

# CASE NO. 029-V-21

PRELIMINARY MEMORANDUM

January 4, 2022

Petitioners: **Steven & Patricia Oertwig**

Request: **Authorize a variance for an existing detached shed with a front yard of 18 feet and a setback of 43 feet from the street centerline of CR 2550N in lieu of the minimum required front yard of 25 feet and setback of 55 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.**

Subject Property: **A 4.9-acre lot in the Northwest Quarter of the Northwest Quarter of the Southwest Quarter of Section 30, Township 21 North, Range 8 East of the Third Principal Meridian in Condit Township, commonly known as the residence with an address of 2546 CR 600E, Dewey.**

Site Area: **4.9 acres**

Time Schedule for Development: **Already in use**

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

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## BACKGROUND

The petitioner requests a variance for an existing detached shed that does not meet the minimum front yard and setback requirements. The need for the variance was found when the petitioner applied for a building permit to construct a residence in November 2021, and a special condition was added to that permit stating that they would either need to move the shed or apply for a variance. The petitioners applied for the variance the following week.

No comments have been received from relevant jurisdictions or the public.

## 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	CR Conservation Recreation
South	Residential	AG-1 Agriculture
East	Residential	AG-1 Agriculture
West	Residential	CR Conservation Recreation

## EXTRATERRITORIAL JURISDICTION

The subject property is not within the one and one-half mile extraterritorial jurisdiction (ETJ) of 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 in Condit Township, which does have a Plan Commission. Townships with Plan Commissions have protest rights on a variance and are notified of such cases.

### **PROPOSED SPECIAL CONDITION**

- A. The existing shed can remain in its current location, but replacement of the shed or repair of more than 50% replacement value in any 365-day period means the shed must be made to conform to the yard requirements in the Zoning Ordinance.**

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

**That replacement of the existing shed conforms to the Zoning Ordinance.**

### **ATTACHMENTS**




- A Case Maps (Location, Land Use, Zoning)
- B Site Plan from ZUPA #313-21-02 approved November 23, 2021
- C Annotated 2020 aerial by P&Z Staff dated November 29, 2021
- D Images of Subject Property taken November 30, 2021
- E Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated January 13, 2022

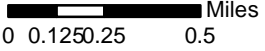
# Location Map

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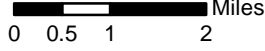
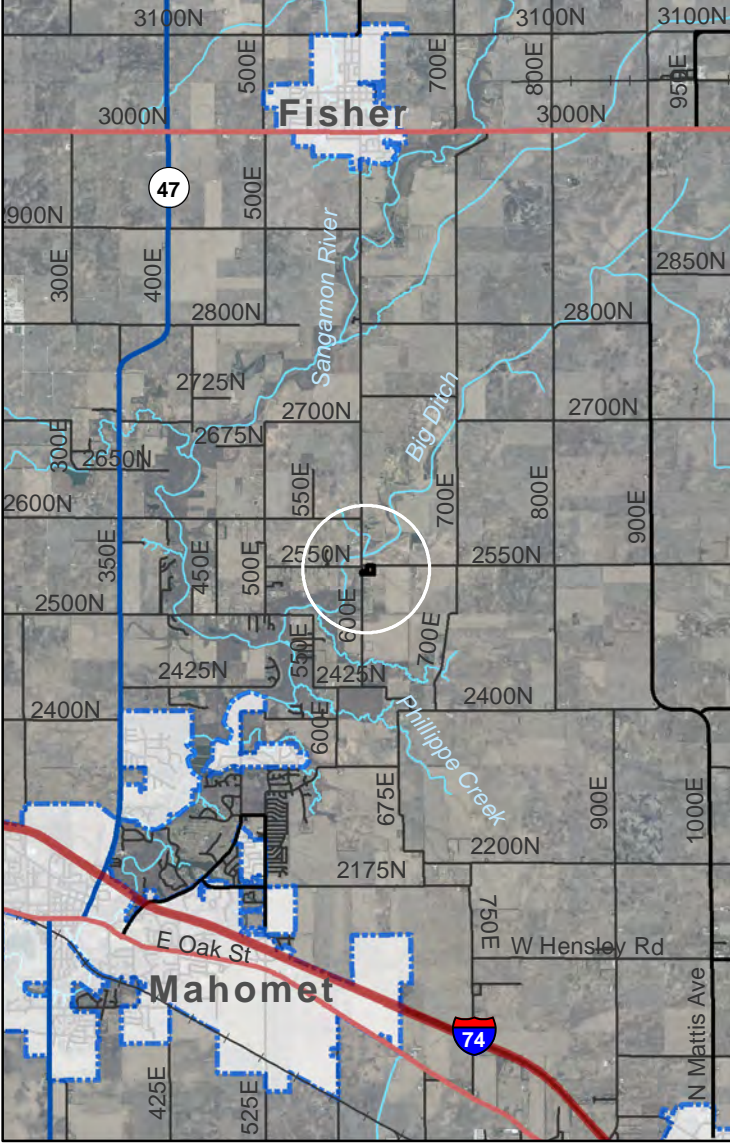
Subject Property



