

CASE NO. 042-V-22

PRELIMINARY MEMORANDUM
MARCH 23, 2022

Petitioner: **Jeff Gamboa and Carol Ghiselli**

Request: **Authorize a variance for a 3.43-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-acre lot plus 0.43 acre of a 140.84-acre tract in the Southwest Quarter of the Southwest Quarter of Section 31, Township 18 North, Range 14 West of the Second Principal Meridian in South Homer Township, commonly known as the residence with an address of 612 CR 2500E, Homer.**

Site Area: **3 existing + 0.43 proposed = 3.43 acres**

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

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

BACKGROUND

Mr. Gamboa purchased the 3-acre lot in March 2020. The 3-acre lot was created in April 2019. Mr. Gamboa would like to add 0.43 acre to his property so that a mature tree line on the south side of the original farmstead can be part of his property. Ms. Ghiselli, owner of the surrounding land, agrees to the proposed transaction and is co-petitioner on this case.

The proposed additional 0.43 acre needs a variance from the County for creating a lot greater than three acres on Best Prime Farmland.

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
East	Agriculture	AG-1 Agriculture
West	Agriculture, Residential	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture

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

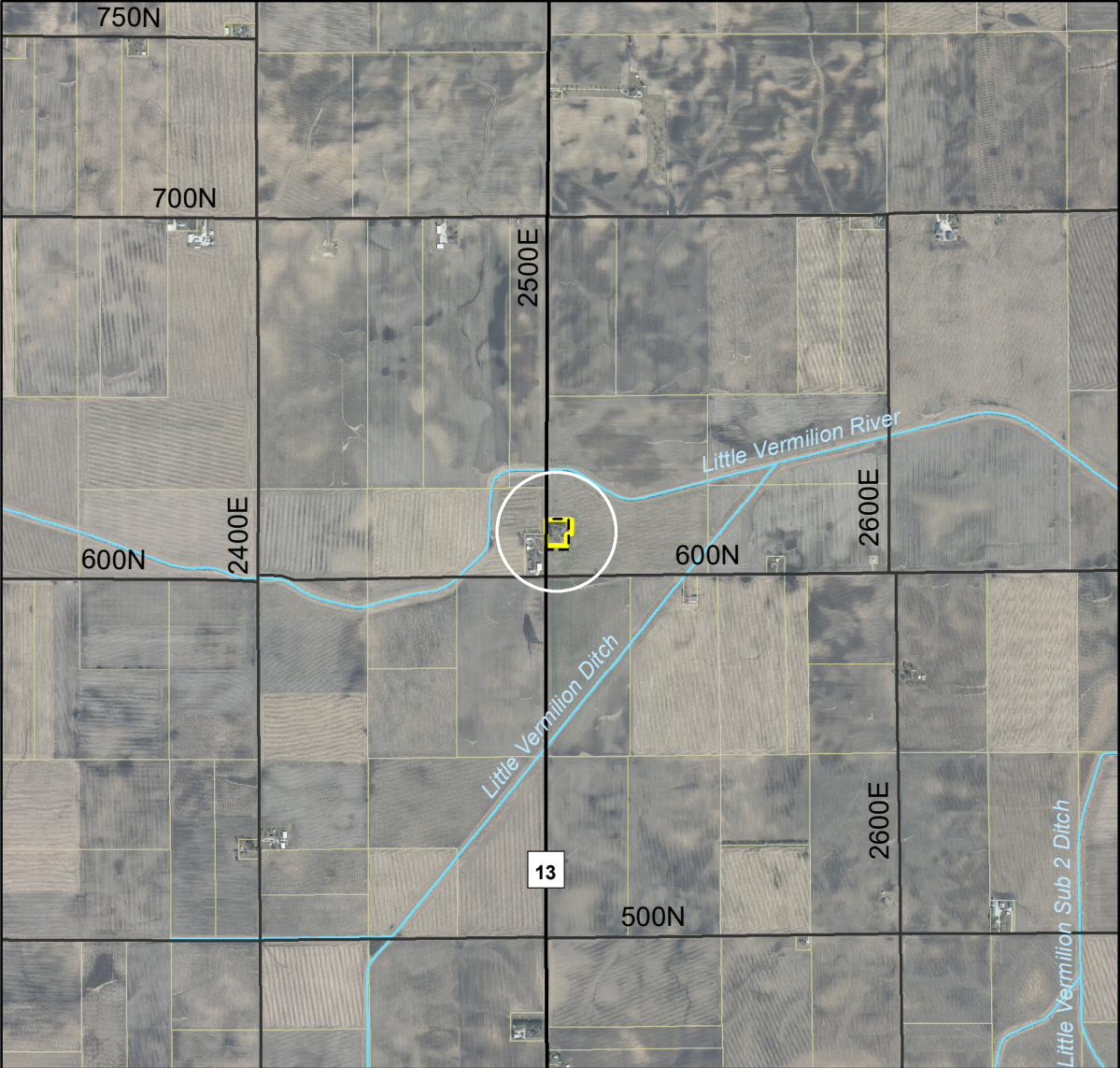
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Plat of Survey prepared by Robert Cox, Professional Land Surveyor, dated July 22, 2021
- C 2020 annotated aerial prepared by P&Z Staff dated February 28, 2022
- D 1973 annotated aerial prepared by P&Z Staff dated February 28, 2022
- E Site Images taken March 7, 2022
- F Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 042-V-22 dated March 31, 2022

