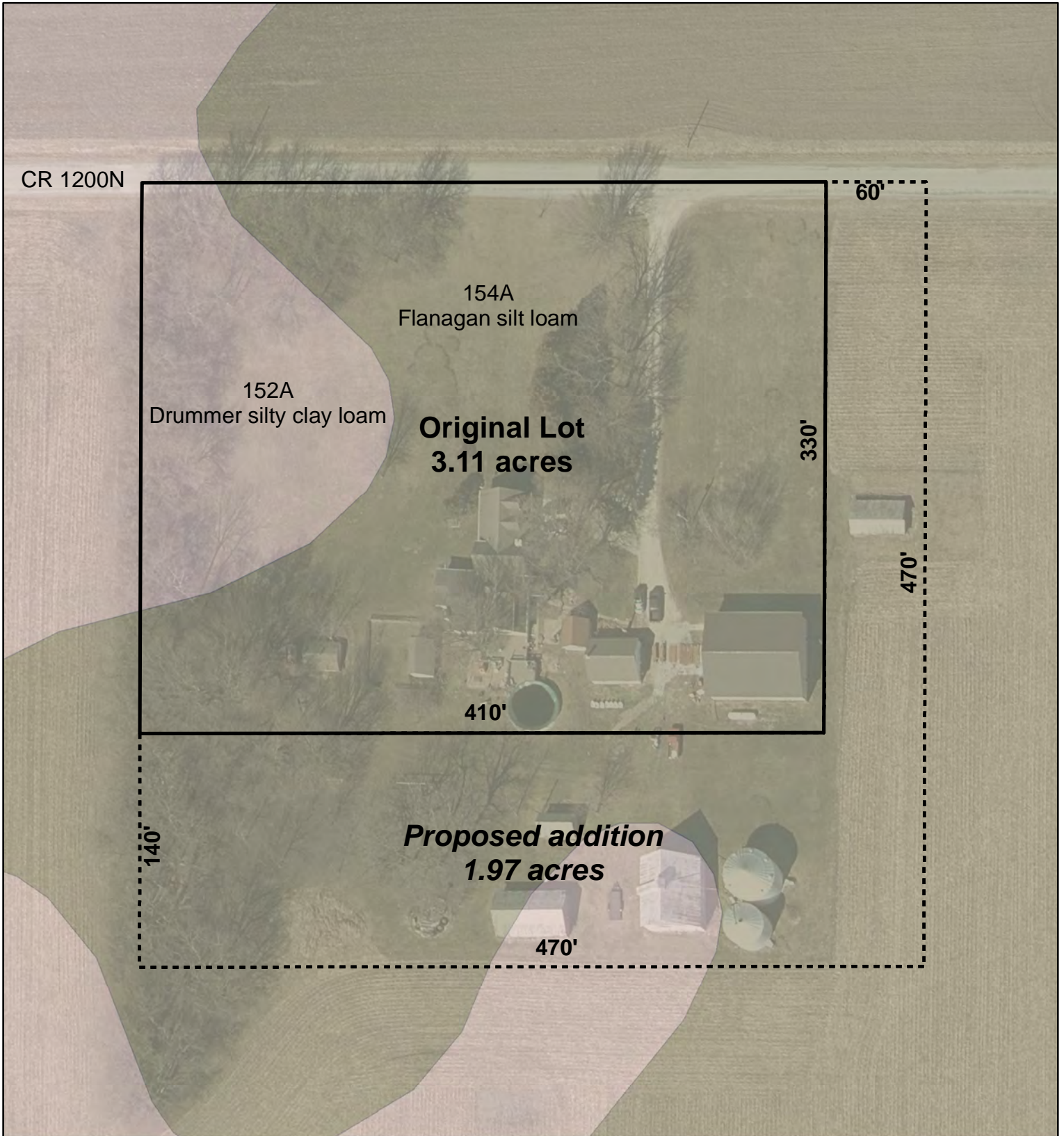
052506200003; 2020; 1:100



This map application was prepared with geographic information system (GIS) data created by the Champaign County GIS Consortium (CCGIS) or other CCGIS member agency. These entities do not warrant or guarantee the accuracy or suitability of GIS data for any purpose. The GIS data within this application is intended to be used as a general index to spatial information and not intended for detailed, site-specific analysis or resolution of legal matters. Users assume all risk arising from the use or misuse of this application and information contained herein. The use of this application constitutes acknowledgment of this disclaimer.

