

CASE NO. 052-V-22

PRELIMINARY MEMORANDUM

May 3, 2022

Petitioner: **Kelly & Diane Kocher**

Request: **Authorize a variance for an average lot width of 165 feet in lieu of the minimum required 200 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.**

Subject Property: **A 2.53-acre tract in the Northeast Quarter of the Southeast Quarter of Section 35, Township 21 North, Range 10 East of the Third Principal Meridian in Compromise Township, and commonly known as the residence with an address of 2447 CR 2300E, St. Joseph.**

Site Area: **2.53 acres**

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

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

BACKGROUND

In March 2022, the Petitioners requested a Zoning Use Permit to construct a pole barn. Staff review indicated that the average lot width did not meet the minimum required 200 feet, so either the lot would need to be increased in width or a variance would be required in order to approve the Zoning Use Permit for the pole barn. Previous attempts to purchase adjacent land were unsuccessful, so the petitioner applied for the variance.

The requirement for a minimum average lot width of 200 feet in the AG-1 Zoning District was established with the adoption of the Zoning Ordinance on October 10, 1973.

The petitioner purchased the subject property in 2009. The lot was created in 1981. The lot is completely surrounded by farmland in production.

No comments have been received to date.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Single Family Residence	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
East	Agriculture	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture

EXTRATERRITORIAL JURISDICTION

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

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

PROPOSED SPECIAL CONDITIONS

No special conditions are proposed at this time.