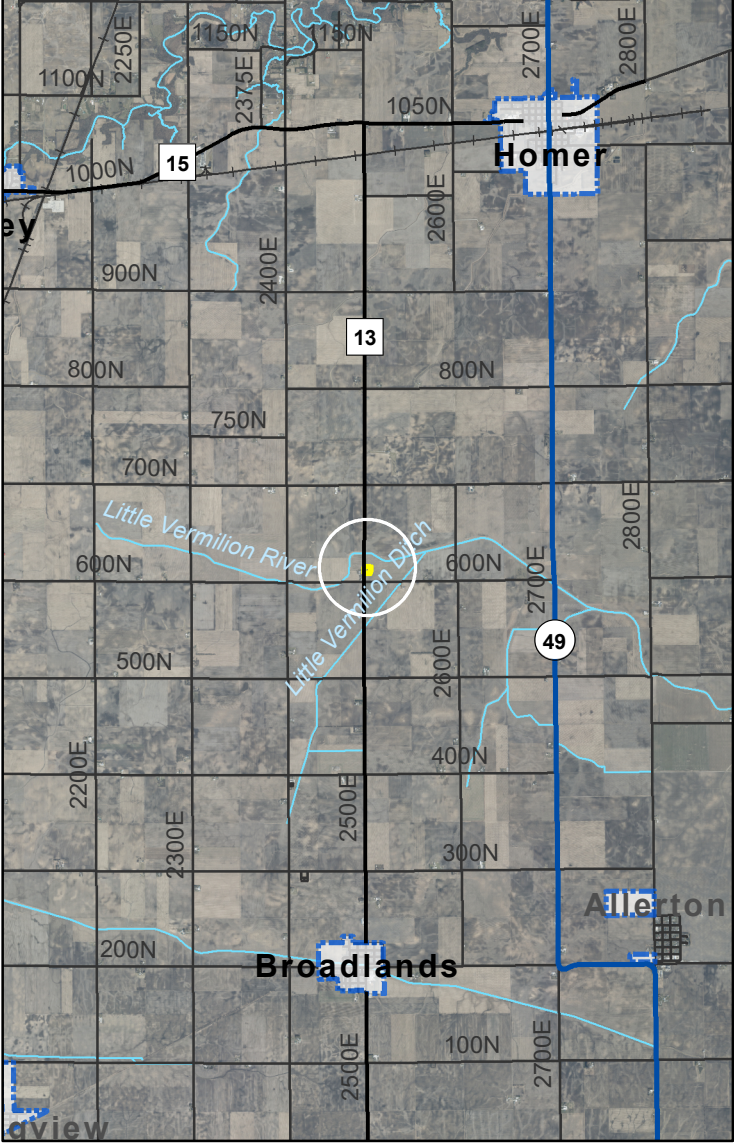
Location Map





Case 042-V-22
March 31, 2022

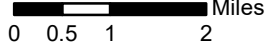
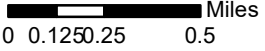
Subject Property



