

CASE NO. 104-V-23

PRELIMINARY MEMORANDUM

July 19, 2023

Petitioner: **Julio Crispin and Joy Young**

Request: **Authorize a variance for an existing ground-mounted solar array with a side yard of 4 feet in lieu of the minimum required 10 feet in the AG-1 Agriculture Zoning District, per Section 7.2.1 of the Champaign County Zoning Ordinance.**

Subject Property: **A 9.46-acre tract in the Southeast corner of Section 6, Township 21 North, Range 8 East of the Third Principal Meridian in Condit Township, with an address of 2903 CR 700E, Fisher.**

Site Area: **9.46 acres**

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

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

BACKGROUND

The petitioner constructed a PV solar array without knowing they needed a permit. Their contractor did not investigate to see if a permit was needed. The solar array was constructed approximately four feet from the side (south) property line according to the Site Plan received May 23, 2023. A variance is needed because the minimum side yard for a detached structure is 10 feet.

P&Z Staff are concerned that the array is located further south than the Site Plan indicates, and may even be on the property to the south. During a site visit, Staff estimated the array was located approximately four feet north of the line of tillage of the property to the south. Attachment C is a 2020 aerial photo that shows the property line being approximately 20 to 25 feet north of the line of tillage. While it is a fact that the property lines used in GIS may be skewed from the aerial photo by several feet, the line of tillage seems to reflect that the array may be on the property to the south. No recorded survey could be found to verify the true property line and distance between the array and the property line.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Vacant, residence proposed	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture
East	Agriculture	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture

EXTRATERRITORIAL JURISDICTION

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

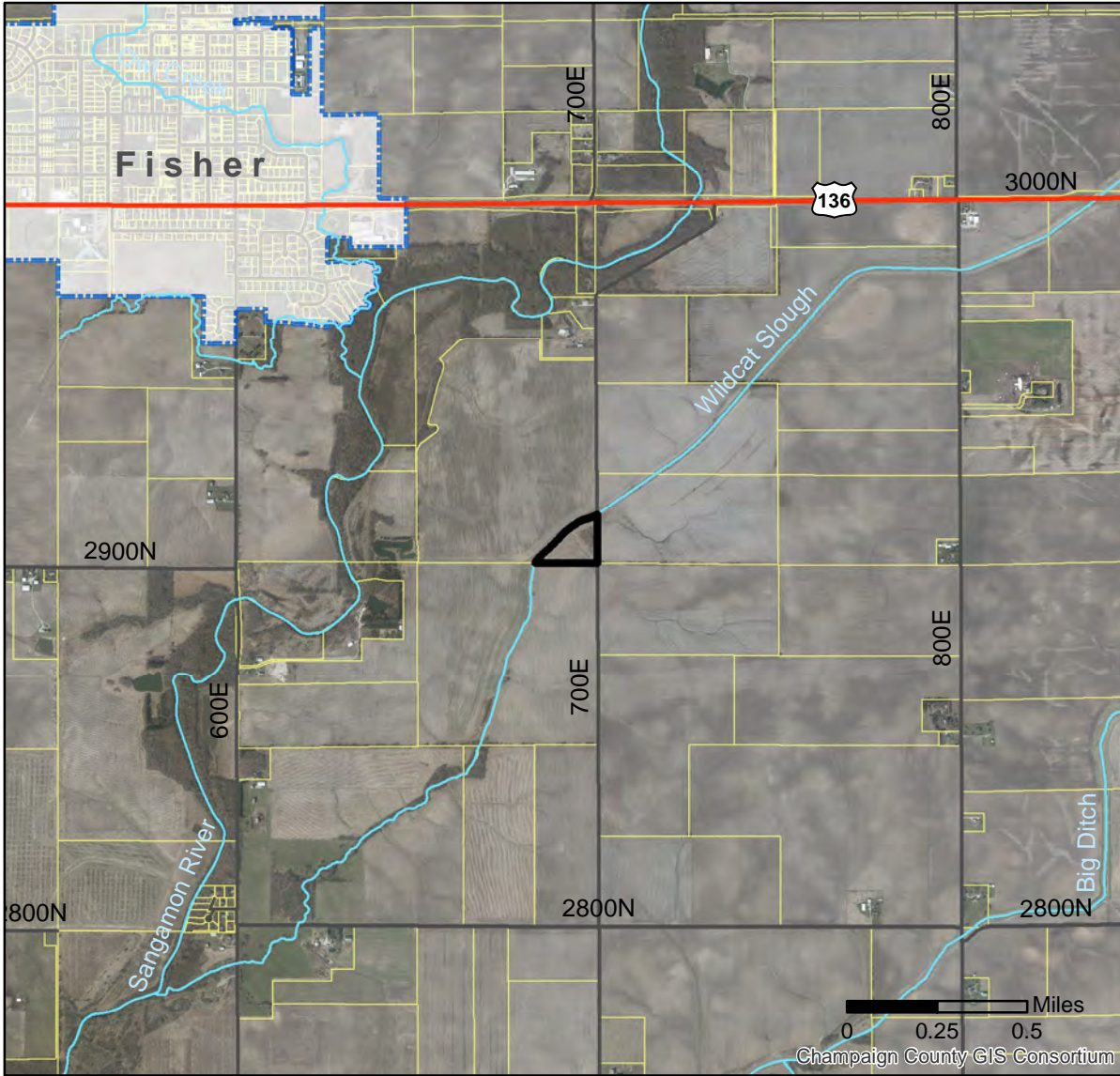
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received May 23, 2023
- C 2020 aerial
- D Images of Subject Property taken June 2, 2023
- E Draft Summary of Evidence, Finding of Fact, and Final Determination dated July 27, 2023