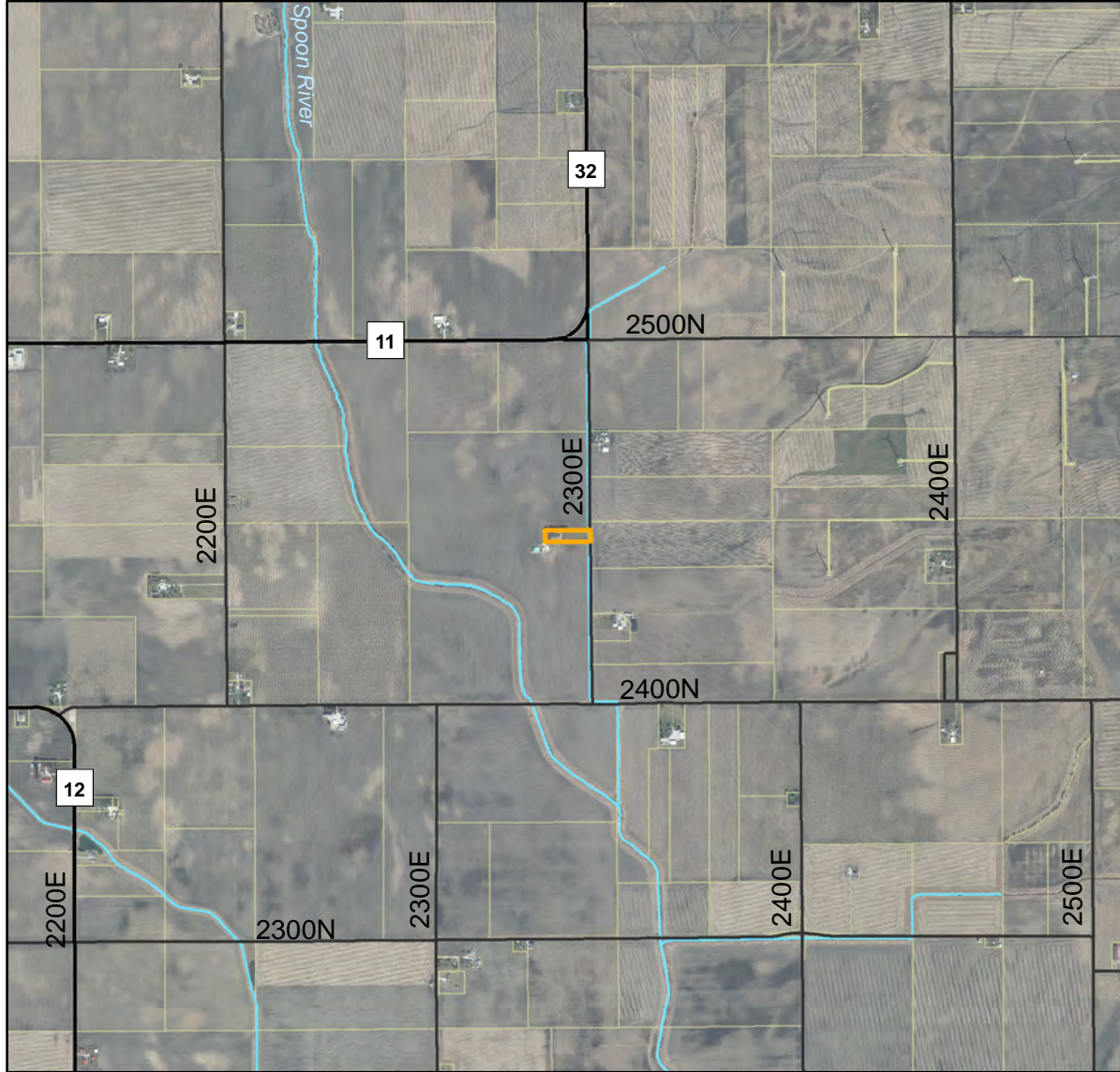
ATTACHMENTS




- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received March 30, 2022
- C Images of Subject Property taken April 21, 2022
- D Draft Summary of Evidence, Finding of Fact, and Final Determination dated May 12, 2022

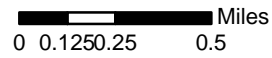
Location Map

Case 052-V-22
May 12, 2022

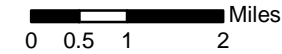
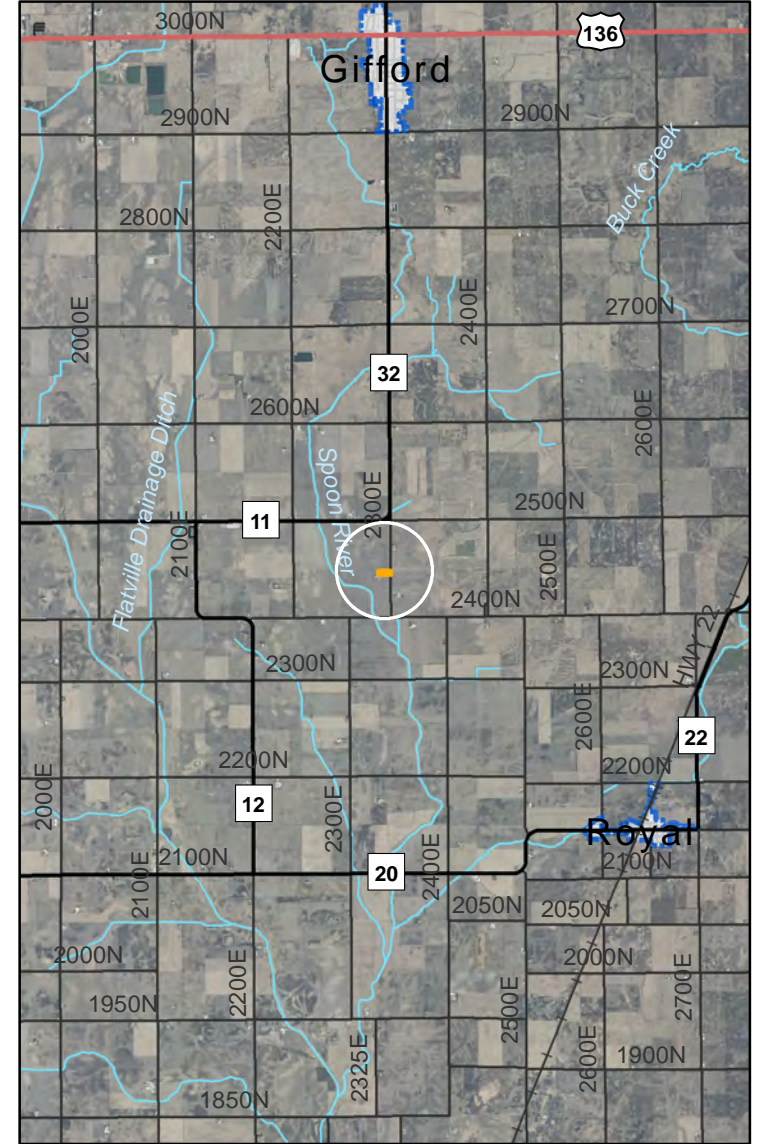
Subject Property