-  Subject Property
-  Parcels
-  Municipal Boundary



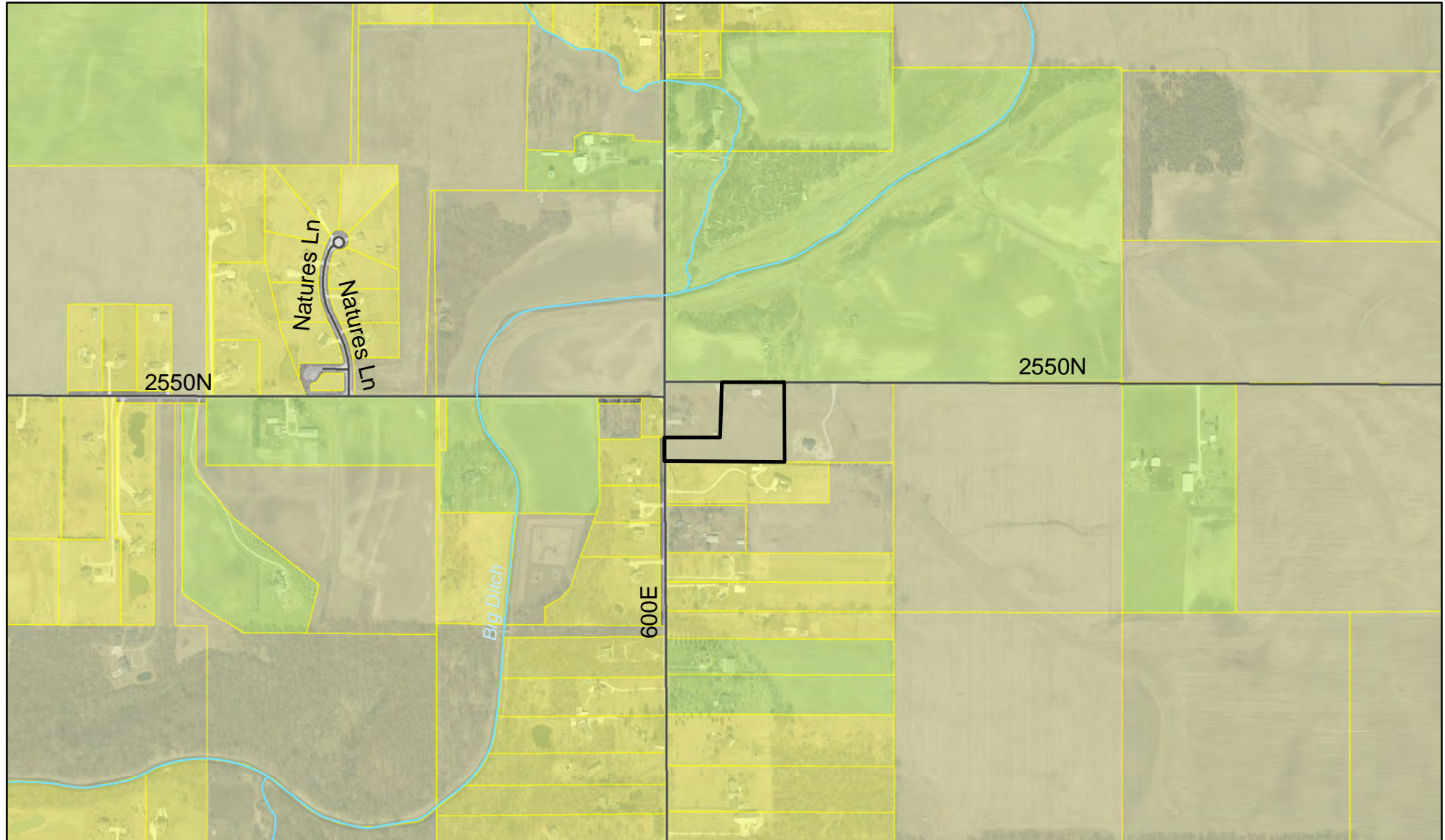
Property location in Champaign County







Champaign County  
Department of  
**PLANNING &  
ZONING**

# Land Use Map

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

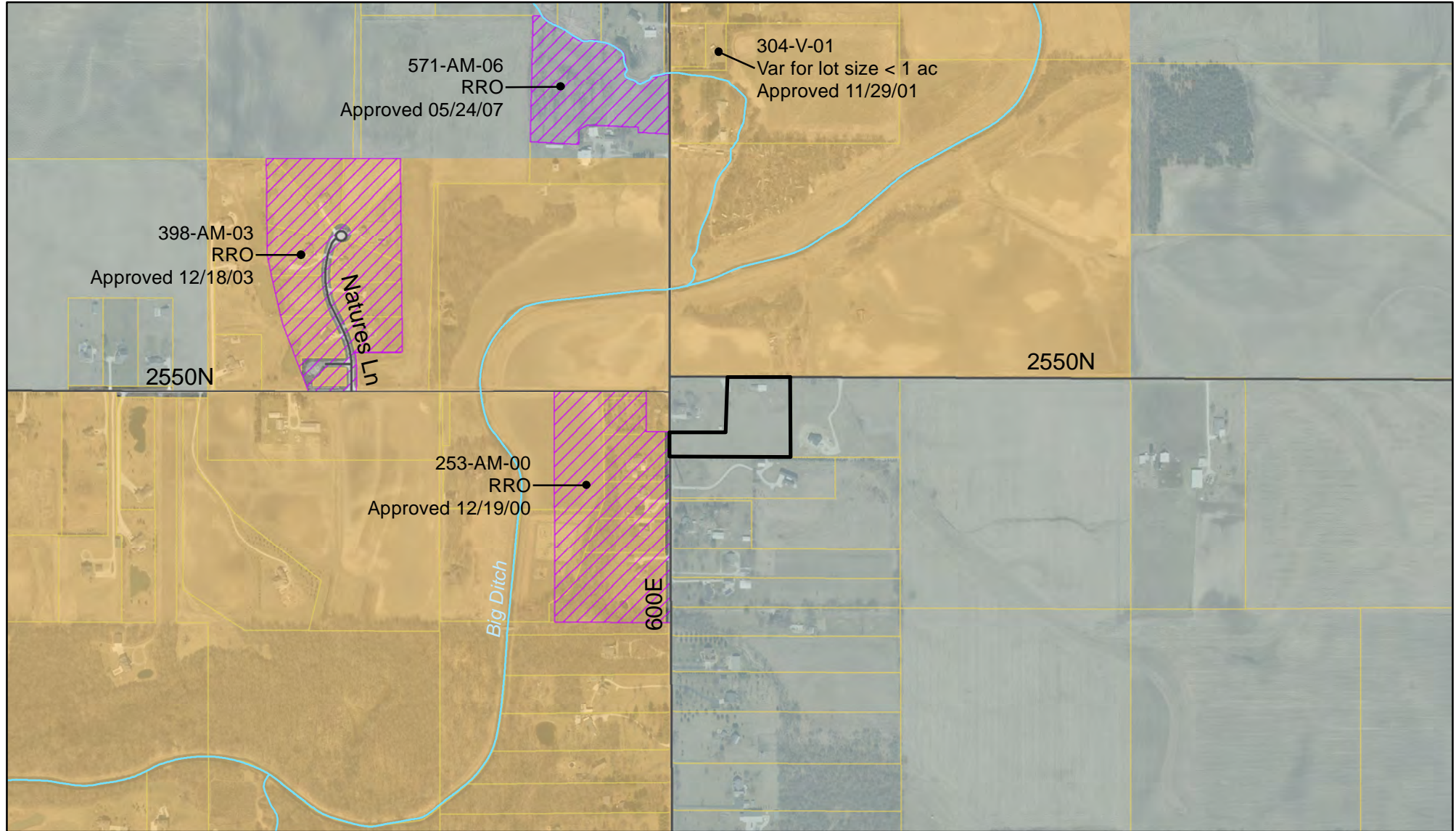
0 200 400 800 Feet



Champaign County  
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ZONING

# Zoning Map

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- Subject Property
- AG-1 Agriculture
- Parcels
- CR Conservation Recreation
- RRO - Rural Residential Overlay

0 200 400 800 Feet



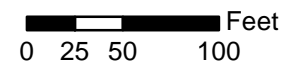


# Annotated 2020 Aerial

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 Subject Property



Champaign County  
Department of  
**PLANNING &  
ZONING**

### 029-V-21 Site Images



From CR 2550N facing east



From gravel drive off CR 2550N facing east



**PRELIMINARY DRAFT**

**029-V-21**

**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: *{January 13, 2022}*

Petitioner: **Steven & Patricia Oertwig**

Request: **Authorize a variance for an existing detached shed with a front yard of 18 feet and a setback of 43 feet from the street centerline of CR 2550N in lieu of the minimum required front yard of 25 feet and setback of 55 feet in the AG-1 Agriculture 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 **January 13, 2022**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Steven and Patricia Oertwig own the subject property.
2. The subject property is a 4.9-acre lot in the Northwest Quarter of the Northwest Quarter of the Southwest Quarter of Section 30, Township 21 North, Range 8 East of the Third Principal Meridian in Condit Township, commonly known as the residence with an address of 2546 CR 600E, Dewey.