Property location in Champaign County

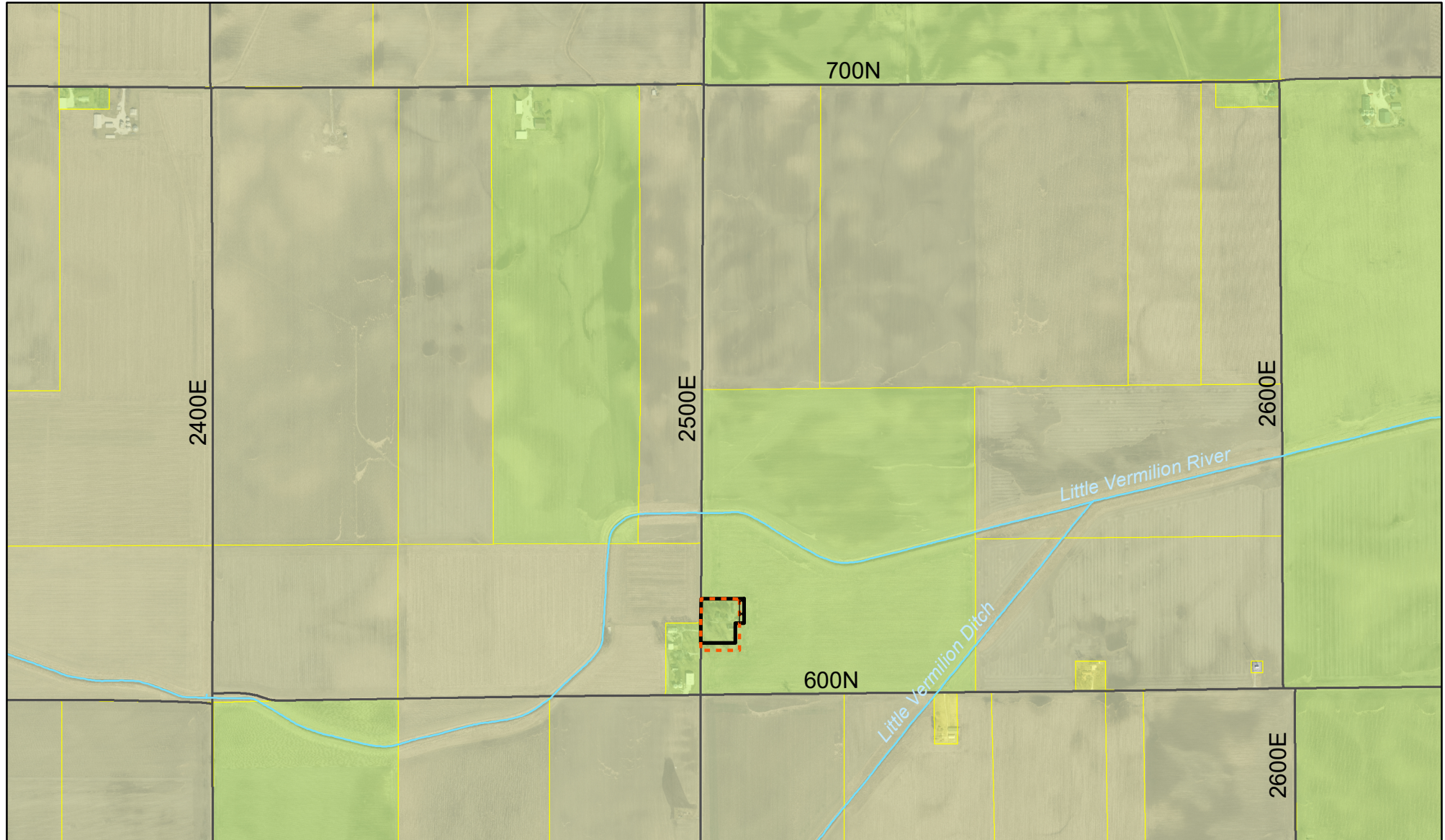


-  Proposed 3.43-acre lot
-  Existing 3-acre lot
-  Municipal Boundary
-  Parcels



