

CASE NO. 123-V-23

PRELIMINARY MEMORANDUM

December 20, 2023

Petitioner: James Webster, d.b.a. JHW Properties LLC, and Chris Mackey

Request: Authorize the following variance in the R-2 Single Family Zoning District on the subject property described below:

Part A: A proposed lot with a lot area of 19,621 square feet in lieu of the minimum required 27,000 square feet, per Section 4.3.4 of the Zoning Ordinance.

Part B: A non-conforming duplex with a front yard of 15 feet and a setback from the street centerline of Willow Road of 45 feet in lieu of the minimum required 25 feet and 58 feet, respectively, per Section 4.3.2 of the Zoning Ordinance.

Part C: A non-conforming duplex with a side yard of 4.48 feet in lieu of the minimum required 5 feet, per Section 5.3 of the Zoning Ordinance.

Subject Property: Lot 3 of L & J Mackey First Subdivision in the Southeast Quarter of the Northeast Quarter of Section 32, Township 20 North, Range 9 East of the Third Principal Meridian in Somer Township, with an address of 3421 Willow Rd, Urbana.

Site Area: 24,301 square feet currently, proposed to be 19,621 square feet

Time Schedule for Development: As soon as possible

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

BACKGROUND

Co-petitioner Mr. Webster owns Lot 3 of L & J Mackey First Subdivision, and co-petitioner Mr. Mackey owns the adjacent Lot 1. Mr. Mackey approached Mr. Webster about purchasing land from Lot 3 so that Lot 1 would have sufficient area to construct a solar array to serve his residence. They agreed upon the transfer of a 40 feet by 117 feet area on the west end of Lot 3.

Lot 3 is already non-conforming with the Zoning Ordinance since the subdivision was approved in 1989. The proposed land transfer would make Lot 3 less conforming, so a variance is needed for lot area (variance Part A).

Lot 3 has a non-conforming duplex that was constructed prior to adoption of the Zoning Ordinance on October 10, 1973. The duplex has insufficient front yard, setback to street centerline, and side yard according to the Zoning Ordinance. Should the duplex be destroyed, a variance would be required to rebuild the duplex in the same location. Variance Parts B and C have been added so that the duplex can be reconstructed should it ever be destroyed.

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 (non-conforming duplex)	R-2 Single Family Residence
North	Residential	R-2 Single Family Residence
South	Residential	R-2 Single Family Residence
East	Agriculture	Urbana IN-1 Light Industrial/Office
West	Residential	R-2 Single Family Residence

EXTRATERRITORIAL JURISDICTION

The subject property is within the one and one-half mile extraterritorial jurisdiction (ETJ) of the City of Urbana, 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.

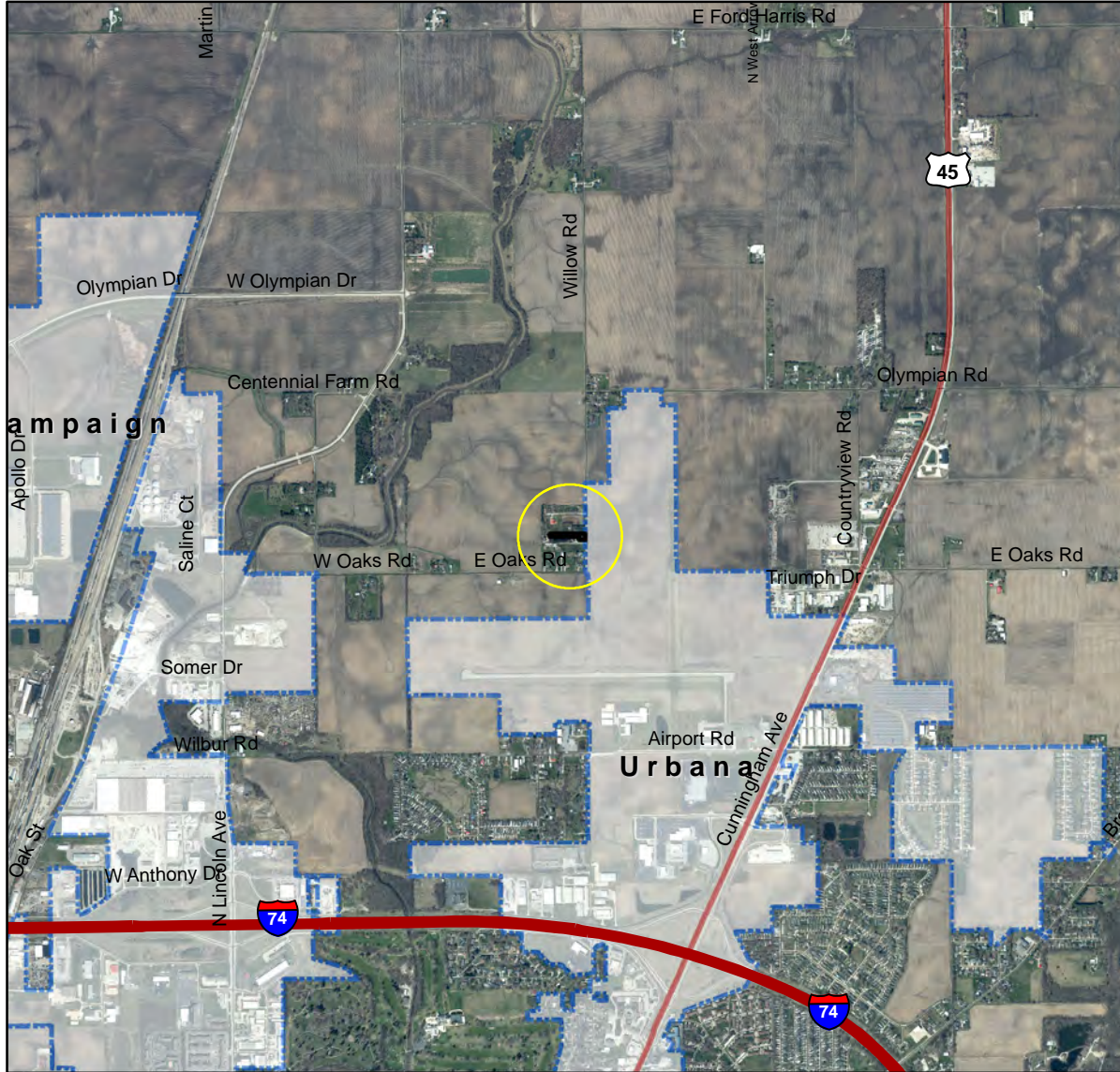
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan: Annotated 2023 Aerial created by P&Z Staff on December 7, 2023
- C L & J Mackey First Subdivision Plat approved July 14, 1989
- D Letter from James Webster received November 28, 2023
- E Images of Subject Property taken December 8, 2023
- F Draft Summary of Evidence, Finding of Fact, and Final Determination dated December 28, 2023

