

CASE NO. 125-V-23

PRELIMINARY MEMORANDUM

December 20, 2023

Petitioner: **Tony and Erin Studer**

Request: **Authorize a variance in the AG-1 Agriculture Zoning District for an existing detached garage with a front yard of 25 feet in lieu of the minimum required 35 feet adjacent to US 45 North, per Section 4.3.2 of the Zoning Ordinance.**

Subject Property: **A 2.58-acre parcel in the Northeast Quarter of the Southeast Quarter of Section 14, Township 22 North, Range 9 East of the Third Principal Meridian in Ludlow Township, with an address of 3327 CR 1700E, Ludlow.**

Site Area: **2.58 acres**

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

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

BACKGROUND

The petitioners purchased the subject property in 2015. Earlier this year, a tornado damaged an existing detached garage and two other outbuildings. They demolished the outbuildings and used part of the existing garage's concrete slab to build a new, smaller garage. P&Z Staff became aware of the new construction and contacted the petitioners about needing a Zoning Use Permit. Upon review of the application, P&Z Staff noted that the new garage was too close to the right-of-way line of US 45. Further review indicated that the previous owners did not get a permit for the detached garage when it was constructed between 1988 and 1996, so the slab the Studers used to place the new garage was already too close to the right-of-way and they did not realize that.

Even though the west side of the property is to the rear of the property, it is considered a frontage because it has a street adjacent to it. The frontage must meet the minimum required 35 feet front yard for being adjacent to a federal highway. Note that a typical rear yard for a detached building in the AG-1 district only needs to be 10 feet.

The petitioners applied for a variance to have a front (west) yard of 25 feet in lieu of 35 feet.

No comments have been received from relevant jurisdictions or neighboring landowners.

EXTRATERRITORIAL JURISDICTION

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

The subject property is located within Ludlow Township, which does not have a Plan Commission. Townships with Plan Commissions have protest rights on a variance and are notified of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Residential	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture
East	Agriculture/Residential	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture

PROPOSED SPECIAL CONDITION

- A. **The existing garage can remain in its current location, but replacement of the garage or repair of more than 50% replacement value in any 365-day period means the garage 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 garage conforms to the Zoning Ordinance.

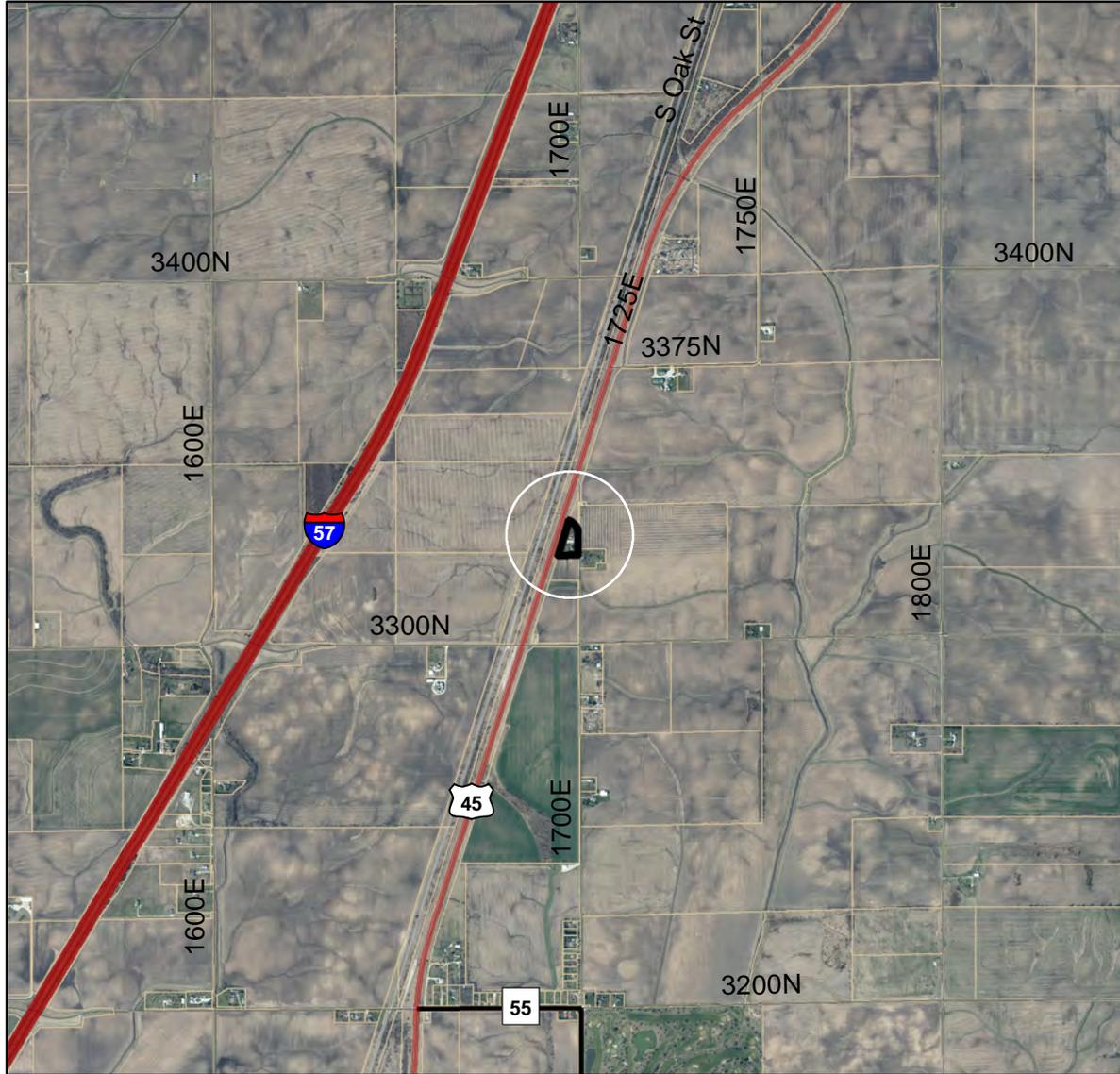
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received December 7, 2023
- C Annotated 2023 aerial photo created by P&Z Staff on December 7, 2023
- D Images of subject property taken December 8, 2023
- E Draft Summary of Evidence, Finding of Fact, and Final Determination dated December 28, 2023