Land Use Map

Case 042-V-22
March 31, 2022



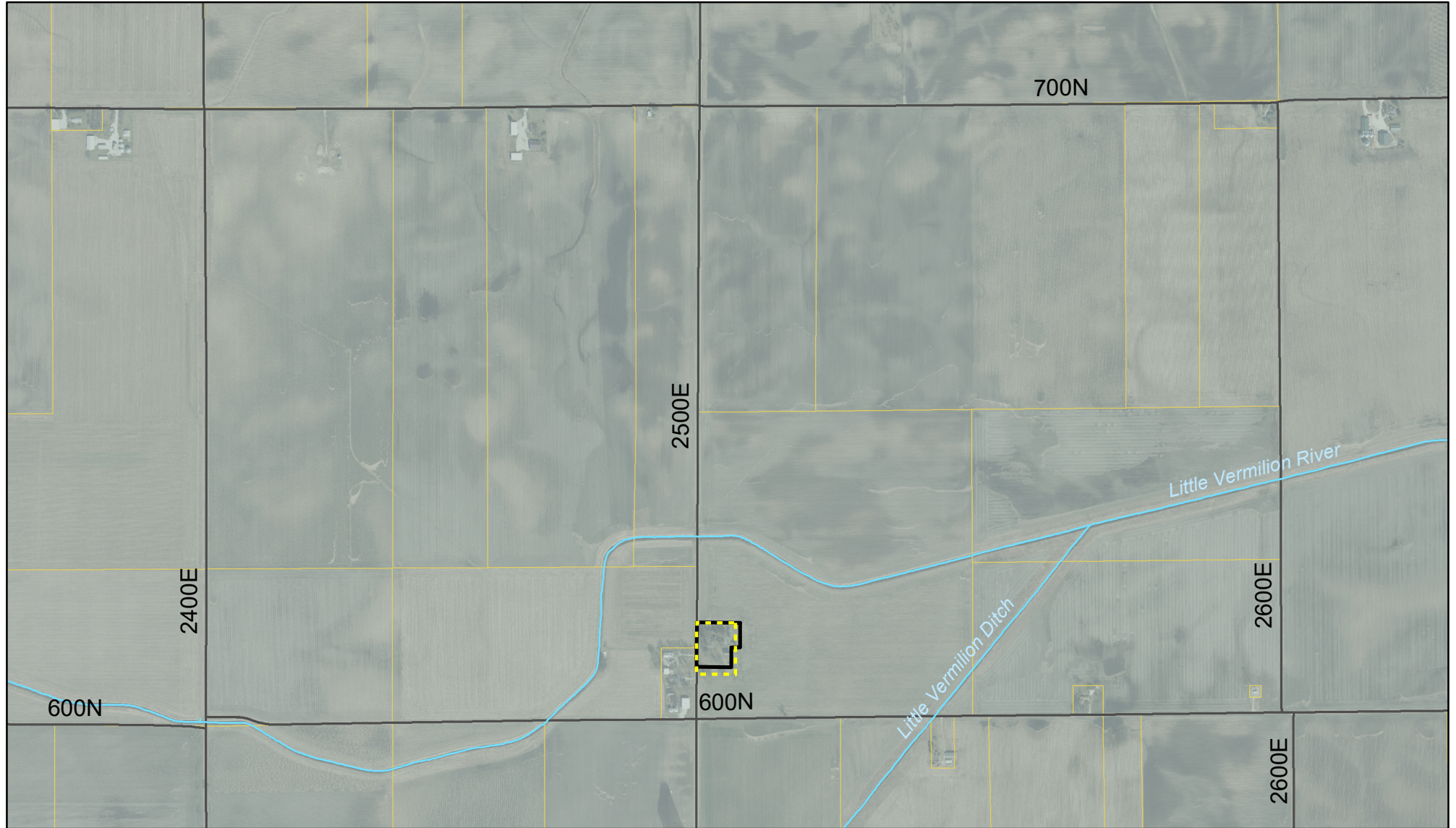
- Proposed 3.43-acre lot
- Existing 3-acre lot
- Parcels
- Agriculture
- Ag/Residential
- Residential





