

CASE NO. 108-V-23

PRELIMINARY MEMORANDUM
August 23, 2023

Petitioner: NSB Investments LLC, via agent Jaffar Haider

Request: Authorize a variance in the I-1 Light Industry Zoning District for an existing detached shed with a rear yard of 8 feet in lieu of the minimum required 15 feet and a side yard of 7 feet in lieu of the minimum required 10 feet, per Section 7.2.3 of the Champaign County Zoning Ordinance.

Subject Property: Lots 243, 244 and 245 of Wilber Heights Subdivision in the Southwest Quarter of Section 31, Township 20 North, Range 9 East of the Third Principal Meridian in Somer Township, with an address of 208 Paul Avenue, Champaign.

Site Area: 9,900 square feet (0.23 acre)

Time Schedule for Development: Already in use

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

BACKGROUND

A detached shed was constructed on the subject property without a permit sometime between 1973 and 1988 with a rear yard of only 8 feet in lieu of the minimum required 15 feet and a side yard of only 7 feet in lieu of the minimum required 10 feet. The petitioner purchased the subject property in 2020. The need for a variance was found when P&Z Staff reviewed the property in March 2023 after it received information about a second dwelling being established in the shed.

On March 30, 2023, P&Z Staff sent the petitioner a First Notice of Violation for establishing a second dwelling on the property and for constructing the shed and a house addition without a permit. The petitioner was timely in their response in telling Staff that the second dwelling has been removed, applying for a Zoning Use Permit for the previously constructed addition and shed, and applying for the variance.

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	I-1 Light Industry
North	Vacant land	I-1 Light Industry
South	Residential, Industrial	I-1 Light Industry
East	Residential	I-1 Light Industry
West	Industrial	I-1 Light Industry

EXTRATERRITORIAL JURISDICTION

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

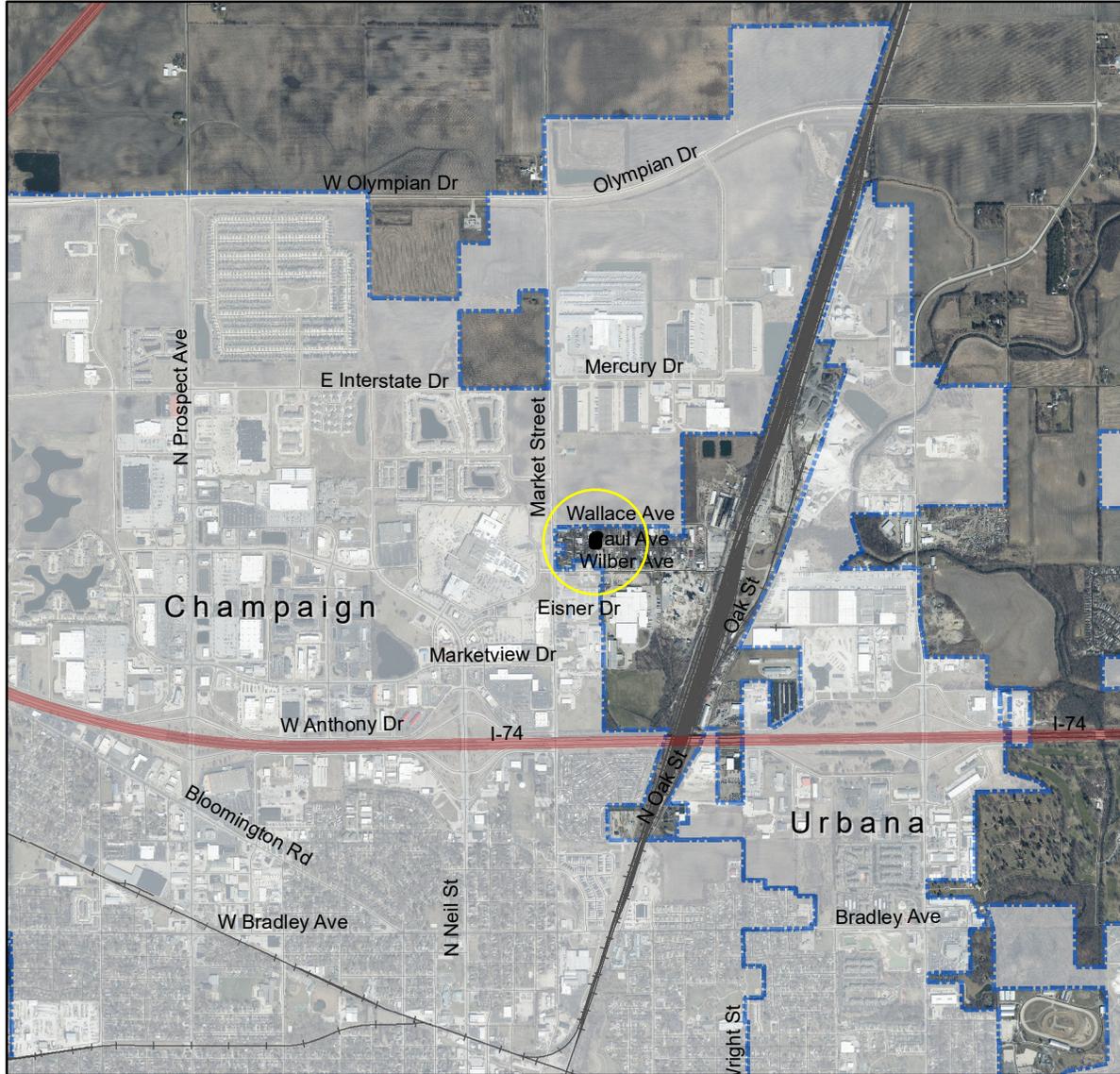
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan prepared by P&Z Staff
- C Images of subject property taken July 31, 2023
- D Draft Summary of Evidence, Finding of Fact, and Final Determination dated August 31, 2023