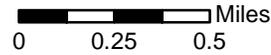
Location Map

Case 125-V-23
December 28, 2023

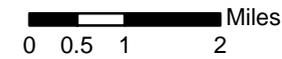
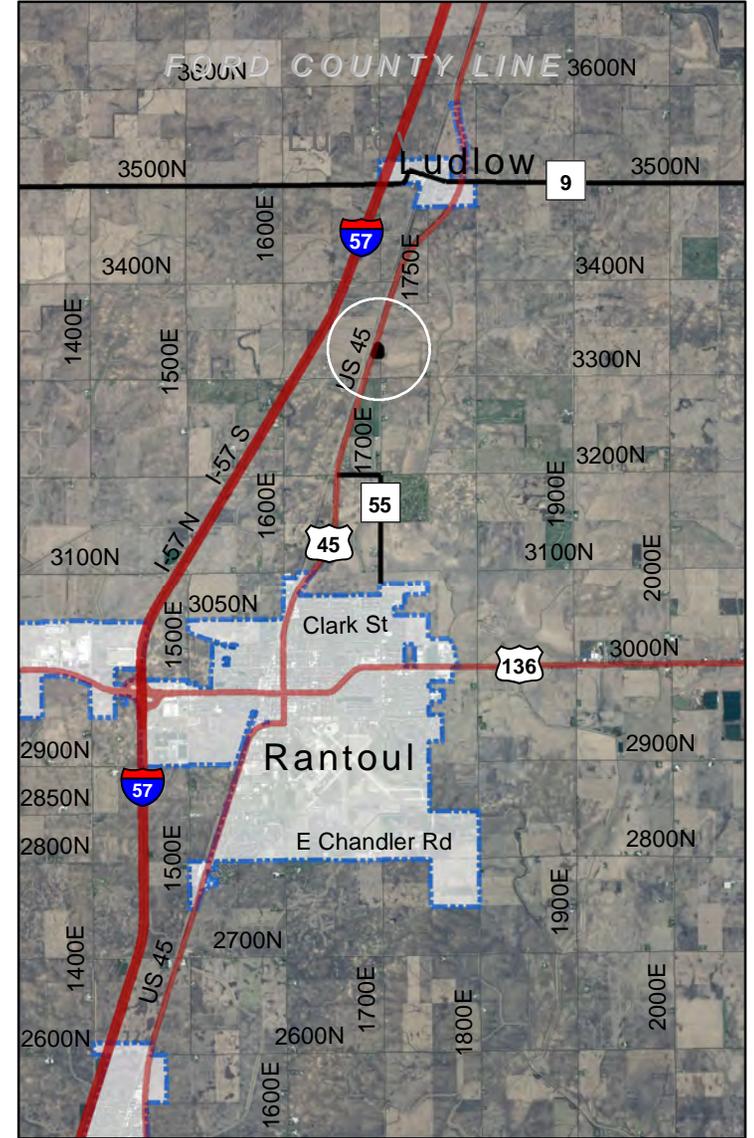
Subject Property