0 300 600 1,200 Feet

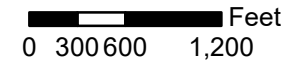
Champaign County
Department of
PLANNING &
ZONING

Zoning Map

Case 042-V-22
March 31, 2022



-  Proposed 3.43-acre lot
-  Existing 3-acre lot
-  Parcels
-  AG-1 Agriculture





COX LAND SURVEYING

P.O. Box 184, Mt. Zion, IL 62549
 Phone: (217)756-3252
 ALTA BOUNDARY
 SUBDIVISION TOPOGRAPHICAL

Professional Design Firm License No. 184.005532
 (License Expires 04/30/2023)

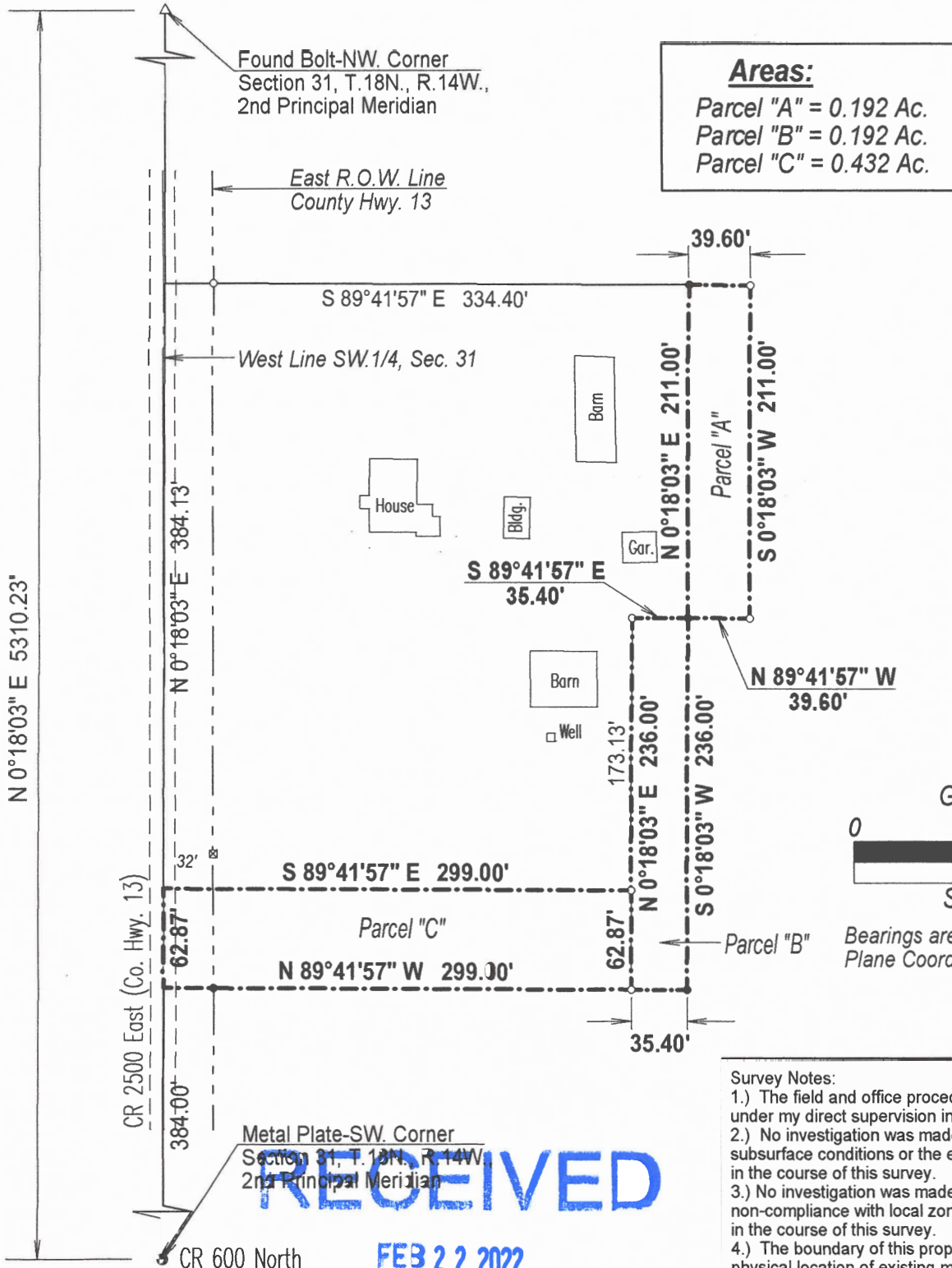
(Ghiselli-Gamboa)
 Project No. 2019-21
 P.C.S. File No. '21