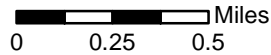
Location Map

Case 123-V-23
December 28, 2023

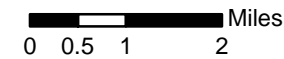
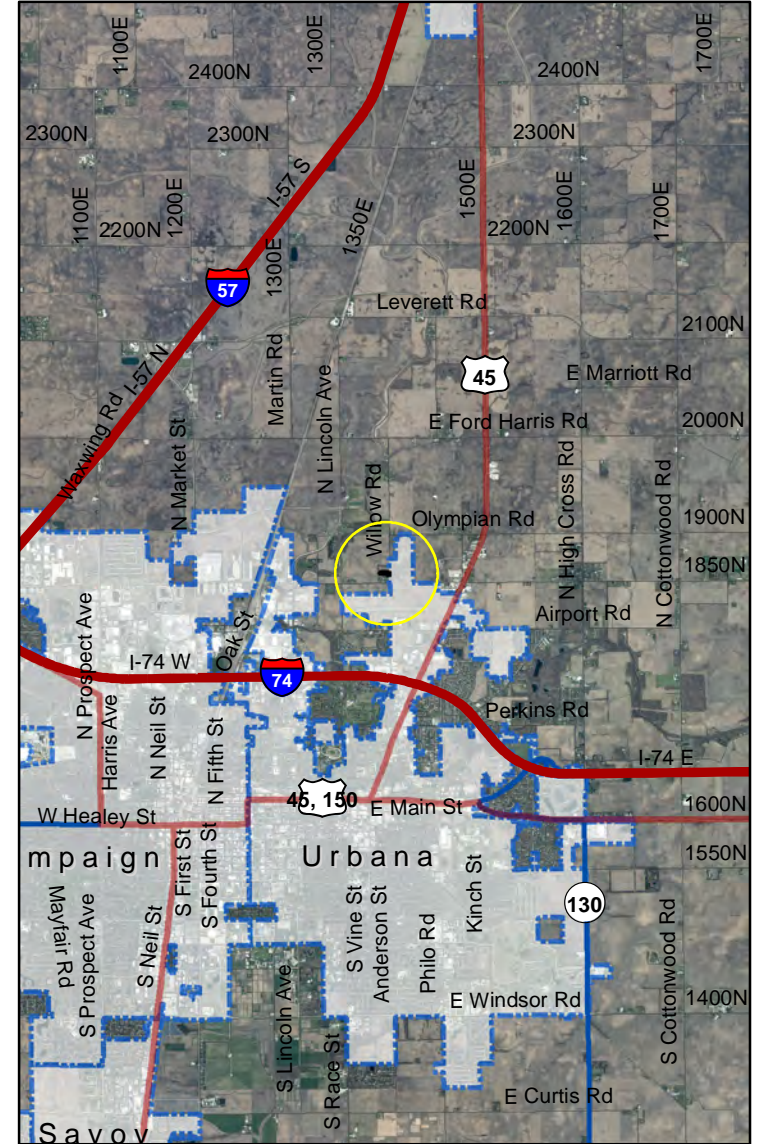
Subject Property