-  Subject Property
-  Municipal Boundary
-  Parcels



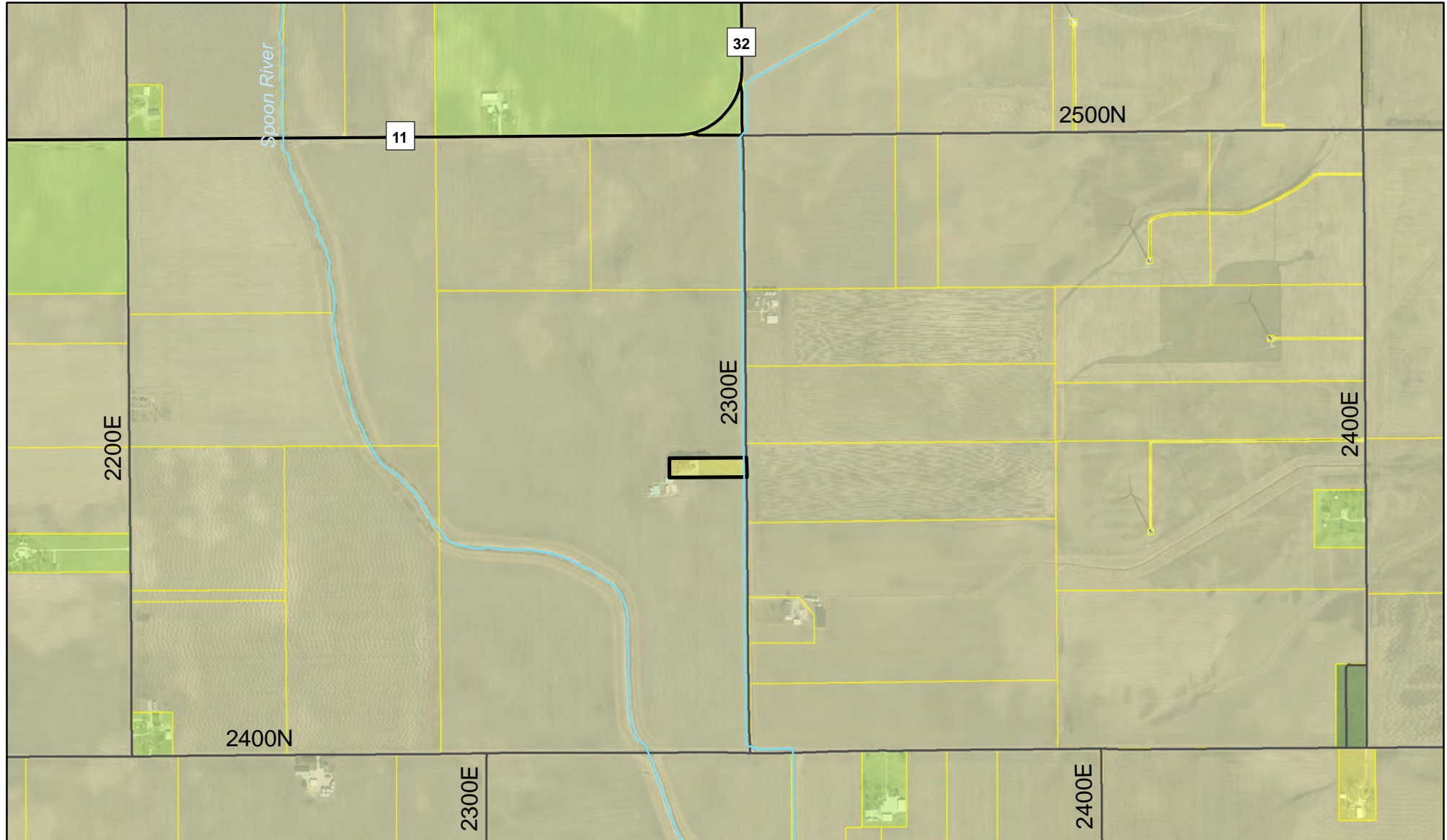
Property location in Champaign County



Champaign County
Department of
PLANNING &
ZONING