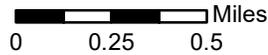
Location Map

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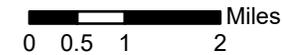
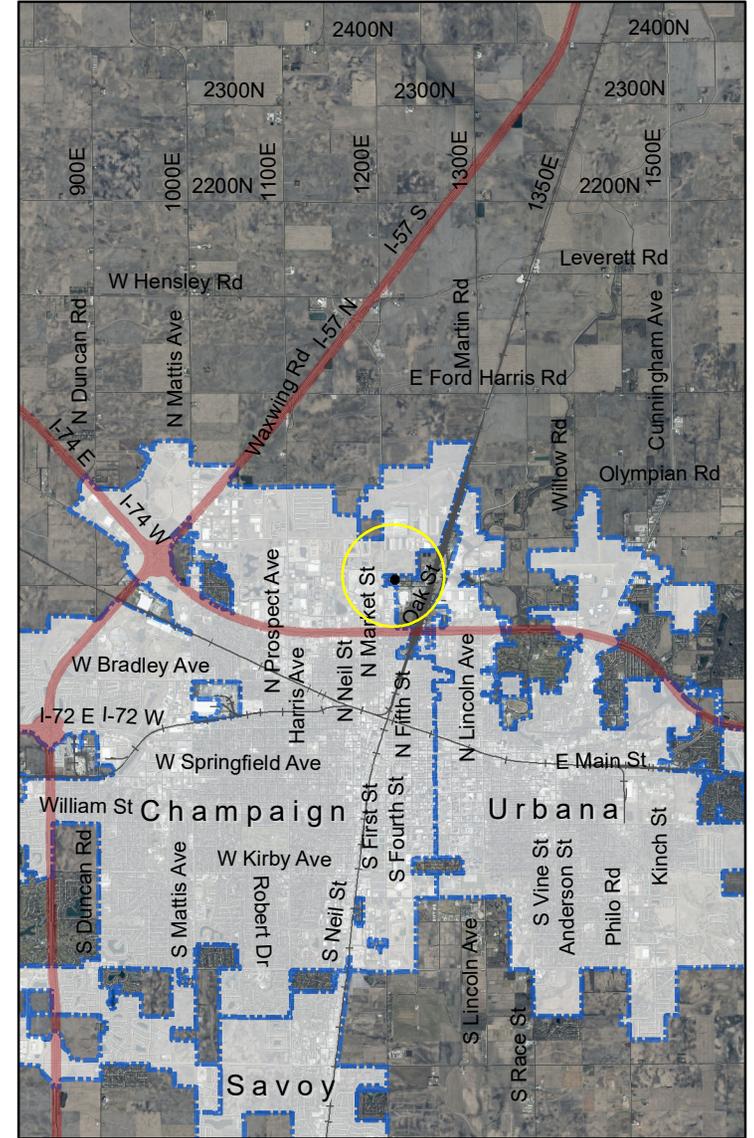
Subject Property