- Subject Property
- Municipal Boundary



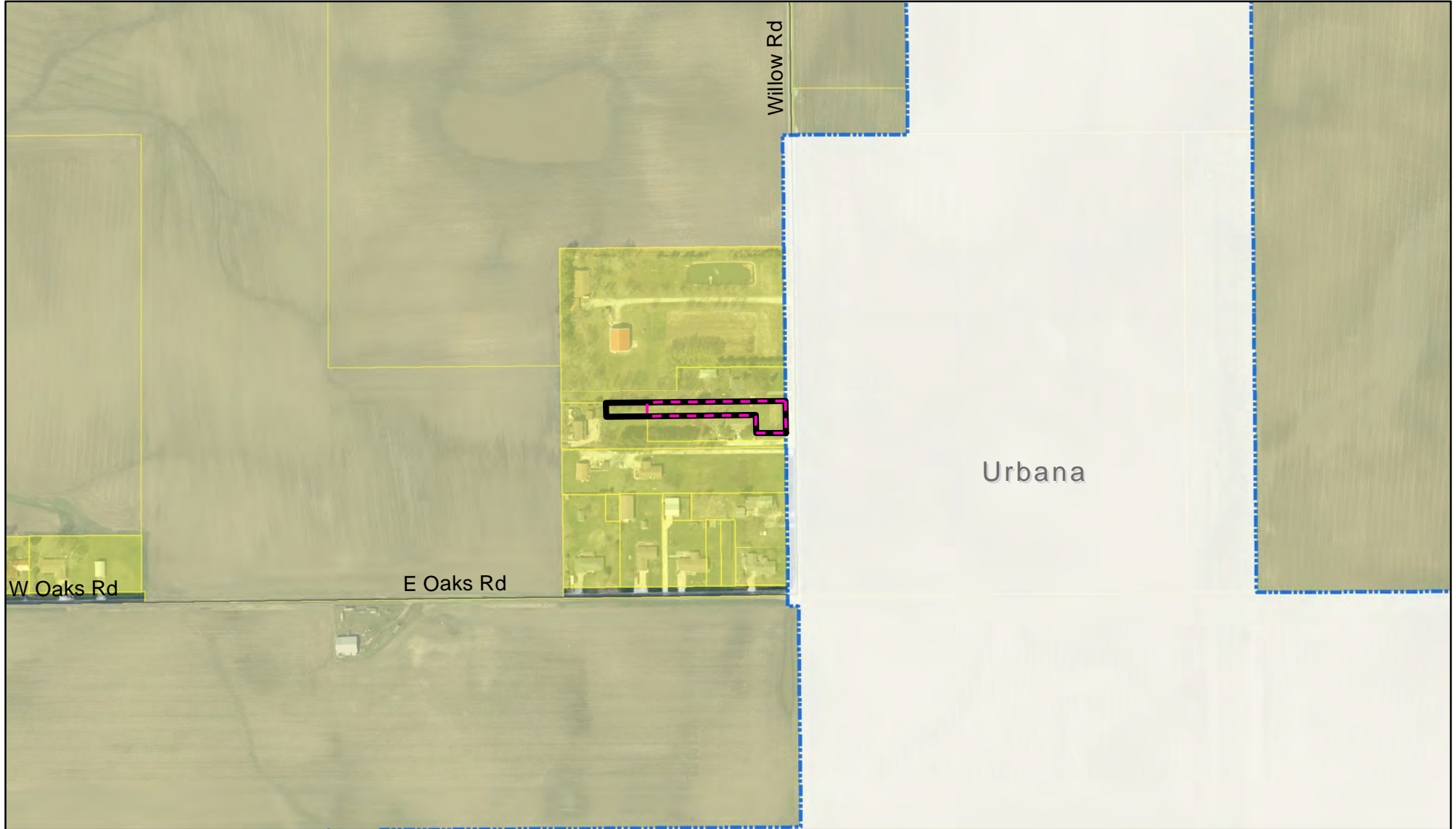
Property location in Champaign County



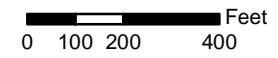
Champaign County
Department of
**PLANNING &
ZONING**

Land Use Map

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December 28, 2023

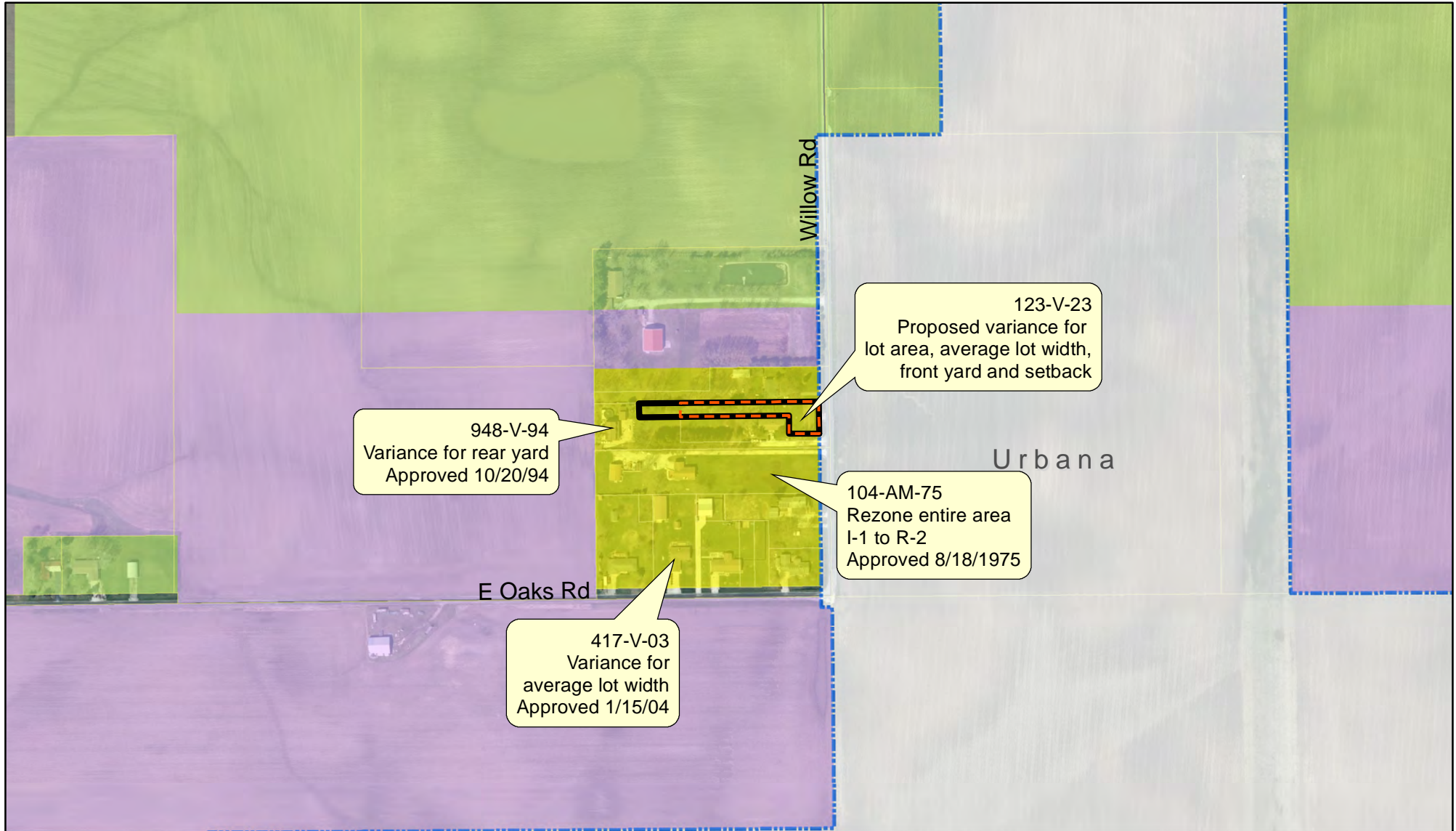


-  Proposed Lot
-  Subject Property
-  Parcels
-  Municipal Boundary
-  Agriculture
-  Residential



Zoning Map

Case 123-V-23
December 28, 2023



- Proposed Lot
- Subject Property
- Municipal Boundary
- AG-2 Agriculture
- R-2 Single Family Residence
- I-1 Light Industry