Land Use Map

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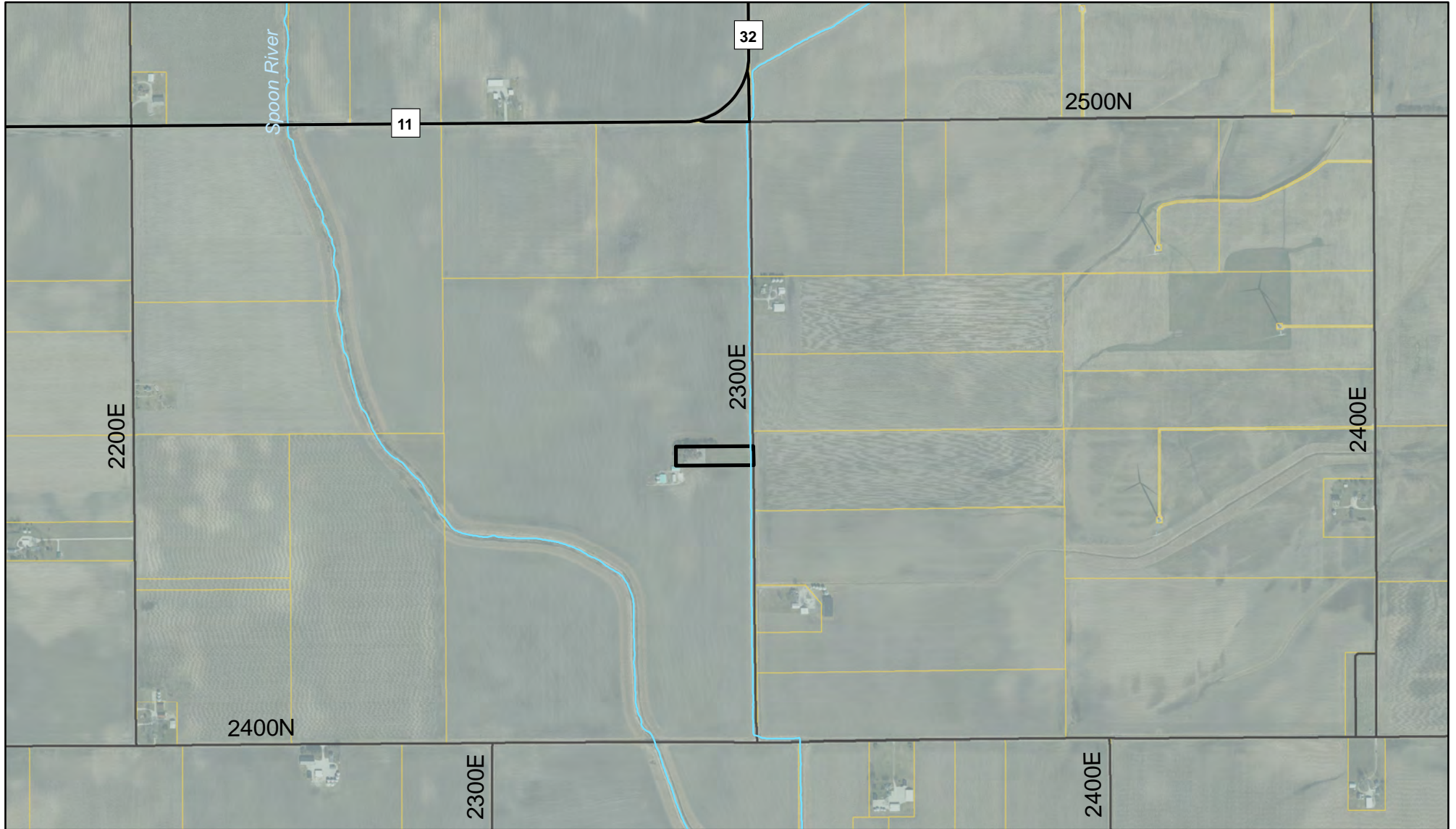
- Subject Property
- Agriculture
- Residential
- Parcels
- Ag/Residential
- Cemetery