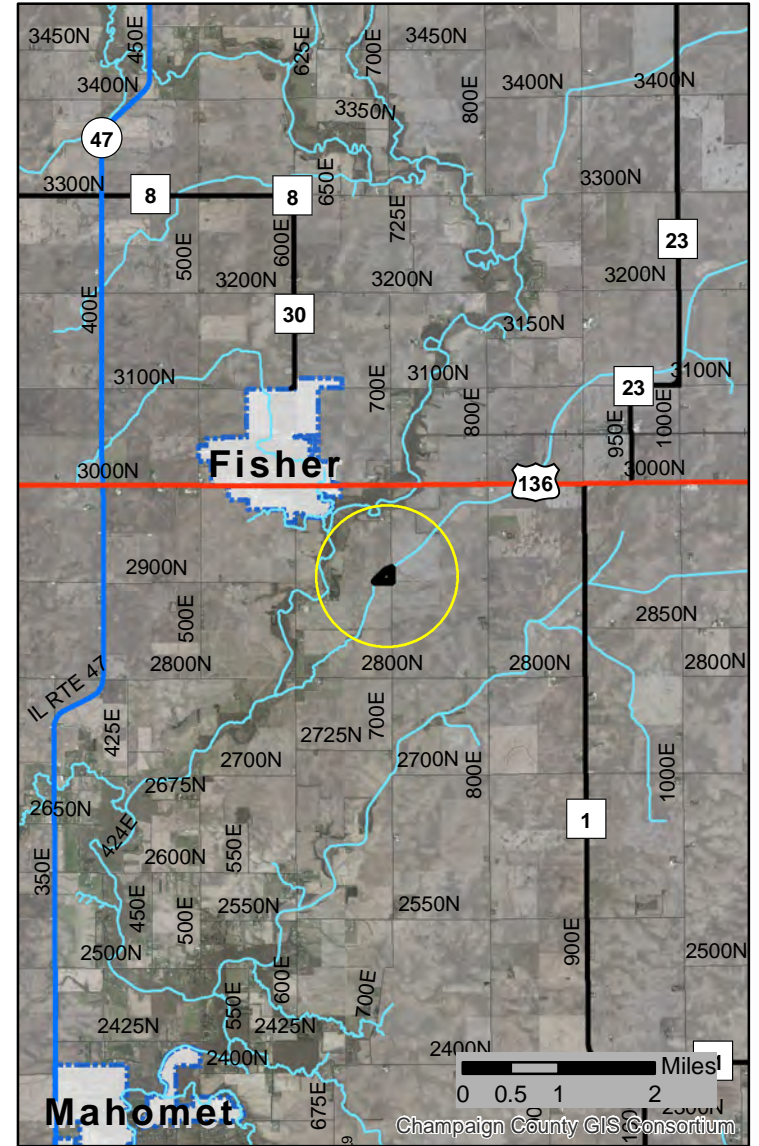
Location Map





Case 104-V-23
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Subject Property