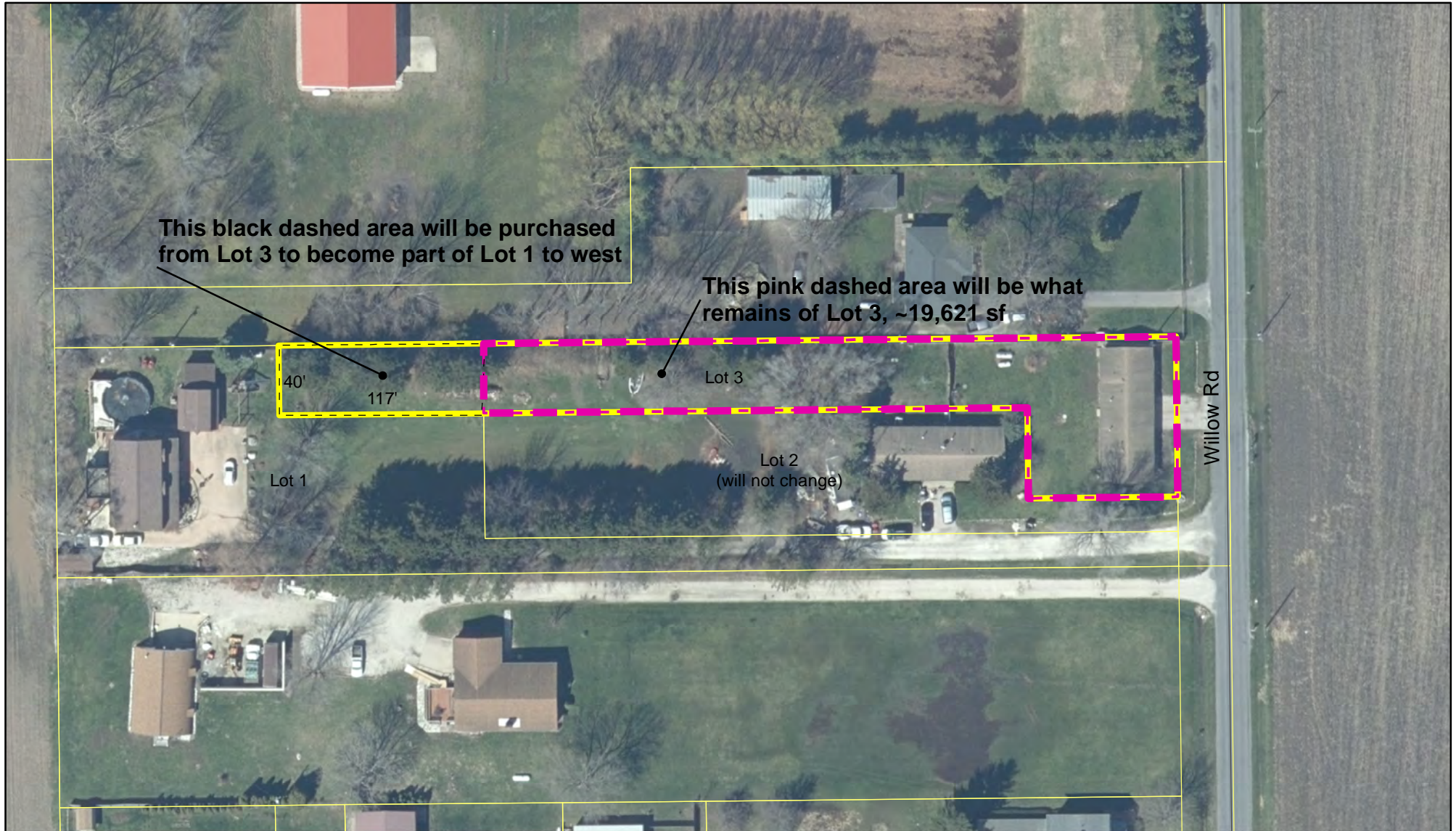
0 100 200 400 Feet






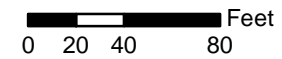
2023 Annotated Aerial

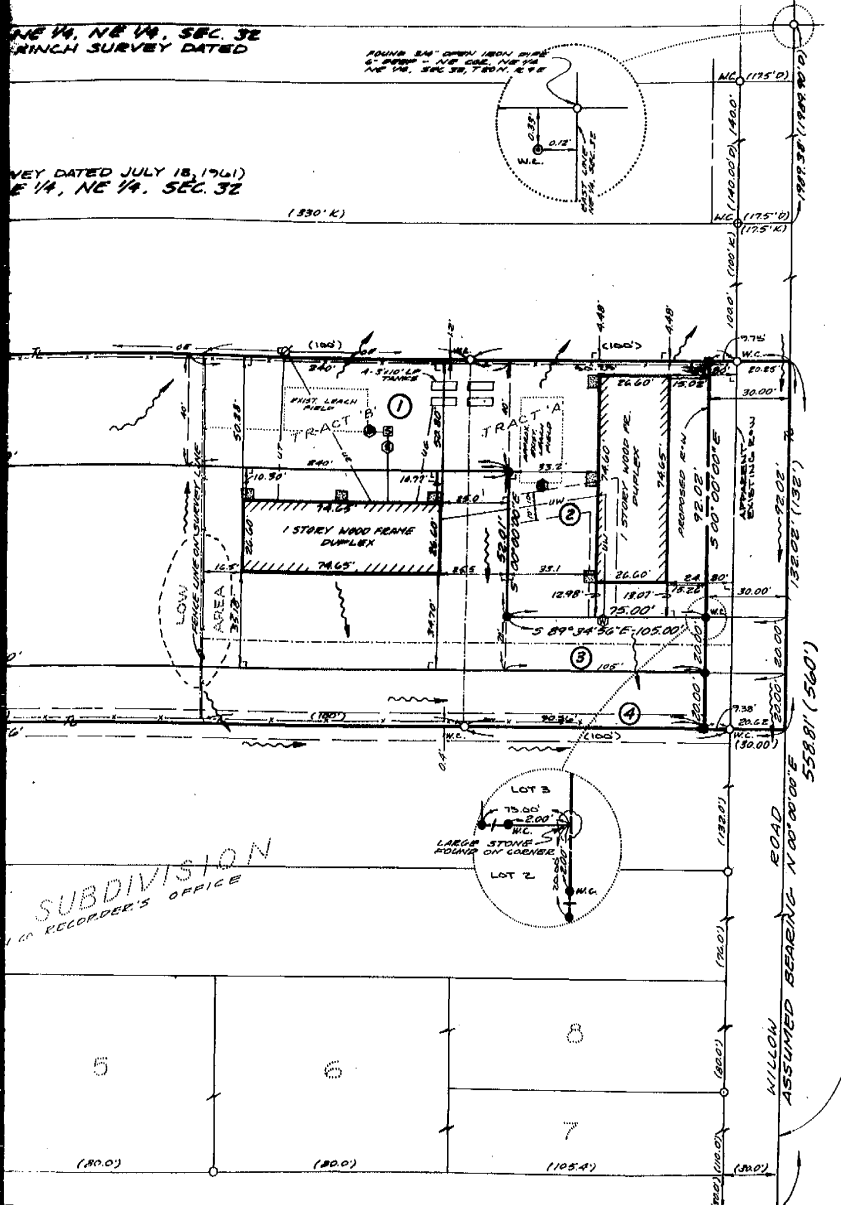
Case 123-V-23

December 28, 2023



-  Subject Property
-  Proposed Lot
-  Parcels





SURVEYOR'S REPORT

I, Edward L. Clancy, Registered Illinois Land Surveyor No. 2207, and Vice President of Berns, Clancy and Associates, P.C. do hereby state that, at the request of and for the exclusive benefit of Janet A. and Larry M. Mackey, I have made a survey of a part of the Southeast Quarter of the Northwest Quarter of Section 32, Township 20 North, Range 9 East of the Third Principal Meridian, Somer Township, Champaign County, Illinois, more particularly described in the legal description provided to me as follows:

The North 132 feet of the South 560 feet of the Southeast Quarter (SE1) of the Southeast Quarter (SE1) of the Northwest Quarter (NE1) of Section 32, Township 20 North, Range 9 East of the Third Principal Meridian in Champaign County, Illinois, containing 2.08 acres, more or less.

I further state that at the request of Janet A. and Larry M. Mackey I have subdivided said land into lots for which purpose I have prepared a Plat of Survey to which this report is attached and made a part thereof, particularly describing and setting forth all lots into which said lands have been subdivided, and I have numbered the lots which numbers are shown in large size on said Plat, and I have stated and shown the precise dimensions of said lots.

I further state that reference has been made upon said Plat to known and permanent survey monuments from which further surveys may be made, and that I have placed an iron pipe survey monument at each lot corner and other places, and I have placed an iron pipe survey monument in Portland Cement Concrete as shown on the Plat.

I further state that all dimensions are shown in feet and hundredths of feet, and that the easement locations and widths are all indicated on said Plat.

I further state that the property developed is within one and one-half miles of the Corporate Limits of the City of Urbana, Champaign County, Illinois, and that the area covered by this Plat is not within 500 feet of a surface drain or water course serving a tributary area of 640 acres or more.

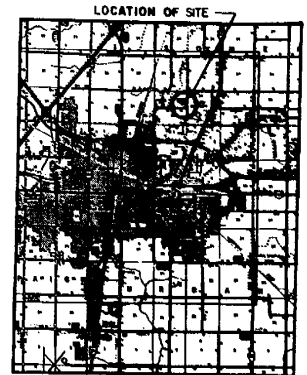