-  Subject Property
-  Municipal Boundary
-  Streets



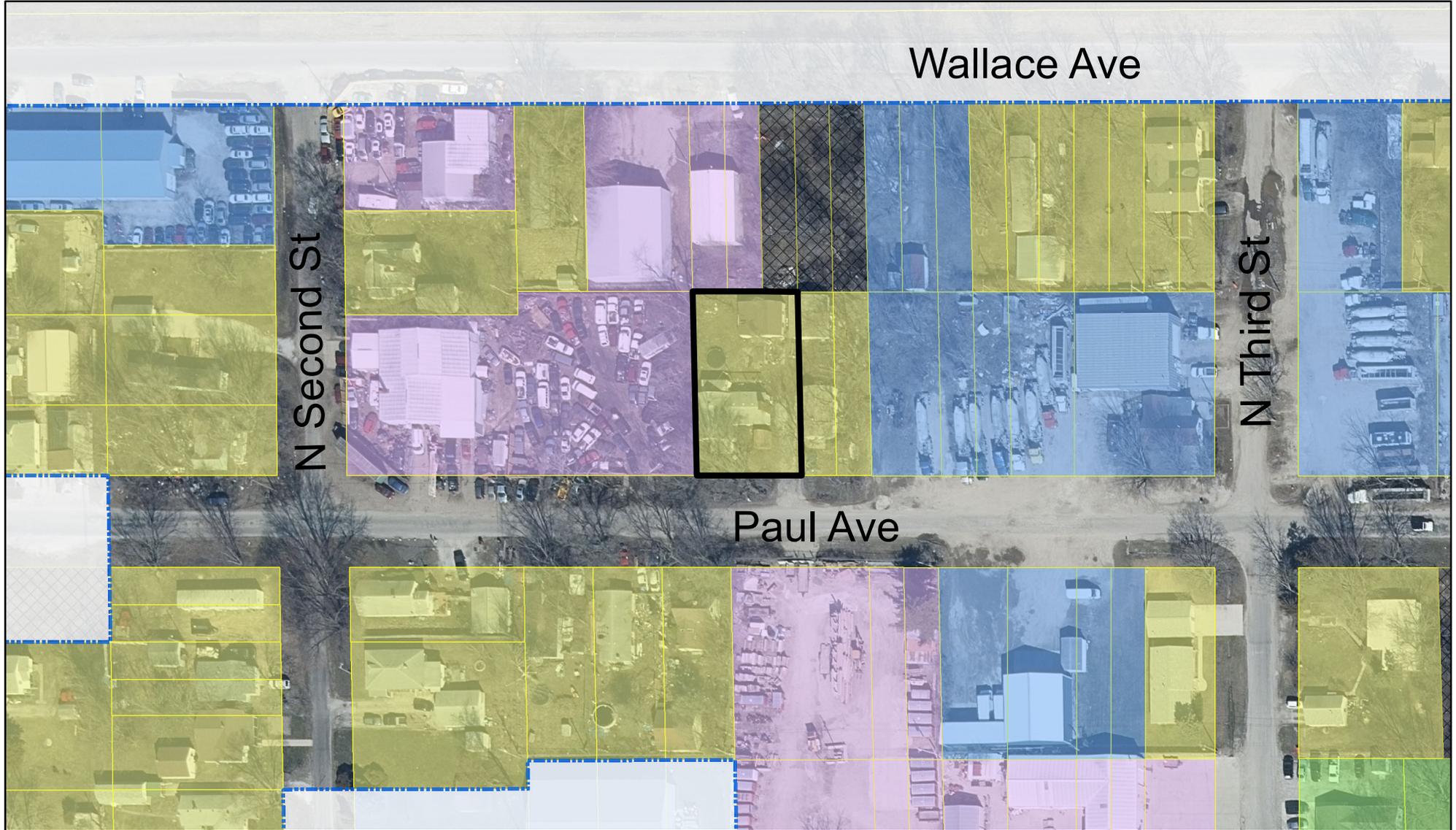
Property location in Champaign County



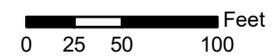
Champaign County
Department of
**PLANNING &
ZONING**