Property location in Champaign County



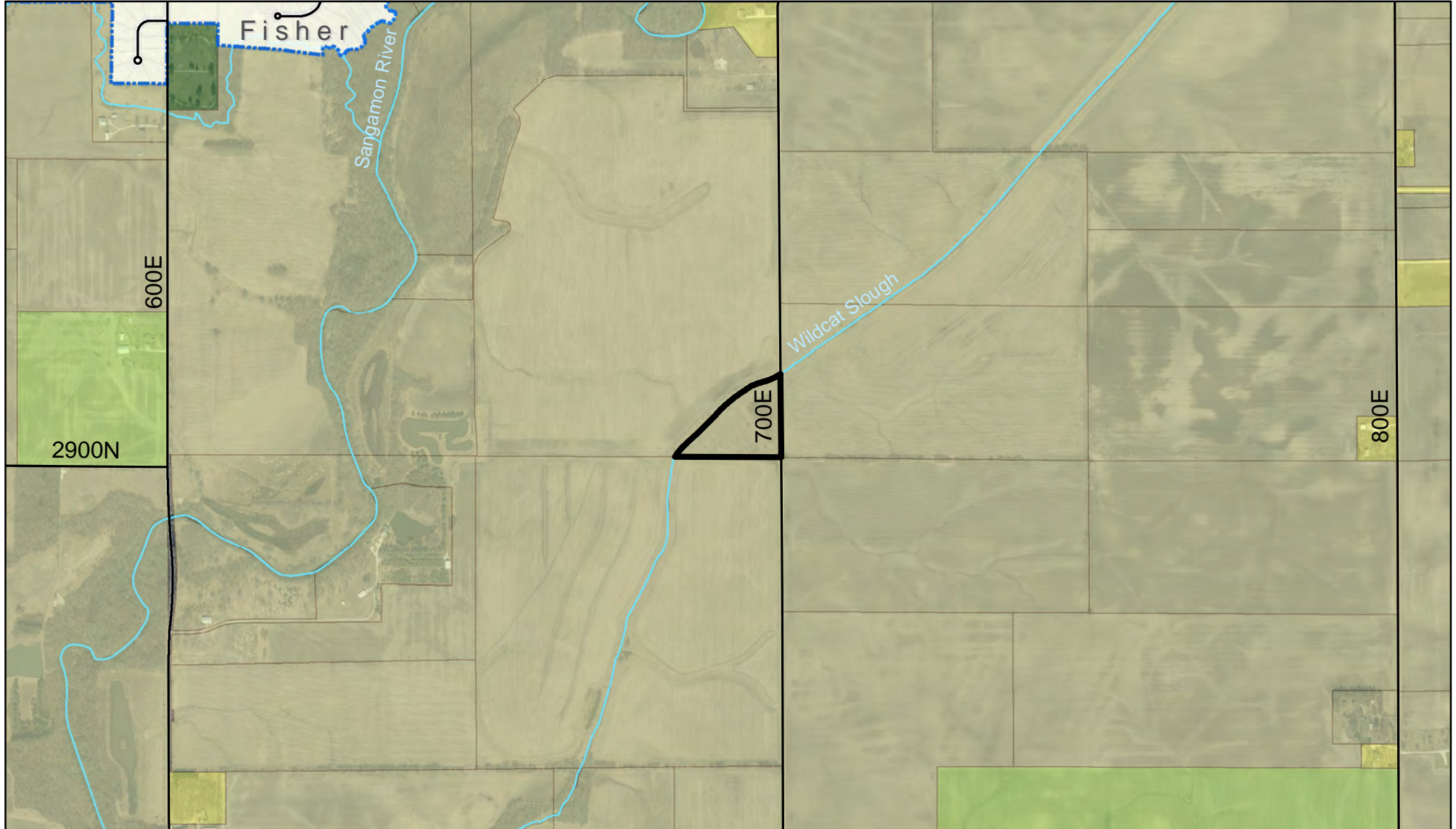
-  Subject Property
-  Municipal Boundary
-  Streets
-  Parcels



Champaign County
Department of
**PLANNING &
ZONING**

Land Use Map

Case 104-V-23
July 27, 2023



- Streets
- ▭ Subject Property
- ▭ Municipal Boundary
- ▭ Agriculture
- ▭ Ag/Residential
- ▭ Residential
- ▭ Tax Exempt