I further state that the area covered by this Plat is not located within a special flood hazard area as identified by the Federal Emergency Management Agency.

I further state that at the request of Janet A. and Larry M. Mackey this subdivision is to be known as "L. and J. MACKEY FIRST SUBDIVISION, CHAMPAIGN COUNTY, ILLINOIS".

SIGNED AND SEALED May 4, 1989

Edward L. Clancy

Edward L. Clancy, Vice President
BERNS, CLANCY AND ASSOCIATES, P.C.
Illinois Professional Land Surveyor No. 2207
Urbana, Illinois



AREA MAP
(NO SCALE)

STATE OF ILLINOIS }
COUNTY OF CHAMPAIGN } SS. OWNER'S AND ENGINEER'S STATEMENT

To the best of our knowledge and belief, the drainage of surface waters will not be changed by the development of L. and J. Mackey First Subdivision, Somer Township, Champaign County, Illinois, or any part thereof, or if such surface water drainage will be changed that reasonable provision has been made for the collection and diversion of surface waters into public areas, or drains which the subdivider has the right to use, and that such surface waters will be planned for in accordance with generally accepted engineering practices so as to reduce the likelihood of damage to the adjoining property because of construction of L. and J. Mackey First Subdivision, Somer Township, Champaign County, Illinois.

Edward L. Clancy
Edward L. Clancy
Illinois Professional Engineer #31344

Larry M. Mackey
Larry M. Mackey
1007 Geraldine Avenue
Urbana, IL 61801

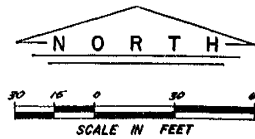
Janet A. Mackey
Janet A. Mackey
1007 Geraldine Avenue
Urbana, IL 61801

**L. AND J. MACKEY FIRST SUBDIVISION
SOMER TOWNSHIP
CHAMPAIGN COUNTY, ILLINOIS**

BERNS, CLANCY & ASSOCIATES, P.C.
CONSULTING ENGINEERS - LAND SURVEYORS - PLANNERS
400 East Main Street - Post Office Box 705
Urbana, Illinois 61801-0705 Phone 224-2222

PROPOSED EASEMENTS

- 1 GENERAL UTILITY EASEMENT ACROSS PARTS OF LOT 3 FOR THE BENEFIT OF LOT 2, FOR THE LIFE OF THE EXISTING UTILITIES SERVING LOT 2 AND/OR UNTIL ABANDONED. (THIS INCLUDES MULTI-FLUX UNIT, SEWAGE DISPOSAL SYSTEM, GAS LINES, PROPANE TANKS, TELEPHONE CABLES, CABLEVISION CABLES AND ELECTRIC CABLES.)
- 2 EXCLUSIVE EASEMENT ACROSS PART OF LOT 3 FOR THE BENEFIT OF LOT 2 FOR THE MAINTENANCE OF EXISTING UNDERGROUND WATER LINE SERVING LOT 2 FOR THE LIFE OF THE EXISTING PIPES OR UNTIL ABANDONED.
- 3 EXCLUSIVE UNIMPEDEDNESS EASEMENT ACROSS PART OF LOT 2 FOR UTILITY SERVICE VEHICLES FOR THE BENEFIT OF LOT 3.
- 4 GENERAL UTILITY EASEMENT ON LOT 1 AS SHOWN.