0 300 600 1,200 Feet



Zoning Map

Case 052-V-22
May 12, 2022



-  Subject Property
-  Parcels
-  AG-1 Agriculture

0 300 600 1,200 Feet



Champaign County
Department of
**PLANNING &
ZONING**

670

125

↓ 12' FROM NORTH PROPERTY LINE

↑ POLE
1 1/2" DIA
5' BAR
↓ 40' →

2447

← 370' FROM CENTER OF ROAD →

400-005

↑ 95' FROM SOUTH PROPERTY LINE

2.53

165

← 200' FROM WEST PROPERTY LINE →

230.0E

RECEIVED

MAR 28 2022

CHAMPAIGN CO. P & Z DEPARTMENT

052-V-22 Site Images



From CR 2300E facing NW to subject property



From CR 2300E facing west to subject property

PRELIMINARY DRAFT

052-V-22

**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: *{May 12, 2022}*

Petitioners: **Kelly & Diane Kocher**

Request: **Authorize a variance for an average lot width of 165 feet in lieu of the minimum required 200 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.**

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SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **May 12, 2022**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Kelly and Diane Kocher own the subject property.
2. The subject property is a 2.53-acre tract in the Northeast Quarter of the Southeast Quarter of Section 35, Township 21 North, Range 10 East of the Third Principal Meridian in Compromise Township, and commonly known as the residence with an address of 2447 CR 2300E, St. Joseph.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is not within the one and one-half mile extraterritorial jurisdiction (ETJ) of a municipality with zoning.
 - B. The subject property is located within Compromise Township, which has a 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 2.53-acre subject property is zoned AG-1 Agriculture. Land use is a single family residence.
 - B. Land surrounding the subject property is also zoned AG-1 Agriculture and is in agricultural production.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Petitioner's Site Plan received March 28, 2022, indicates the following:
 - (1) Existing features on the subject property include:
 - a. One 2,960 square feet residence constructed in 1969, prior to the adoption of the Zoning Ordinance on October 10, 1973.
 - b. One 26 feet by 20 feet (520 square feet) detached shed, also constructed prior to the adoption of the Zoning Ordinance on October 10, 1973.
 - (2) Proposed features include:
 - a. One 56 feet by 40 feet (2,240 square feet) pole barn to be constructed east of the house.
 - B. There is one previous Zoning Use Permit for the subject property:
 - (1) ZUPA 087-22-01 was approved on March 31, 2022 to construct the 2,240 square foot pole barn. A condition of the permit was that a variance must be approved or the lot would need to be increased in width.
 - C. There are no previous Zoning Cases for the subject property.

PRELIMINARY DRAFT

- D. The required variance is for an average lot width of 165 feet in lieu of the minimum required 200 feet in the AG-1 Agriculture Zoning District, per Section 5.3 of the Zoning Ordinance.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding authorization for the proposed variances:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested Variance (capitalized words are defined in the Ordinance):
- (1) “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.
 - (2) “LOT LINES” are the lines bounding a LOT.
 - (3) “LOT WIDTH, AVERAGE” is the LOT AREA divided by the LOT DEPTH or, alternatively, the diameter of the largest circle that will fit entirely within the LOT LINES.
 - (4) “VARIANCE” is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning BOARD of Appeals are permitted to grant.
- 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.

PRELIMINARY DRAFT

- (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. The minimum average lot width requirement for the AG-1 District is established in Section 5.3 of the Zoning Ordinance as 200 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, **“Lot was created before I purchased it and was not created to conform to Zoning Ordinance.”**
 - B. The subject property was created from a larger tract in 1981, and was not created in conformance to the Zoning Ordinance.
 - C. The lot area of 2.53 acres is more than twice as large as the minimum required lot area in the AG-1 Zoning District.

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, **“Without variance I am not able to build pole barn. Previous attempts to purchase surrounding land were not successful.”**
 - B. Regarding the proposed variance for an average lot width of 165 feet in lieu of the minimum required 200 feet: without the proposed variance, the petitioner could not construct the proposed pole barn.
 - C. The petitioner has indicated that previous attempts to purchase surrounding land were not successful.

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. Lot was created before we purchased the land.”**
 - B. The lot was created in 1981, and the petitioner purchased the subject property in 2009.