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 Condit 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 4.9-acre subject property is zoned AG-1 Agriculture and is residential in use.
  - B. Land to the north of the subject property is zoned CR Conservation Recreation and is in agricultural production.
  - C. Land to the east and south of the subject property is zoned AG-1 Agriculture and is residential in use.
  - D. Land to the west of the subject property is zoned CR Conservation Recreation with a Rural Residential Overlay, and is residential in use.

***GENERALLY REGARDING THE PROPOSED SITE PLAN***

5. Regarding the site plan for the subject property:
  - A. The Annotated 2020 Aerial created by P&Z Staff on November 29, 2021 is the site plan for this case, and indicates the following:
    - (1) Existing buildings include:
      - a. One 6,002 square feet residence approved under ZUPA #313-21-02 is not shown since it is newer than the aerial photo.
      - b. One 2,480 square feet detached shed in the northeast corner, which was constructed without a permit due to an agricultural exemption between 1988 and 2002. Expansions have been made since, and a permit was issued for the shed along with the new residence under ZUPA #313-21-02, contingent upon this variance case.
    - (2) No construction is proposed.

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- B. The following are previous Zoning Use Permits for the subject property:
- (1) ZUPA #313-21-02 was approved on November 23, 2021 to construct a residence and include the subject shed.
- C. There are no prior zoning cases for the subject property.
- D. The required variance is as follows:
- (1) Authorize a variance for an existing detached shed with a front yard of 18 feet and a setback of 43 feet from the street centerline of CR 2550N in lieu of the minimum required front yard of 25 feet and setback of 55 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County 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) “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.
  - (4) “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.
  - (5) “LOT LINES” are the lines bounding a LOT.
  - (6) “RIGHT-OF-WAY” is the entire dedicated tract or strip of land that is to be used by the public for circulation and service.
  - (7) “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.
  - (8) “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

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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.
- (9) “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.
- (10) “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.
- (11) “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.

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- D. Minimum FRONT YARD for an accessory structure in the AG-1 Agriculture District is established in Section 4.3.2 of the Zoning Ordinance as 25 feet.
- E. Minimum SETBACK for an accessory structure in the AG-1 Agriculture District is established in Section 4.3.2 of the Zoning Ordinance as 55 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, **“Purchased property with buildings on and didn’t realize building appears to be too close to property line.”**
  - B. The shed was constructed without a permit sometime between 1988 and 2002 and had an agricultural exemption at that time. An addition was built between 2002 and 2008, again without a permit. A final addition was built prior to 2011 without a permit.
  - C. When the petitioners applied for a building permit for their new residence, the shed was discovered to be too close to the road; even with an agricultural exemption, a shed must comply with the front yard and setback requirements.
  - D. Construction and additions to the shed occurred prior to the petitioner’s purchase of the subject property.