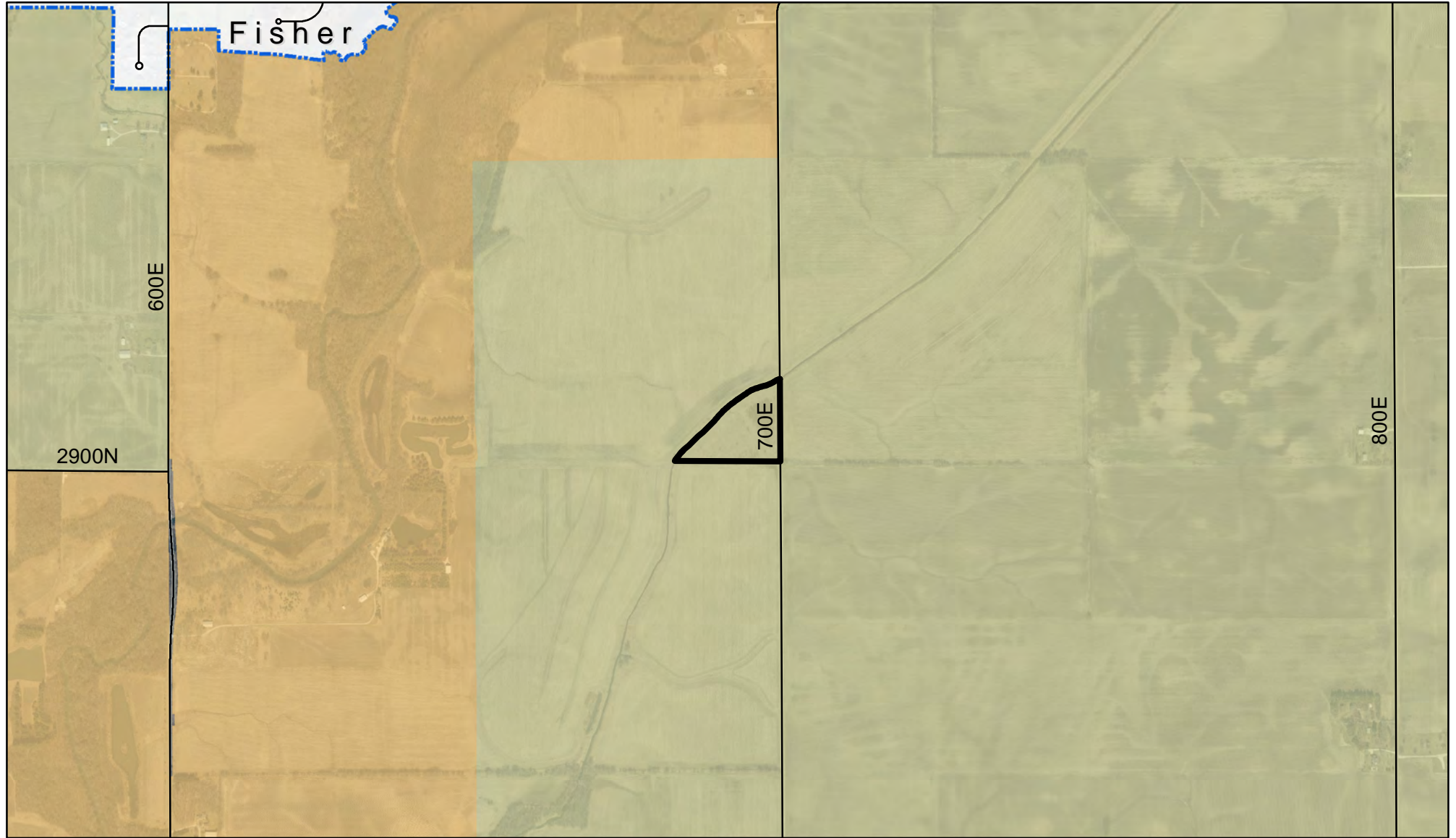
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Champaign County
Department of
PLANNING &
ZONING

Zoning Map

Case 104-V-23
July 27, 2023



-  Subject Property
-  Municipal Boundary
-  CR Conservation Recreation
-  AG-1 Agriculture