The following matters in the requirements of the City of Urbana Subdivision and Land Development Code Ordinance are requested:

- | | |
|---|---|
| <p>Section 21-38
21-36</p> <p>Section 21-37</p> <p>Section 21-29</p> <p>Section 21-30</p> <p>Section 21-32
21</p> <p>Section 21-32
24</p> | <p>A waiver of the requirement for the construction of one-half of Willow Road for the length of Subdivision Frontage (102 linear feet) at this time. In lieu thereof the petitioner proposes the following:
The property owner(s) will install the required sidewalks, street pavement, curb, underground drainage and utility improvements for the east one-half (1/2) of the Willow Road Subdivision Frontage (102 linear feet) within ninety (90) days of the City of Urbana Engineer's written request to do so in accordance with arrangements satisfactory to the City Council of Urbana and in compliance with the then current standards of the City of Urbana Code of Ordinances. The City Engineer shall verify the owner(s) in writing of the need and justification for the required public improvements.</p> <p>A waiver of the requirement for construction of sidewalks along the west side of Willow Road. In lieu thereof the petitioner proposes the following:
The property Owner(s) will install the required sidewalks along the west side of Willow Road within ninety (90) days of the City of Urbana Engineer's written request to do so in accordance with arrangements satisfactory to the City Council of Urbana and in compliance with the then current standards of the City of Urbana Code of Ordinances.</p> <p>A waiver of the requirement to provide Surety Bonds for any public improvements.</p> <p>A waiver of the requirement to provide Maintenance Bonds for public improvements.</p> <p>A waiver of the requirement for the length of the access portion of the lot set to connect thereon and one-half (1/2) (one the linear) dimension of the minimum lot width of the subdivision (2.5 x 60 feet - 229.5 linear feet) to an access portion for Lot 1 of 200.5 feet.</p> <p>A waiver of the requirement for Lot 1 and Lot 2 (Flag Lots) to be separated from the access portion of the adjoining Flag lot by at least one structure lot within of the zoning district.</p> |
|---|---|

APPROVED BY: THE URBANA PLAN COMMISSION OF THE CITY OF URBANA, ILLINOIS.

DATE: 7-7-89 CHAIRPERSON: *Jeffrey A. Trank*

APPROVED BY: THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, IN ACCORDANCE WITH ORDINANCE NO. 2847-90

DATE: 7/14/89 BY *Jeffrey A. Trank* MAYOR.

ATTEST: *Rud S. B...* CITY CLERK

THIS PLAT MUST BE RECORDED 90 DAYS AFTER THE CITY COUNCIL APPROVAL.



RECEIVED

NOV 28 2023

CHAMPAIGN CO. P & Z DEPARTMENT

Variance request
3421 Willow Road
Urbana, Illinois 61802

Background

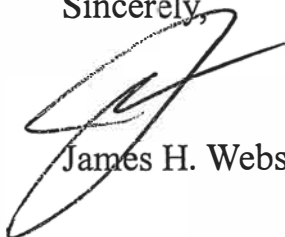
I own a duplex property which is located at 3421 Willow Road, Urbana, Illinois 61802 which is in the name of JHW Properties, LLC which I am the manager for this entity. The site could be described as “flag shaped” containing 25,076 square feet. The dwelling is located near Willow Road and the rear section of the site has trees and grass that adjoin the neighboring property to the west which is owned by Christopher Mackey.

Mr. Mackey approached me a few months ago in order to acquire a strip of land immediately east of his dwelling in the site area described above in order to support solar panels which would be mounted from the ground. We have had several meetings and conversations with Champaign County Zoning. I am in agreement that use of the land by Mr. Mackey would be beneficial to his interest and it does not appear as if it would adversely affect the utility of my site. The site area would decrease from 25,076 square feet to 20,396 square feet.

Mr. Mackey has experienced high electrical bills and is seeking relief by augmenting his power source to include solar. The panels would not be visible from my tenants nor does it appear that any neighbors would be affected in this manner as well. Although I never had any intentions of selling a 40 by 117 foot parcel and any sections of the site, Mr. Mackey’s proposal is reasonable and it would be a great benefit to him. I will receive some monetary compensation although this was not my motivation for the sale or a variance to enable such sale.

Thank you for your consideration.

Sincerely,



James H. Webster

123-V-23 Site Images



From Willow Rd facing NW to duplex



From west of Willow Rd facing north to duplex

PRELIMINARY DRAFT

123-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: ***{December 28, 2023}***

Petitioners: **James Webster, d.b.a. JHW Properties LLC, and Chris Mackey**

Request: **Authorize the following variance in the R-2 Single Family Zoning District on the subject property described below:**

Part A: A proposed lot with a lot area of 19,621 square feet in lieu of the minimum required 27,000 square feet, per Section 4.3.4 of the Zoning Ordinance.

Part B: A non-conforming duplex with a front yard of 15 feet and a setback from the street centerline of Willow Road of 45 feet in lieu of the minimum required 25 feet and 58 feet, respectively, per Section 4.3.2 of the Zoning Ordinance.

Part C: A non-conforming duplex with a side yard of 4.48 feet in lieu of the minimum required 5 feet, per Section 5.3 of the Zoning Ordinance.

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PRELIMINARY DRAFT

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 28, 2023**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner James Webster, d.b.a. JHW Properties LLC owns the subject property. Mr. Webster is the sole officer and shareholder in JHW Properties LLC.
 - A. Mr. Chris Mackey is the adjacent landowner of Lot 1 who seeks to purchase land from Mr. Webster's Lot 3.
2. The subject property is the 24,301 square feet Lot 3 of L & J Mackey First Subdivision in the Southeast Quarter of the Northeast Quarter of Section 32, Township 20 North, Range 9 East of the Third Principal Meridian in Somer Township, with an address of 3421 Willow Rd, Urbana.
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 Urbana, 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 vacant subject property is 24,301 square feet (0.56 acre) and is currently zoned R-2 Single Family Residence.
 - B. Land to the north, west, and south is also zoned R-2 Single Family Residence and is residential in use.
 - C. Land to the east is inside the City of Urbana, has Urbana IN-1 Light Industrial/Office zoning, and is in agricultural production.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. The Site Plan for the subject property is a 2023 Annotated Aerial created by P&Z Staff on December 7, 2023.
 - A. The petitioners propose to reduce the size of Lot 3 from 24,301 square feet to 19,621 square feet and add that 4,680 square feet (40 feet by 117 feet) area to Lot 1 so that co-petitioner Mr. Mackey has room to install a solar array for his residence.
 - B. There are no previous Zoning Use Permits for the subject property.
 - (1) The duplex was constructed prior to adoption of the Zoning Ordinance on October 10, 1973.
 - C. There is one previous Zoning Case for the subject property.