Soils

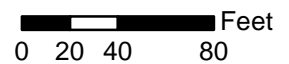
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2020 aerial with proposed lot addition

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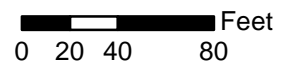


1973 aerial with proposed lot addition

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Yellow dashed line is approximate farmstead area in 1973



028-V-21 Site Images



From CR 1200N facing west toward subject property



From CR 1200N facing south toward subject property

028-V-21 Site Images



From CR 100E facing west (zoomed in)



From CR 100E facing west (zoomed out)

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: ***{December 30, 2021}***

Petitioners: **Frank and Karen Hardimon**

Request: **Authorize a variance for a 5.08-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.**

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PRELIMINARY DRAFT

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 30, 2021**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Frank and Karen Hardimon own a 3.11-acre lot and Mr. Hardimon's family LLC owns the surrounding 83.89 acres.
2. The subject property is an existing 3.11-acre lot plus part of an 83.89-acre tract in the Northeast Quarter of the Northeast Quarter of Section 6, Township 18 North, Range 7 East of the Third Principal Meridian in Colfax Township, commonly known as the residence with an address of 79 CR 1200N, White Heath.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is not located within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning.
 - B. The subject property is located in Colfax Township, which does not have a Planning Commission. Townships with Plan Commissions have protest rights on a variance and 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. Both the 3.11-acre tract and the 83.89-acre tract are zoned AG-1 Agriculture. The larger tract is in agricultural production and the 3.11-acre tract is residential in use.
 - B. Land to the north, east, south and west is zoned AG-1 Agriculture and is in agricultural production.
 - C. The 3.11-acre lot was created in 1986, prior to the Zoning Ordinance amendment with the 3-acre maximum lot area requirement on Best Prime Farmland that was adopted in 2004.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Site Plan received on November 19, 2021 shows an outline of the proposed lot, which indicated the following:
 - (1) The proposed lot would be 470 feet by 470 feet, or 5.08 acres.
 - (2) The 3.11-acre lot includes the following existing features:
 - a. One residence constructed prior to the adoption of the Zoning Ordinance on October 10, 1973;
 - b. One 12 feet by 16 feet accessory building constructed prior to the adoption of the Zoning Ordinance on October 10, 1973;
 - c. One 16 feet by 20 feet accessory building constructed prior to the adoption of the Zoning Ordinance on October 10, 1973;

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- d. One 24 feet by 30 feet detached garage constructed prior to the adoption of the Zoning Ordinance on October 10, 1973;
 - e. One 56 feet by 48 feet detached shed constructed under ZUPA# 147-15-02 approved on June 8, 2015; and
 - f. One swimming pool approved under ZUPA# 147-15-02 approved on June 8, 2015.
- (3) The additional 1.97 acres includes the following existing features:
- a. Two grain bins constructed sometime between 1973 and 1988; and
 - b. Four detached accessory structures constructed prior to the adoption of the Zoning Ordinance on October 10, 1973.
- B. Prior Zoning Use Permits for the subject property and proposed 1.97 acres include:
- (1) One 56 feet by 48 feet detached shed constructed under ZUPA# 147-15-02 approved on June 8, 2015; and
 - (2) One swimming pool approved under ZUPA# 147-15-02 approved on June 8, 2015.
- C. There are no prior zoning cases on or in the vicinity of the subject property.
- D. The requested variance is for a lot size of 5.08 acres in lieu of the maximum area of 3 acres for lots on soils that are best prime farmland, per Section 5.3 of the Zoning Ordinance.