PRELIMINARY DRAFT**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, **“Yes. Adequate light and air.”**
 - B. Regarding the proposed variance for an average lot width of 165 feet in lieu of the minimum required 200 feet: the requested variance is 82.5% of the minimum required, for a variance of 17.5%.
 - C. Regarding the proposed variance for lot area and average lot width:
 - (1) Since the adoption of the Zoning Ordinance on October 10, 1973, the AG-1 District has always required a minimum average lot width of 200 feet.
 - (2) The County reviewed the minimum lot area and minimum average lot width requirements in Case 847-AT-93. That case established the importance of accommodating onsite wastewater treatment on lots without connection to a sanitary sewer system. As amended, following Case 847-AT-93, the Ordinance requires a minimum lot area of 30,000 square feet (0.689 acre) and a minimum average width of 150 feet for any new lot (in other than the CR and AG-1 Districts) if there is no sanitary sewer and no public water supply. Further, if a connected public water supply system is available, Paragraph 4.3.4.B. only requires a minimum lot area of 20,000 square feet and a minimum average lot width of 100 feet.
 - (3) In regards to accommodating onsite wastewater treatment and disposal:
 - a. The septic system is located west of the house on the subject property, and the water well is located on the adjacent property.
 - (4) Besides the importance of accommodating onsite wastewater treatment and disposal as part of the basis for the minimum lot area and average lot width requirement, other considerations are as follows:
 - a. Adequate light and air: The subject property is in residential use. The surrounding properties are in agricultural production.
 - b. Separation of structures to prevent conflagration: The subject property is within the Gifford Fire Protection District and the station is approximately 5.8 road miles from the subject property. The nearest residence is approximately 1,000 feet south on the other side of CR 2300E.
 - c. Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.

GENERALLY PERTAINING TO THE EFFECTS OF THE REQUESTED VARIANCE ON THE NEIGHBORHOOD AND THE PUBLIC HEALTH, SAFETY, AND WELFARE

11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:

- A. The Petitioner has testified on the application: **“Sufficient land for expansion, septic, and emergency services.”**
- B. The Compromise Township Road Commissioner has been notified of this variance and no comments have been received.
- C. The Gifford Fire Protection District has been notified of this variance and no comments have been received.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

- 12. Generally regarding and other circumstances which justify the Variance:
 - A. The Petitioner did not provide a response on the application.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

- 13. Regarding proposed special conditions of approval:

No special conditions are proposed.

PRELIMINARY DRAFT

DOCUMENTS OF RECORD

1. Variance Application received March 30, 2022, with attachment:
 - A Site Plan

2. Preliminary Memorandum dated May 3, 2022, with attachments:
 - A Case Maps (Location, Land Use, Zoning)

 - B Site Plan received March 30, 2022

 - C Images of Subject Property taken April 21, 2022

 - D Draft Summary of Evidence, Finding of Fact, and Final Determination dated May 12, 2022

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **052-V-22** held on **May 12, 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 lot did not conform to the Zoning Ordinance's minimum average lot width requirement when it was created from a larger tract in 1981.***
 - b. ***The lot area of 2.53 acres is more than twice as large as the minimum required lot area.***
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 could not construct the proposed pole barn.***
 - b. ***The petitioner has indicated that previous attempts to purchase surrounding land were not successful.***
3. The special conditions, circumstances, hardships, or practical difficulties ***{DO / DO NOT}*** result from actions of the applicant because:
 - a. ***The lot was created prior to the current owner's purchase of the property in 2009.***
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. ***There is adequate light and air and room for septic replacement on the subject property.***
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 were notified of the variance 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. ***Attempts to purchase adjacent land were unsuccessful.***
7. ***{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}***

PRELIMINARY DRAFT

FINAL DETERMINATION FOR CASE 052-V-22

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 **052-V-22** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Kelly & Diane Kocher**, to authorize the following variance in the AG-1 Agriculture Zoning District:

Variance for an average lot width of 165 feet in lieu of the minimum required 200 feet, per Section 5.3 of the Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

ATTEST:

Ryan Elwell, Chair
Champaign County Zoning Board of Appeals

Secretary to the Zoning Board of Appeals

Date