PRELIMINARY DRAFT**Case 123-V-23**

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- (1) Case 104-AM-75 was approved on August 18, 1975 to rezone this neighborhood from I-1 Light Industry to R-2 Single Family Residence.
- D. The required variance is as follows:
- (1) Part A: A proposed lot with a lot area of 19,621 square feet in lieu of the minimum required 27,000 square feet, per Section 4.3.4 of the Zoning Ordinance.
 - (2) Part B: A non-conforming duplex with a front yard of 15 feet and a setback from the street centerline of Willow Road of 45 feet in lieu of the minimum required 25 feet and 58 feet, respectively, per Section 4.3.2 of the Zoning Ordinance.
 - (3) Part C: A non-conforming duplex with a side yard of 4.48 feet in lieu of the minimum required 5 feet, per Section 5.3 of the 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) “AREA, LOT” is the total area within the LOT LINES.
 - (2) “DWELLING UNIT” is one or more rooms constituting all or part of a DWELLING which are used exclusively as living quarters for one FAMILY, and which contains a bathroom and kitchen.
 - (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) “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.
 - (7) “NONCONFORMING LOT, STRUCTURE or USE” is a LOT, SIGN, STRUCTURE, or USE that existed on the effective date of the adoption or amendment of this ordinance which does not conform to the regulations and standards of the DISTRICT in which it is located.
 - (8) “PLAT” is a map, plan or layout showing the SUBDIVISION of land and indicating the location and boundaries of individual LOTS.

PRELIMINARY DRAFT

- (9) “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 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.
- (10) “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.
- (11) “YARD” is an OPEN SPACE, other than a COURT, of uniform 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.
- (12) “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.
- (13) “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 R-2 Single Family Residence DISTRICT is intended to provide areas for SINGLE FAMILY detached DWELLINGS, set on medium sized building LOTS and is intended for application within or adjoining developed areas where community facilities exist.
- C. Section 8.3.2 regarding NONCONFORMING STRUCTURES states, “should such STRUCTURE be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. The BOARD may authorize such a VARIANCE prior to such STRUCTURE incurring any damage or destruction.”
- D. 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:

PRELIMINARY DRAFT

- 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.
- E. The minimum LOT AREA requirement for lots established between October 10, 1973 and September 21, 1993 is established in Section 4.3.4 of the Zoning Ordinance as 20,000 square feet for the first DWELLING UNIT and an additional 7,000 feet for an additional DWELLING UNIT.
- F. The FRONT YARD requirement along a MINOR STREET is established in Section 4.3.2 of the Zoning Ordinance as 25 feet.
- G. The setback requirement along a MINOR STREET is established in Section 4.3.2 of the Zoning Ordinance as 55 feet.
- H. The SIDE YARD requirement in the R-2 Single Family Residence Zoning District is established in Section 5.3, Footnote 8 of the Zoning Ordinance as 5 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, **“This small narrow strip of land is not now or has ever been used by the front duplex on Lot 3. It has pine trees along the perimeter and the rest is grass. There are no structures on the land.”**
 - B. The L & J Mackey First Subdivision was approved by the City of Urbana on July 14, 1989. The City of Urbana has subdivision jurisdiction within one-and-one-half miles of its corporate limits.
 - (1) The applicable requirements for a minimum lot area of 20,000 square feet for the first dwelling and 7,000 square feet for the second dwelling were established with the adoption of Ordinance 23 in Case 164-AT-76 on May 18, 1976.
 - a. The Lot 3 lot area of 24,301 square feet approved in the subdivision did not comply with the Champaign County Zoning Ordinance in 1989.

PRELIMINARY DRAFT

- b. The current standard for a new lot created without public sewer or public water is 30,000 square feet for the first dwelling and 10,000 square feet for the second dwelling, for a total of 40,000 square feet.
 - c. The Zoning Administrator has determined that the lot area standard that applied in 1989 is the relevant standard needed to establish the variance for the proposed lot.
- C. Regarding the variance for front yard, setback, and side yard, the duplex was constructed prior to adoption of the Zoning Ordinance on October 10, 1973.

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, **“Inability to purchase this land would prevent our installation of a solar array and provide another party access to land very close to our home and garage.”**
 - B. Regarding Part A of the proposed variance, for a lot area of 19,621 square feet in lieu of the minimum required 27,000 square feet: without the proposed variance, the petitioners would be unable to transfer the land from Lot 3 to Lot 1 to accommodate a proposed solar array for use by the residence on Lot 1.
 - C. Regarding Part B of the proposed variance, for a non-conforming duplex with a front yard of 15 feet and a setback from the street centerline of Willow Road of 45 feet in lieu of the minimum required 25 feet and 58 feet: without the proposed variance, the non-conforming duplex could not be rebuilt in the same location should it be destroyed.
 - D. Regarding Part C of the proposed variance, for a non-conforming duplex with a side yard of 4.48 feet in lieu of the minimum required 5 feet: without the proposed variance, the non-conforming duplex could not be rebuilt in the same location should it be destroyed.

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, **“The land was originally owned by my parents, in 1989 it was subdivided into 3 lots by family contract which was written by a local attorney. The 2 lots with existing duplexes (Lots 2 and 3) were purchased by my younger brother. I purchased lot 1, the back lot and built my family home on it. The family contract stated that I or any of my descendance +1 would have full use of the pasture. My father never recorded the contract with the County, and unfortunately my brother encountered financial difficulties and lost the duplex and Lot 3. The duplex/lot was purchased by Mr. Webster in a tax sale.”**

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- B. The lot size when the subdivision was approved in 1989 was already smaller than the Champaign County Zoning Ordinance required. The proposed lot size is less conforming, but both landowners agree that the proposed lot size is acceptable.
- C. Regarding the variance for front yard, setback, and side yard, the duplex was constructed prior to adoption of the Zoning Ordinance on October 10, 1973.