-  Subject Property
-  Municipal Boundary



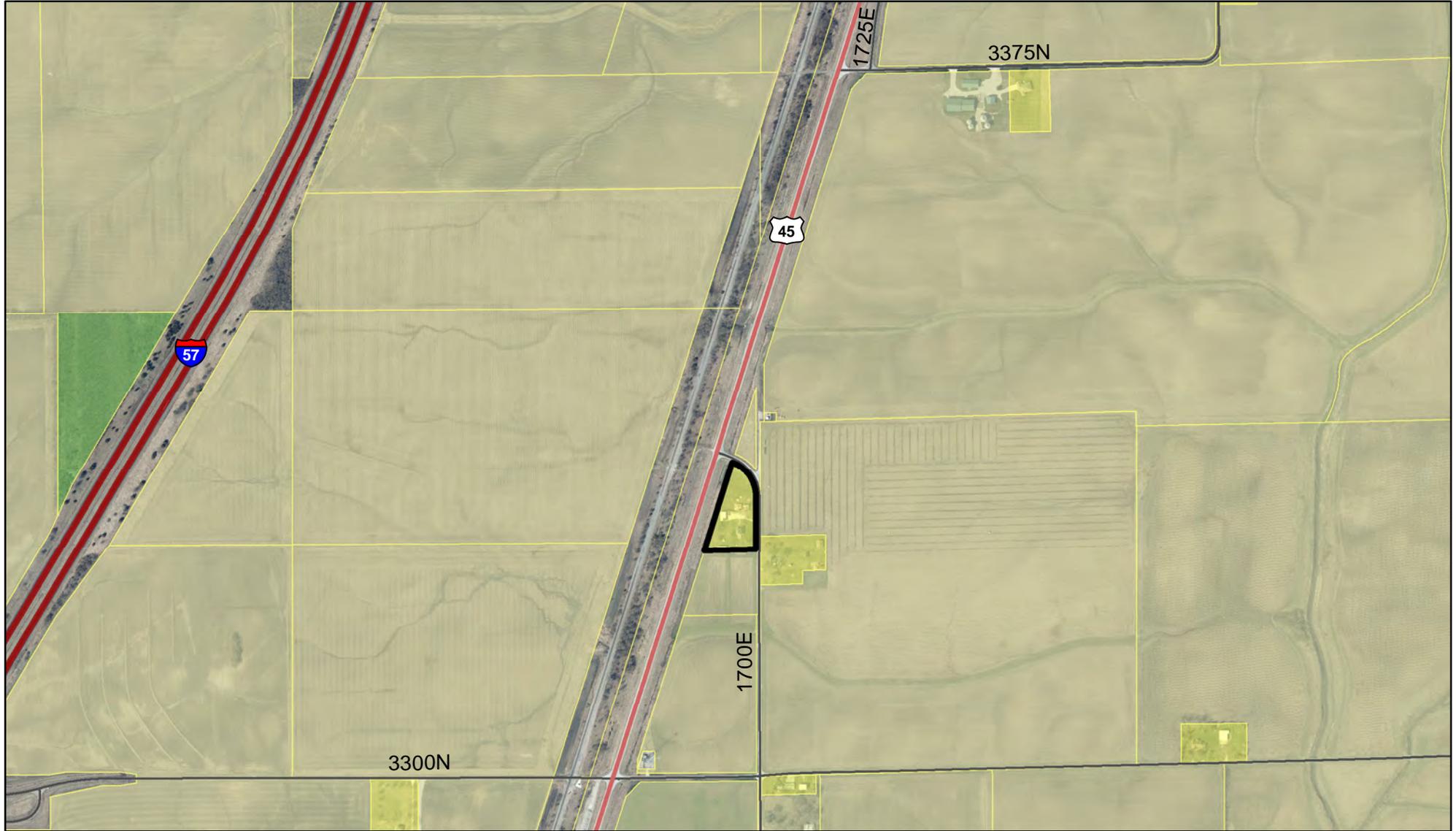
Property location in Champaign County



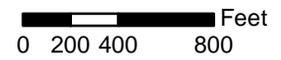
Champaign County
Department of
**PLANNING &
ZONING**