Land Use Map

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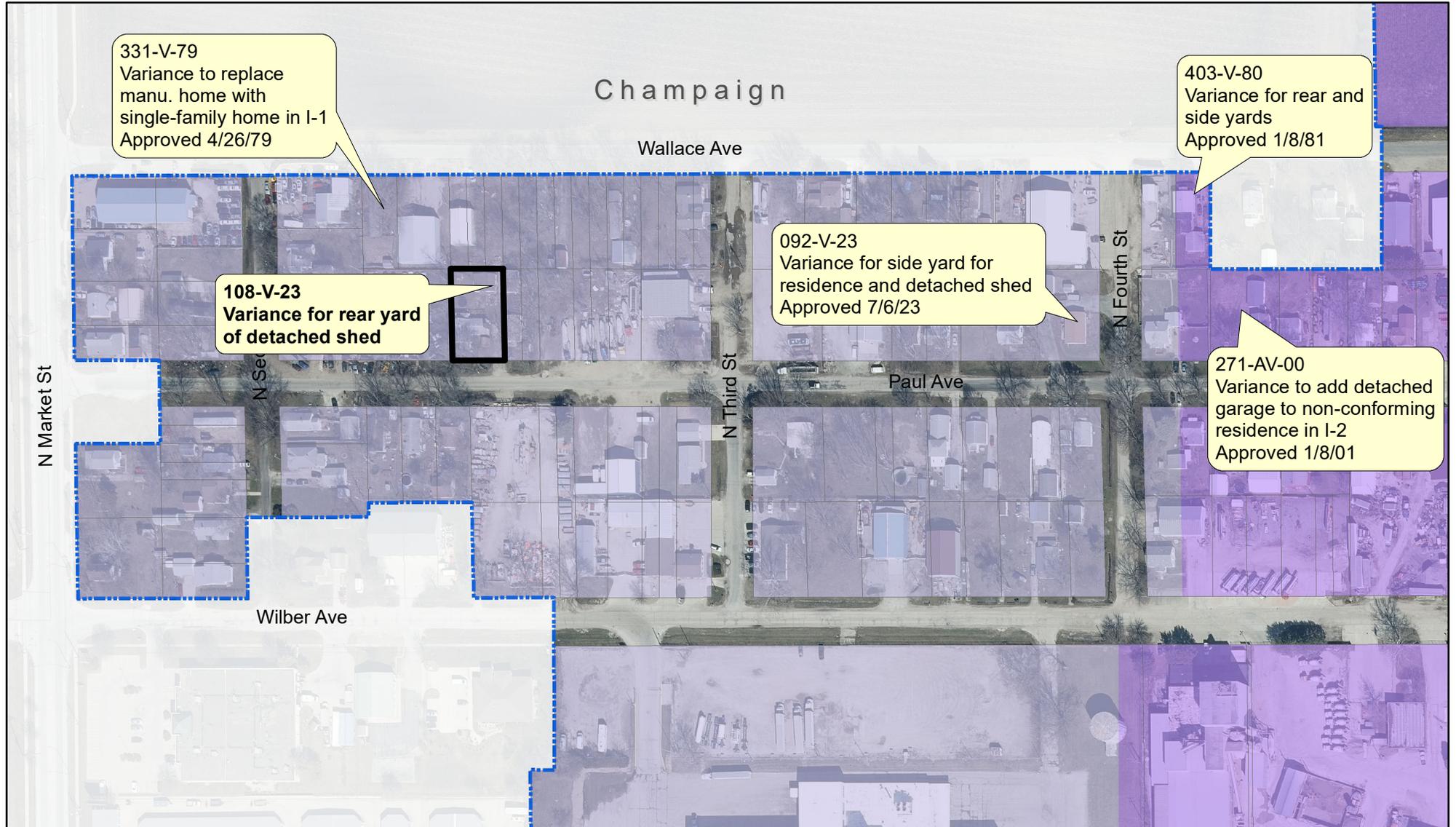
- Subject Property
- Parcels
- Municipal Boundary
- Industrial
- Commercial
- Residential
- Tax Exempt
- vacant



Zoning Map

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Zoning cases shown on map only include residential variances in Wilber Heights with existing addressing.