**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, **“I need variance to get building permit for my home. One building will be used for storage. Not an option to remove.”**
  - B. Regarding the proposed Variance:
    - (1) Without the proposed variance, the petitioner would have to move or demolish the building.

**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, **“Purchased this land 10/29/22. Was not aware of any zoning issues.”**
  - B. Construction and additions to the shed occurred prior to the petitioner’s purchase of the subject property.

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**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 buildings do not present visual distractions for traffic.”**
  - B. Regarding the proposed variance for a front yard of 18 feet and a setback of 43 feet in lieu of the minimum required 25 feet and 55 feet, respectively: the requested variance for front yard is 72% of the minimum required, for a variance of 28%, and the requested variance for setback is 78% of the minimum required, for a variance of 22%.
  - C. 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 2550N 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: **“The buildings do not present visual distractions for traffic.”**
  - B. The Condit Township Road Commissioner has been notified of this variance, and no comments have been received.
  - C. The Sangamon Valley 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 did not provide a response on the application.

**GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL**

13. Regarding proposed special conditions of approval:

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- A. The existing shed can remain in its current location, but replacement of the shed or repair of more than 50% replacement value in any 365-day period means the shed must be made to conform to the yard requirements in the Zoning Ordinance.**

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

**That replacement of the existing shed conforms to the Zoning Ordinance.**

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**DOCUMENTS OF RECORD**

1. Variance Application received November 17, 2021, with attachment:
  - A Site Plan
  
2. Preliminary Memorandum dated January 4, 2022, with attachments:
  - A Case Maps (Location, Land Use, Zoning)
  - B Site Plan from ZUPA #313-21-02 approved November 23, 2021
  - C Annotated 2020 aerial by P&Z Staff dated November 29, 2021
  - D Images of Subject Property taken November 30, 2021
  - E Summary of Evidence, Summary Draft Finding of Fact, and Final Determination dated January 13, 2022



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**Page 9 of 11****SUMMARY DRAFT FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **029-V-21** held on **January 13, 2022**, 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. *The petitioner was unaware of the setback and front yard requirements until they applied to construct a residence in November 2021.*
  - b. *The shed was constructed without a permit sometime between 1988 and 2002 and had an agricultural exemption at that time. An addition was built between 2002 and 2008, again without a permit. A final addition was built prior to 2011 without a permit.*
  - c. *Even with an agricultural exemption, a shed must comply with the front yard and setback requirements.*
  - d. *Construction and additions to the shed occurred prior to the petitioner's purchase of the subject 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 proposed variance, the petitioner would have to move or demolish the building.*
  
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
  - a. *Construction and additions to the shed occurred prior to the petitioner's purchase of the subject property.*
  
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 requested variance for front yard is 72% of the minimum required, for a variance of 28%, and the requested variance for setback is 78% of the minimum required, for a variance of 22%.*
  - b. *There are no known plans to expand CR 2550N.*
  
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 variance, 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:

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7. **{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITION IMPOSED HEREIN IS REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}**

- A. **The existing shed can remain in its current location, but replacement of the shed or repair of more than 50% replacement value in any 365-day period means the shed must be made to conform to the yard requirements in the Zoning Ordinance.**

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

**That replacement of the existing shed conforms to the Zoning Ordinance.**

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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 **029-V-21** is hereby *{GRANTED / GRANTED WITH CONDITIONS/ DENIED}* to the petitioners, **Steven & Patricia Oertwig**, to authorize the following variance:

**Authorize a variance for an existing detached shed with a front yard of 18 feet and a setback of 43 feet from the street centerline of CR 2550N in lieu of the minimum required front yard of 25 feet and setback of 55 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.**

*{SUBJECT TO THE FOLLOWING CONDITION(S):}*

- A. The existing shed can remain in its current location, but replacement of the shed or repair of more than 50% replacement value in any 365-day period means the shed must be made to conform to the yard requirements in the Zoning Ordinance.**

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