Plat of Survey

Part of the Southwest Quarter (SW.1/4) of Section Thirty-one (31),
 Township Eighteen (18) North, Range Fourteen (14) West of the
 Second Principal Meridian, Champaign County, Illinois.

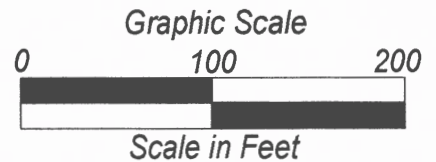
Areas:

Parcel "A" = 0.192 Ac.
 Parcel "B" = 0.192 Ac.
 Parcel "C" = 0.432 Ac.



Legend

Scale: 1" = 100'
 ○ = Iron Pipe or Pin
 From Prev. Surveys
 ● = 5/8" Iron Pin Set
 This Survey



Bearings are based on the Illinois State
 Plane Coordinate System - (East Zone)

Sheet 1 of 2 Sheets

Survey Notes:

- 1.) The field and office procedures were performed by me, or under my direct supervision in the month of July 2021.
- 2.) No investigation was made concerning environmental or subsurface conditions or the existence of underground utilities in the course of this survey.
- 3.) No investigation was made concerning the compliance or non-compliance with local zoning ordinances in effect, if any, in the course of this survey.
- 4.) The boundary of this property was determined by the physical location of existing monumentation in Section 31 and the surrounding sections.
- 5.) This professional service conforms with the current IPLSA Minimum Standards of Practice applicable to boundary surveys

RECEIVED



FEB 22 2022

CHAMPAIGN COUNTY DEPARTMENT
 Fieldwork completed July 21 (RC)