 Subject Property  I-1 Light Industry
 Municipal Boundary  I-2 Heavy Industry

0 50 100 200 Feet



Champaign County
Department of
PLANNING &
ZONING

25-15-31-353-039

2020 aerial



RECEIVED

JUL 11 2023

CHAMPAIGN CO. P & Z DEPARTMENT

Paul Ave



108-V-23 Site Images



From Paul Avenue facing NW to subject property



From driveway facing north to detached shed

108-V-23 Site Images



From west side of detached shed facing east



From west side of detached shed facing east

PRELIMINARY DRAFT

108-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: ***{August 31, 2023}***

Petitioner: **NSB Investments LLC, via agent Jaffar Haider**

Request: **Authorize a variance in the I-1 Light Industry Zoning District for an existing detached shed with a rear yard of 8 feet in lieu of the minimum required 15 feet and a side yard of 7 feet in lieu of the minimum required 10 feet, per Section 7.2.3 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 **August 31, 2023**, the Zoning Board of Appeals of Champaign County finds that:

1. NSB Investments LLC, owns the subject property.
 - A. NSB Investments LLC has officers Baqer, Nasar and Saira Haider, 2700 Prairie Meadow Drive, Champaign.
2. The subject property is Lots 243, 244 and 245 of Wilber Heights Subdivision in the Southwest Quarter of Section 31, Township 20 North, Range 9 East of the Third Principal Meridian in Somer Township, with an address of 208 Paul Avenue, Champaign.
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 City of Champaign, 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 Somer 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 subject property is a 9,900 square foot (0.23 acre) lot and is zoned I-1 Light Industry. Land use is a single-family residence.
 - B. Land surrounding the subject property is zoned I-1 Light Industry and is a mix of residential, commercial and industrial uses.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Petitioner's Site Plan was prepared by P&Z Staff and indicates the following:
 - (1) The following are existing structures on the subject property:
 - a. One 1,300 square feet residence, constructed prior to adoption of the Zoning Ordinance on October 10, 1973;
 - b. One addition to the east side of the residence, constructed without a permit sometime between 1973 and 1988; and
 - c. One 24 feet by 30 feet (720 square feet) detached shed in the northeast corner of the subject property, also constructed without a permit sometime between 1973 and 1988. Note that since the 2020 aerial photo that is the background for the site plan, the building has been reduced to about half its size, approximately 24 feet by 16 feet.
 - (2) No construction is proposed.

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- B. There are no previous Zoning Use Permits for the subject property. The petitioner has submitted a Zoning Use Permit application for approval of previous construction without permits.
- C. There are no prior zoning cases for the subject property.
- D. The required variance is as follows:
 - (1) Authorize a variance in the I-1 Light Industry Zoning District for an existing detached shed with a rear yard of 8 feet in lieu of the minimum required 15 feet and a side yard of 7 feet in lieu of the minimum required 10 feet, per Section 7.2.3 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 with 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, REAR” is any LOT LINE which is generally opposite and parallel to the FRONT LOT LINE or to a tangent to the midpoint of the FRONT LOT LINE. In the case of a triangular or gore shaped LOT or where the LOT comes to a point opposite the FRONT LOT LINE it shall mean a line within the LOT 10 feet long and parallel to and at the maximum distance from the FRONT LOT LINE or said tangent.
 - (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.
 - (7) “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.