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 duplexes have never utilized this footage since they were built by my father in the late 1960s.”**
 - B. Regarding the proposed variance for a lot area of 19,621 square feet (.45 acre) in lieu of the minimum required 27,000 square feet (.62 acre): the requested variance is 72.7% of the minimum required, for a variance of 27.3%.
 - C. Regarding the proposed variance for a non-conforming duplex with a front yard of 15 feet and a setback from the street centerline of Willow Road of 45 feet in lieu of the minimum required 25 feet and 55 feet, respectively: the requested front yard variance is 60% of the minimum required, for a variance of 40%, and the requested setback is 82% of the minimum required, for a variance of 18%.
 - D. Regarding the proposed variance for a non-conforming duplex with a side yard of 4.48 feet in lieu of the minimum required 5 feet: the requested variance is 90% of the minimum required, for a variance of 10%.
 - F. Regarding the proposed variance for lot area:
 - (1) The applicable requirements in 1989 for a minimum lot area of 20,000 square feet for the first dwelling and 7,000 square feet for the second dwelling were established with the adoption of Ordinance 23 in Case 164-AT-76 on May 18, 1976.
 - (2) The County reviewed the minimum lot area 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 (0.69 acre) for the first dwelling and 10,000 additional square feet (0.23 acre) for any new lot if there is no sanitary sewer and no public water supply.
 - (3) In regards to accommodating onsite wastewater treatment and disposal:
 - a. There is a functioning septic system on the subject property.
 - (4) Besides the importance of accommodating onsite wastewater treatment and disposal as part of the basis for the minimum lot area requirement, other considerations are as follows:

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- a. Adequate light and air: The subject property has a duplex and a large rear yard.
 - b. Separation of structures to prevent conflagration: The subject property is within the Eastern Prairie Fire Protection District and the station is approximately 4.8 road miles from the subject property. The nearest residence is approximately 53 feet from the duplex on the subject property.
 - c. Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.
- G. Regarding the proposed variance for front yard, setback, and side yard, 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 Willow Road.
 - (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: **“This small strip of land has never been utilized by anyone other than our family. A change in ownership of this piece of land would have no effect on the neighbors.”**
 - B. In a letter received November 28, 2023, petitioner Mr. Webster stated, “Mr. Mackey has experienced high electrical bills and is seeking relief by augmenting his power source to include solar. The panels would not be visible from my tenants nor does it appear that any neighbors would be affected in this manner as well.”
 - C. The Somer Township Road Commissioner has been notified of this variance and no comments have been received.
 - D. The Eastern Prairie 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 has testified on the application: **“We would like to utilize this piece the northern strip of Lot 3 to install a solar array as this area is unobstructed by the trees to the south. Roof installation is not practical as our roof faces east and west. Our home**

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has a gambrel roof which poses challenges for solar installation. Our goal is to utilize a more environmentally friendly and cost-effective source of power. Additionally, we would like to purchase this land to maintain privacy of our family home. We have 14 grandchildren who are often at our home playing out front and we have built a play structure/swing set which is very close to where the property line would be. This strip of land is 40 feet by 117 feet. Additionally, in discussion with the current owner of this strip, James Webster, his preference would be for us to purchase this piece of land, as he does not utilize or wish to keep and maintain it.”

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:

No special conditions are proposed.

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DOCUMENTS OF RECORD

1. Variance Application received November 28, 2023
2. Site Plan: Annotated 2023 Aerial created by P&Z Staff on December 7, 2023
3. Letter from James Webster received November 28, 2023
4. Preliminary Memorandum dated December 20, 2023, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan: Annotated 2023 Aerial created by P&Z Staff on December 7, 2023
 - C L & J Mackey First Subdivision Plat approved July 14, 1989
 - D Letter from James Webster received November 28, 2023
 - E Images of Subject Property taken December 8, 2023
 - F Draft Summary of Evidence, Finding of Fact, and Final Determination dated December 28, 2023

PRELIMINARY DRAFT**FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **123-V-23** held on **December 28, 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. ***Regarding variance Part A, the L & J First Subdivision was approved in 1989 when the standard for lot area was a total of 27,000 square feet for a lot with two dwellings. The subdivision was approved with a lot area of less than 27,000 square feet, so the proposed variance will bring the lot into compliance.***
 - b. ***Regarding variance Parts B and C, the duplex was constructed prior to adoption of the Zoning Ordinance on October 10, 1973.***
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. ***Regarding Part A of the proposed variance, for lot area: without the proposed variance, the petitioners would be unable to transfer the land from Lot 3 to Lot 1 to accommodate a proposed solar array for use by the residence on Lot 1.***
 - b. ***Regarding Parts B and C of the proposed variance for front yard, setback, and side yard: without the proposed variance, the non-conforming duplex could not be rebuilt in the same location should it be destroyed.***
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
 - a. ***The lot size when the subdivision was approved in 1989 was already smaller than the Champaign County Zoning Ordinance required. The proposed lot size is less conforming, but both landowners agree that the proposed lot size is acceptable.***
 - b. ***Regarding the variance for front yard, setback, and side yard, the duplex was constructed prior to adoption of the Zoning Ordinance on October 10, 1973.***
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 on the subject property, and sufficient distance to prevent conflagration.***
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 the variance, and no comments have been received.***
 - b. ***Neighboring landowners were notified of the 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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- a. *The proposed lot area to be transferred is the minimum required for installation of the proposed solar array.*
 - b. *The variance for front yard, setback, and side yard of the duplex is the minimum variation required without moving the duplex.*
7. **{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}**

FINAL DETERMINATION FOR CASE 123-V-23

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 **123-V-23** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioner, **James Webster, d.b.a. JHW Properties LLC, and Chris Mackey**, to authorize the following:

Authorize the following variance in the R-2 Single Family Zoning District on the subject property described below:

Part A: A proposed lot with a lot area of 19,621 square feet in lieu of the minimum required 27,000 square feet, per Section 4.3.4 of the Zoning Ordinance.

Part B: A non-conforming duplex with a front yard of 15 feet and a setback from the street centerline of Willow Road of 45 feet in lieu of the minimum required 25 feet and 58 feet, respectively, per Section 4.3.2 of the Zoning Ordinance.

Part C: A non-conforming duplex with a side yard of 4.48 feet in lieu of the minimum required 5 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:

Ryan Elwell, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date