2020 Annotated Aerial

Case 042-V-22
March 31, 2022



 Subject Property
 Proposed

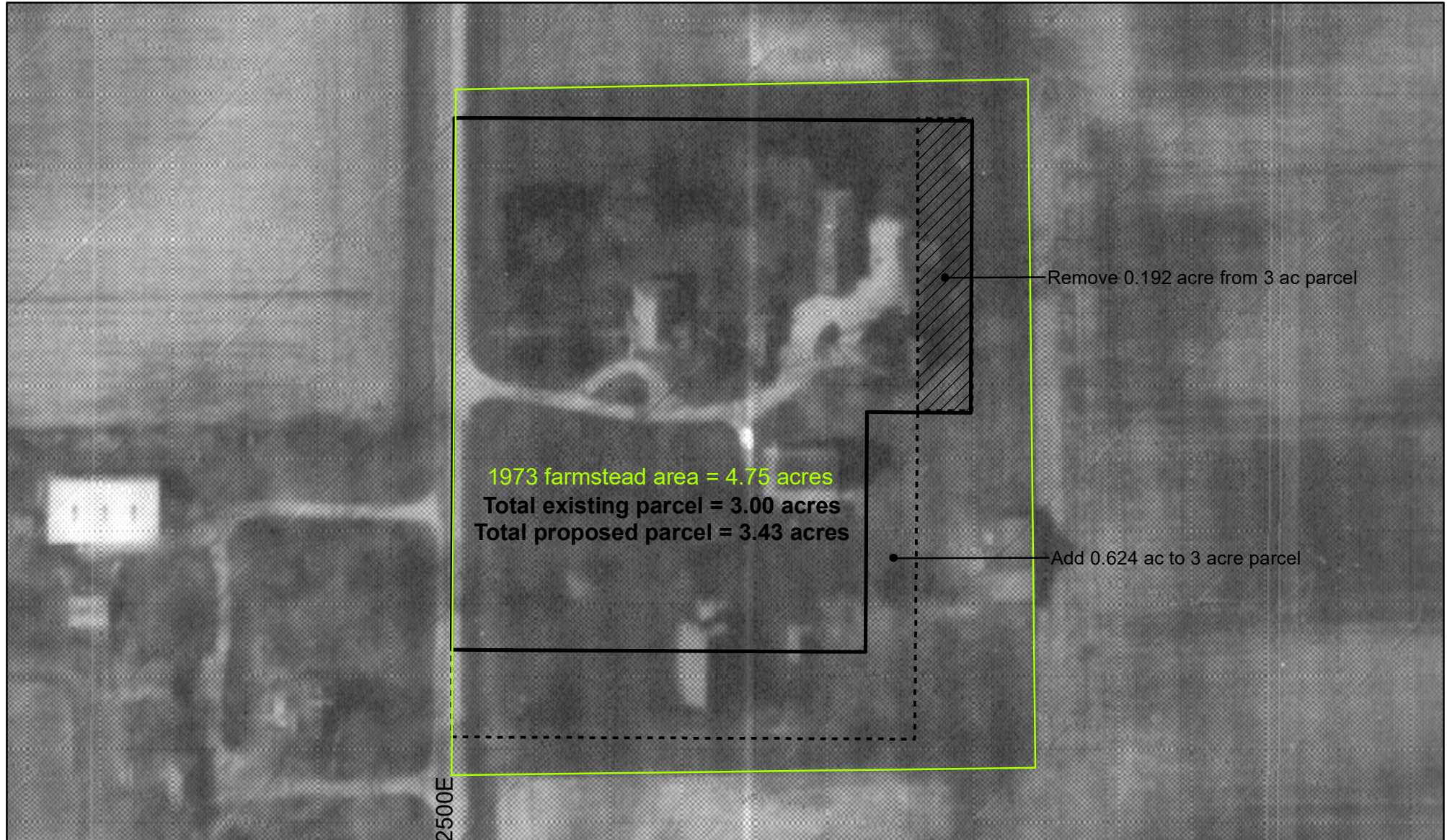
0 25 50 100 Feet



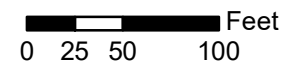
Champaign County
Department of
PLANNING &
ZONING

1973 Annotated Aerial

Case 042-V-22
March 31, 2022



- Subject Property
- Proposed additional area
- 1973 farmstead area



042-V-22 Site Images



From CR 2500E facing NE to subject property



From CR 600N facing North to subject property

042-V-22 Site Images



From CR 2500E facing East to subject property



From CR 2500E facing SE to subject property

PRELIMINARY DRAFT

042-V-22

**FINDING OF FACT
AND FINAL DETERMINATION
of the
Champaign County Zoning Board of Appeals**

Final Determination: ***{GRANTED/GRANTED WITH SPECIAL CONDITION(S)/DENIED}***

Date: ***{March 31, 2022}***

Petitioners: **Jeff Gamboa and Carol Ghiselli**

Request: **Authorize a variance for a 3.43-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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SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 31, 2022**, the Zoning Board of Appeals of Champaign County finds that:

1. Co-petitioner Jeff Gamboa owns the 3-acre lot and co-petitioner Carol Ghiselli owns the surrounding 140.84-acre tract.
2. The subject property is an existing 3-acre lot plus a proposed 0.43 acre of a 140.84-acre tract in the Southwest Quarter of the Southwest Quarter of Section 31, Township 18 North, Range 14 West of the Second Principal Meridian in South Homer Township, commonly known as the residence with an address of 612 CR 2500E, Homer.
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 South Homer 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-acre tract and the 140-acre tract are zoned AG-1 Agriculture. The larger tract is in agricultural production and the 3-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. There is one neighboring residence to the west.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Site Plan received on February 22, 2022 is a proposed Plat of Survey created by Professional Land Surveyor Robert Cox, which indicated the following:
 - (1) The proposed lot would be 334.4 feet by 447 feet, or 3.43 acres.
 - (2) The 3-acre lot includes the following existing features:
 - a. One 1,642 square foot residence constructed in 1948;
 - b. One 1,584 square foot shed constructed in 1952, located northeast of the house;
 - c. One 1,428 square foot shed constructed in 1919, located south of the house;
 - d. One 16 feet by 20 feet (320 square feet) garage constructed in 1916, located southeast of the house; and
 - e. One 14 feet by 24 feet (336 square feet) shed constructed in 1916, located east of the house.