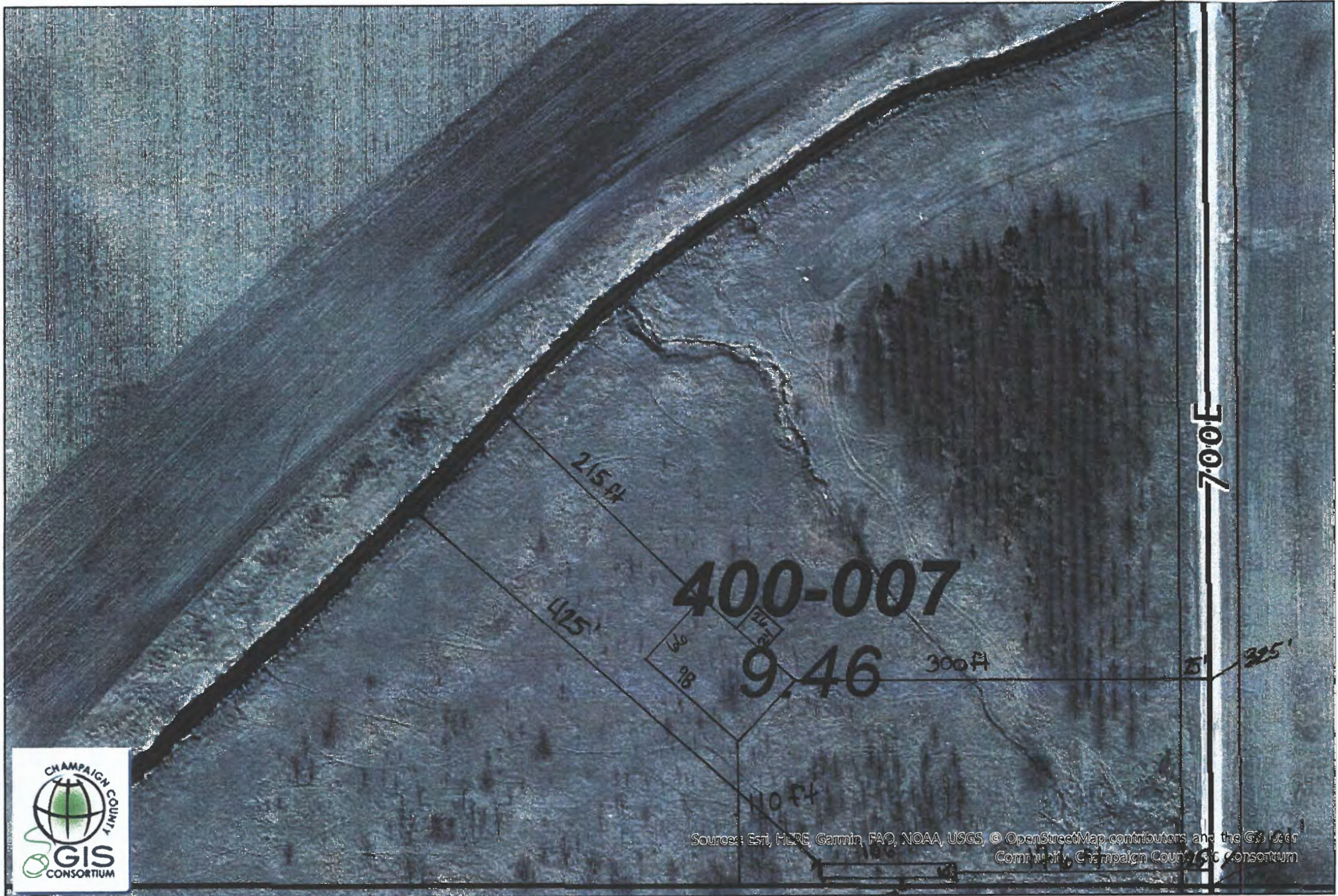
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Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, Champaign County GIS Consortium

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Property lines drawn in GIS are often skewed by several feet when overlaid on an aerial photo.



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104-V-23 Site Images



Solar array is approximately 4 feet from crop production



From CR 700E facing NW to solar array

PRELIMINARY DRAFT

104-V-23

**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: *{July 27, 2023}*

Petitioners: **Julio Crispin and Joy Young**

Request: **Authorize a variance for an existing ground-mounted solar array with a side yard of 4 feet in lieu of the minimum required 10 feet in the AG-1 Agriculture Zoning District, per Section 7.2.1 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 **July 27, 2023**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Julio Crispin and Joy Young own the subject property.
2. The subject property is a 9.46-acre tract in the Southeast corner of Section 6, Township 21 North, Range 8 East of the Third Principal Meridian in Condit Township, with an address of 2903 CR 700E, Fisher.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is within the one and one-half mile extraterritorial jurisdiction (ETJ) of the Village of Fisher, a municipality with zoning. Municipalities do not have protest rights on a variance and are not notified of such cases.
 - B. The subject property is located within Condit Township, which does not have a Plan Commission. Township Plan Commissions have protest rights on a variance and are notified of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. The subject property is currently zoned AG-1 Agriculture. Land use is vacant, with a proposed single-family residence.
 - B. Land surrounding the subject property is also in the AG-1 Agriculture Zoning District, with land use 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 May 23, 2023, indicates the following:
 - (1) Existing structures consist of the following:
 - a. One 10 feet by 106 feet ground-mounted solar array.
 - (2) The petitioner proposes to construct a single-family residence.
 - B. Previous Zoning Use Permits for the subject property are:
 - (1) ZUPA #110-23-01 was approved on May 26, 2023, to construct a single-family home.
 - C. There are no previous zoning cases for the subject property.
 - D. The required variance includes the following:
 - (1) Authorize a variance for an existing ground-mounted solar array with a side yard of 4 feet in lieu of the minimum required 10 feet in the AG-1 Agriculture Zoning District, per Section 7.2.1 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 STRUCTURE” is a STRUCTURE 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, subordinate to and USED for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE or the main or principal USE.
 - (2) “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.
 - (3) “LOT LINES” are the lines bounding a LOT.
 - (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.
 - (5) “YARD, SIDE” is a YARD situated between a side LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT and extending from the rear line of the required FRONT YARD to the front line of the required REAR YARD.
- B. The AG-1 Agriculture Zoning 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*.