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.

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- (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.

- 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.

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- 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 Petitioner testified the following on the application: **“This farm building lot site has not been farmed for over 100 years. It contains pasture, walnut, maple, hackberry and osage orange trees. I have maintained this property for the past 38 years.”**
 - B. Regarding the soils that make up the subject property:
 - (1) The soil on the proposed 5.08-acre lot is BEST PRIME FARMLAND. It consists of 154A Flanagan silt loam and 152A Drummer silty clay loam, and has an average LE of 100.
 - a. No land will be removed from production.
 - C. The subject property is owned by the petitioner, and the surrounding farmland is owned by the petitioner and his siblings as a trust LLC.

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: **“The buildings are in need of repair and maintenance. Members of the family LLC prefer to transfer ownership to a family member that will maintain the property.”**
 - B. Without the variance, the petitioner could not add the 1.97 acres to the existing residential lot, so maintenance of the outbuildings could not be transferred to the petitioner to maintain them.

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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 they do not.”**
 - B. No land would be removed from agricultural production.
 - C. The 1973 farmstead area (grass area) was larger than the proposed 5.08-acre 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: **“This building site has been in my family for over 100 years. It was originally part of the same property. I have owned house and buildings at 79 CR 1200N since the 1990s.”**
 - 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 5.08-acre lot area is 169% of the required three acre maximum, for a variance of 69%.
 - E. No on the ground changes are proposed.
 - F. 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: **“This is a rural property and the closest neighbors are over a quarter of a mile away. The surrounding 160 acres are owned by me and siblings.”**
 - B. The Colfax Township Highway Commissioner has been notified of this variance, and no comments have been received.
 - C. The Colfax Township Supervisor has been notified of this variance, and no comments have been received.

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- D. The Seymour 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 Petitioners testified the following on the application: **“This farm building site is currently only accessible through the property that I own.”**

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 received November 19, 2021
2. Site Plan received November 19, 2021
3. Preliminary Memorandum dated December 21, 2021, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received November 19, 2021
 - C 2020 aerial photo with soil types overlay created by P&Z Staff on December 7, 2021
 - D 2020 aerial photo with proposed lot split created by P&Z Staff on December 7, 2021
 - E 1973 aerial photo with proposed lot split created by P&Z Staff on December 7, 2021
 - F Site Images taken November 30, 2021
 - G Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 028-V-21 dated December 30, 2021

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SUMMARY DRAFT FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **028-V-21** held on **December 30, 2021**, 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:
 - a. ***No land will be removed from agricultural production.***
 - b. ***The subject property is owned by the petitioner, and the surrounding farmland is owned by the petitioner and his siblings as a trust LLC.***
 - c. ***The buildings on the proposed additional lot area are currently only accessible through the petitioner's property.***

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:
 - a. ***Without the variance, the petitioner could not add the 1.97 acres to the existing residential lot, so maintenance of the outbuildings could not be transferred to the petitioner to maintain them.***

3. The special conditions, circumstances, hardships, or practical difficulties ***{DO / DO NOT}*** result from actions of the applicant because:
 - a. ***No land would be removed from agricultural production.***
 - b. ***The 1973 farmstead area (grassed area) was larger than the proposed 5.08-acre lot.***

4. The requested variance ***{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}*** in harmony with the general purpose and intent of the Ordinance because:
 - a. ***The 5.08-acre lot area is 169% of the required three acre maximum, for a variance of 69%.***
 - b. ***No on the ground changes are proposed.***
 - c. ***The requested variance is not prohibited by the Zoning Ordinance.***

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:
 - a. ***Relevant jurisdictions have been notified of this case, and no comments have been received.***

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 **028-V-21** is hereby ***{GRANTED/ GRANTED WITH CONDITIONS/ DENIED}*** to the petitioners, **Frank & Karen Hardimon**, to authorize the following:

Authorize a variance for a 5.08-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, 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