PRELIMINARY DRAFT**Case 042-V-22**

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- B. There are no prior Zoning Use Permits for the subject property.
- 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 3.43 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.
 - (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.

PRELIMINARY DRAFT

- (5) “LOT LINES” are the lines bounding a LOT.
 - (6) “PLAT” is a map, plan or layout showing the SUBDIVISION of land and indicating the location and boundaries of individual LOTS.
 - (7) “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.
 - 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.

PRELIMINARY DRAFT**Case 042-V-22****Page 5 of 9****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: **“1. Square east side for ease of tillage. 2. Reintegrate original farmstead south side to include mature tree line and existing well.”**
- B. Regarding the soils that make up the subject property:
- (1) The soil on the proposed 3.43-acre lot is BEST PRIME FARMLAND. It consists of 154A Flanagan silt loam and has an average LE of 100.
- (2) No on the ground changes are proposed.
- C. The 1973 aerial of the farmstead shows it was approximately 4.75 acres and included the south tree line.

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 hardship is owner being prevented from using all of the original farmstead.”**
- B. Without the variance, the petitioner could not add the 0.43 acres to the existing 3-acre residential lot.

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. Lot size reduced from original homestead to 3 acres when breaking out homestead from tillable land at the time of sale due to existing zoning.”**
- B. The 3-acre lot was created in a survey recorded on April 4, 2019. The current owner purchased the property on March 26, 2020.
- (1) The lot size was limited to 3 acres so that a variance would not be needed at the time. The petitioner wants to own a mature tree line to the south that would increase the lot size to 3.43 acres, thus requiring the variance.

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:

PRELIMINARY DRAFT

- A. The Petitioners testified the following on the application: **“No land will be removed from production.”**
- 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 3.43-acre lot area is 114% of the required three acre maximum, for a variance of 14%.
- 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: **“No on the ground changes are proposed.”**
 - B. The South Homer Township Highway Commissioner has been notified of this variance, and no comments have been received.
 - C. The South Homer Township Supervisor has been notified of this variance, and no comments have been received.
 - D. The Homer 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 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 proposed at this time.

PRELIMINARY DRAFT

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DOCUMENTS OF RECORD

1. Application for Variance received February 22, 2022, with attachments:
 - Plat of Survey prepared by Robert Cox, Professional Land Surveyor, dated July 22, 2021

2. Preliminary Memorandum dated March 23, 2022, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Plat of Survey prepared by Robert Cox, Professional Land Surveyor, dated July 22, 2021
 - C 2020 annotated aerial prepared by P&Z Staff dated February 28, 2022
 - D 1973 annotated aerial prepared by P&Z Staff dated February 28, 2022
 - E Site Images taken March 7, 2022
 - F Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 042-V-22 dated March 31, 2022

PRELIMINARY DRAFT**SUMMARY DRAFT FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **042-V-22** held on **March 31, 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 1973 aerial of the farmstead shows it was approximately 4.75 acres and included the south tree line.***
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 0.43 acres to the existing residential lot, so he would not have ownership of the mature tree line that was part of the original farmstead.***
3. The special conditions, circumstances, hardships, or practical difficulties ***{DO / DO NOT}*** result from actions of the applicant because:
 - a. ***The 3-acre lot was created in a survey recorded on April 4, 2019. The current owner purchased the property on March 26, 2020.***
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 3.43-acre lot area is 114% of the required three acre maximum, for a variance of 14%.***
 - 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:
 - a. ***3.43 acres is the minimum acreage to include the mature tree line on the south side and to square up the east property line for ease of tillage.***
7. ***{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}***

PRELIMINARY DRAFT

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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 **042-V-22** is hereby *{GRANTED/ GRANTED WITH CONDITIONS/ DENIED}* to the petitioners, **Jeff Gamboa and Carol Ghiselli**, to authorize the following:

Authorize a variance for a 3.43-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