PRELIMINARY DRAFT

- 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. Minimum SIDE YARD for an accessory structure in the AG-1 Agriculture DISTRICT is established in Section 7.2.1.B. of the Zoning Ordinance as 10 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, **“The rest of the property is abundant with trees and low sunlight. The array is at the best solar location. Many trees would have to be cut.”**
 - B. The petitioner was unaware that a permit was necessary to install a PV SOLAR ARRAY, and the contractor did not investigate whether a permit was needed, so the array was installed without a sufficient side yard.

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, **“The array would have to be ripped out and trees cut in order to be at the 10 foot setback.”**
 - B. Regarding the for a 4-foot side yard for the detached PV SOLAR ARRAY: without the proposed variance, the petitioner would have to move the array six feet to the north.

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, **“We were not aware the company did not research the required setback and found out after it was built when applying for housing permit.”**
 - B. The petitioner was unaware that a permit was necessary to install a PV SOLAR ARRAY, and the contractor did not investigate whether a permit was needed, so the array was installed without a sufficient side yard.

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, **“There are no south dwellings, there is 4 feet setback to the farmer’s buffer, it doesn’t impede onto neighbor’s farming operation.”**
 - B. Regarding the for a 4-foot side yard for the detached PV SOLAR ARRAY: the requested variance is 40% of the minimum required, for a variance of 60%.
 - C. The Zoning Ordinance does not clearly state the considerations that underlay the side yard requirements. In general, the side yard is presumably intended to ensure the following:
 - (1) Adequate light and air: the surrounding properties are in agricultural production.
 - (2) Separation of structures to prevent conflagration: The subject property is within the Sangamon Valley Fire Protection District and the station is approximately 3 road miles from the subject property. There are no structures on adjacent property.
 - (3) 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: **“The array sits far from the street, 4 feet from the farmer’s buffer so as to not affect operation, no trees will need cut.”**
 - 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.
 - D. There are no structures nearby.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

12. Generally regarding and other circumstances which justify the Variance:
- A. The Petitioner has testified on the application: **“Solar company did not check county setbacks prior to installing array.”**

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:
- A. No special conditions are currently proposed.

DOCUMENTS OF RECORD

1. Variance Application received May 23, 2023, with attachment:
 - A Site Plan

2. Preliminary Memorandum dated October 19, 2021, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received May 23, 2023
 - C 2020 aerial
 - D Images of Subject Property taken June 2, 2023
 - E Draft Summary of Evidence, Finding of Fact, and Final Determination dated July 27, 2023

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **104-V-23** held on **July 27, 2023**, 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 that a permit was necessary to install a PV SOLAR ARRAY, and the contractor did not investigate whether a permit was needed, so the array was installed without a sufficient side yard.***
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 the array six feet to the north.***
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
 - a. ***The petitioner was unaware that a permit was necessary to install a PV SOLAR ARRAY, and the contractor did not investigate whether a permit was needed, so the array was installed without a sufficient side yard.***
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 is 40% of the minimum required, for a variance of 60%.***
 - b. ***There is adequate light and air surrounding the PV SOLAR ARRAY.***
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 this case, and no comments have been received.***
 - b. ***There are no structures on adjacent properties.***
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:}***

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 **104-V-23** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Julio Crispin and Joy Young**, to authorize the following:

Authorize a variance for an existing ground-mounted solar array with a side yard of 4 feet in lieu of the minimum required 10 feet in the AG-1 Agriculture Zoning District, per Section 7.2.1 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