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- (8) “YARD, REAR” is a YARD extending the full width of a LOT and situated between the REAR LOT LINE and the nearest line of a PRINCIPAL STRUCTURE located on said LOT.
- (9) “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 I-1, Light Industry DISTRICT is established to provide for storage and manufacturing USES not normally creating a nuisance discernible beyond its PROPERTY lines.
- 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.
- D. Regarding the proposed variance:
- (1) Minimum rear yard for a detached structure in the I-1 Light Industry Zoning District is established in Section 7.2.3 of the *Zoning Ordinance* as 15 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:

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- A. The Petitioner has testified on the application, **“The required rear yard for a detached accessory structure in I-1 Zoning District is 15 feet. The current structure is about 8 feet.”**
- B. On March 30, 2023, P&Z Staff sent the petitioner a First Notice of Violation for establishing a second dwelling on the property and for constructing the shed and addition without a permit. The required variance was found upon review of the property for the Notice of Violation. The petitioner was timely in their response in telling Staff that the second dwelling has been removed, applying for a Zoning Use Permit for the previously constructed addition and shed, and applying for the variance.

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 structure is old and large, unable to move, surrounded by concrete. No property nearby available for sale.”**
 - B. Regarding the proposed variance for a rear yard of 8 feet in lieu of the minimum required 15 feet and a side yard of 7 feet in lieu of 10 feet: without the proposed variance, the petitioner would have to attempt to move the structure, which might destroy it.

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, **“When purchased the applicant was unaware of the prior zoning restriction as the accessory structure was pre-existing.”**
 - B. The petitioner purchased the subject property in 2020 and the accessory building was constructed prior to 1988.

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 structure is in the backyard with no active neighbor to the north. No prior complaint has been noted about the structure. There is adequate light, air and space around the structure.”**
 - B. Regarding the proposed variance for a rear yard of 8 feet in lieu of 15 feet: the requested variance is 53% of the minimum required, for a variance of 47%.
 - C. Regarding the proposed variance for a side yard of 7 feet in lieu of 10 feet: the requested variance is 70% of the minimum required, for a variance of 30%.

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- D. The Zoning Ordinance does not clearly state the considerations that underlie the rear and side yard requirements. In general, yards are presumably intended to ensure the following:
- (1) Adequate light and air: The subject property is in residential use. The surrounding properties are in residential, commercial, or industrial use.
 - (2) Separation of structures to prevent conflagration: The subject property is within the Eastern Prairie Fire Protection District and the station is approximately 0.35 road miles from the subject property. The nearest structure on adjacent property is a shed to the east that is approximately 7 feet away.
 - (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 structure is at the end of driveway with easy accessibility for firefighting. The property is low traffic street.”**
 - B. The Somer Township Road Commissioner has been notified of this variance, and no comments have been received.
 - C. The Eastern Prairie Fire Protection District has been notified of this variance, and no comments have been received.
 - D. The nearest structure on adjacent property to the shed is a shed located to the east that is about 7 feet away.

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: **“The structure has been in existence for over 40 years and has not caused any issues for concern. There has been no noted complaint about the structure.”**

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:
- 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.

DOCUMENTS OF RECORD

1. Variance Application received on July 11, 2023
2. Site Plan prepared by P&Z Staff
3. Preliminary Memorandum dated August 23, 2023, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan prepared by P&Z Staff
 - C Images of subject property taken July 31, 2023
 - D Draft Summary of Evidence, Finding of Fact, and Final Determination dated August 31, 2023

PRELIMINARY DRAFT**FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **108-V-23** held on **August 31, 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. ***On March 30, 2023, P&Z Staff sent the petitioner a First Notice of Violation for establishing a second dwelling on the property and for constructing the shed and addition without a permit. The required variance was found upon review of the property for the Notice of Violation. The petitioner was timely in their response in telling Staff that the second dwelling has been removed, applying for a Zoning Use Permit for the previously constructed addition and shed, and applying for the variance.***
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 shed, which might destroy it.***
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
 - a. ***The petitioner purchased the subject property in 2020 and the accessory building was constructed prior to 1988.***
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 around the shed.***
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 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:
 - a. ***The requested variance is the minimum variation without attempting to move the structure, which could destroy it.***
7. **{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE 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.

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 **108-V-23** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioner, **NSB Investments LLC**, to authorize the following variance:

Authorize a variance in the I-1 Light Industry Zoning District for an existing detached shed with a rear yard of 8 feet in lieu of the minimum required 15 feet and a side yard of 7 feet in lieu of the minimum required 10 feet, per Section 7.2.3 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