Land Use Map

Case 125-V-23
December 28, 2023



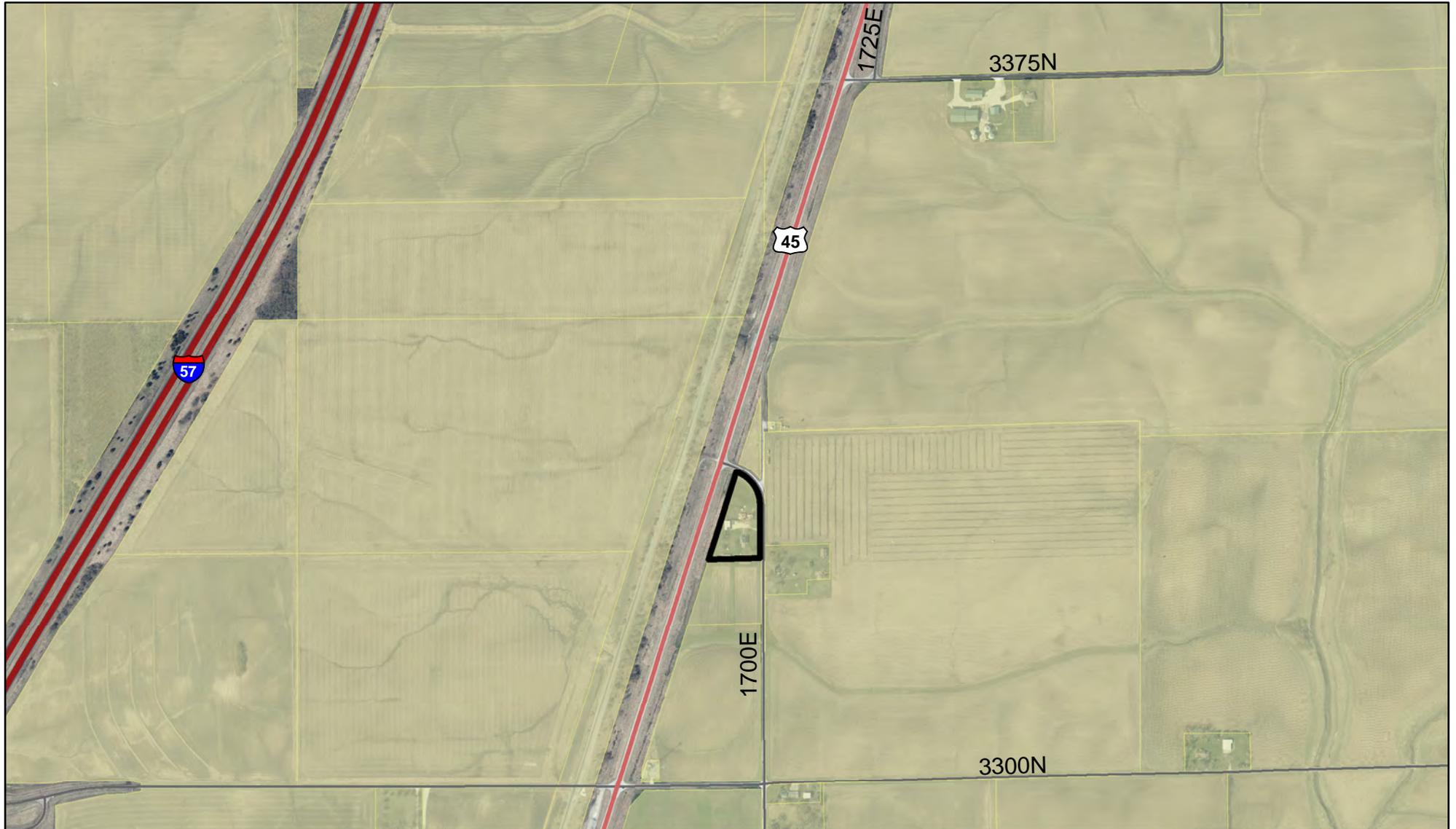
-  Subject Property
-  Parcels



Zoning Map

Case 125-V-23

December 28, 2023

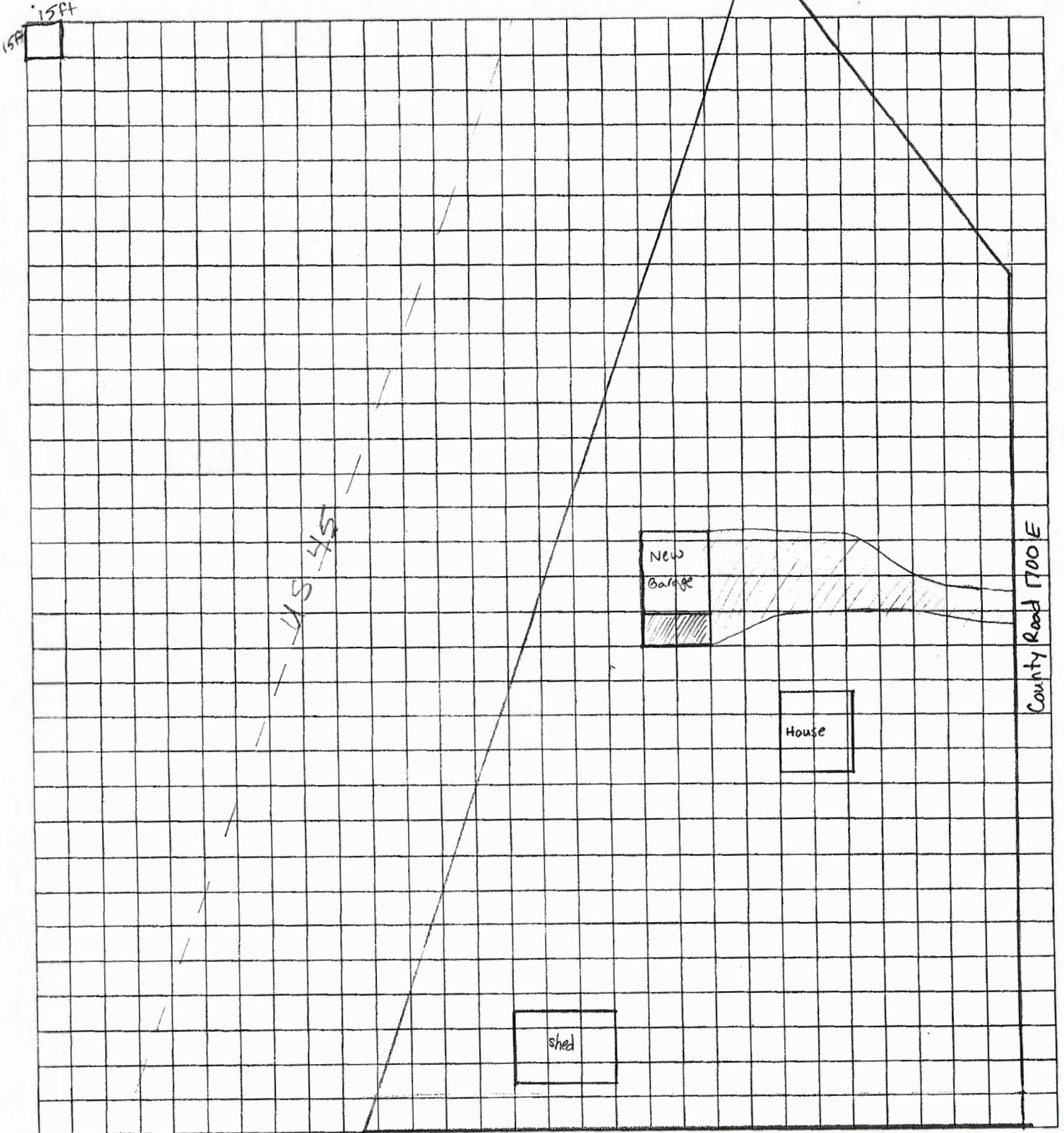


-  Subject Property
-  Municipal Boundary
-  AG-1 Agriculture

0 200 400 800 Feet



Champaign County
Department of
PLANNING &
ZONING



Check which applies:

- Site Plan
- Erosion & Sediment. Control Plan
- Other: _____

Date Received:

North Arrow:

Approval (Office Use Only):

Permit Application No. _____

Applicant Name: _____

RECEIVED

DEC 07 2023

CHAMPAIGN CO. P & Z DEPARTMENT

2023 Annotated Aerial

Case 125-V-23
December 28, 2023



 Subject Property
 Parcels

0 15 30 60 Feet



Champaign County
Department of
PLANNING &
ZONING

125-V-23 Site Images



From CR 1700E facing south to garage; US 45 is at right



From CR 1700E facing west to garage

PRELIMINARY DRAFT

125-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}***

Petitioner: **Tony and Erin Studer**

Request: **Authorize a variance in the AG-1 Agriculture Zoning District for an existing detached garage with a front yard of 25 feet in lieu of the minimum required 35 feet adjacent to US 45 North, per Section 4.3.2 of the Zoning Ordinance.**

Table of Contents

General Application Information 2

Required Variance 3

Specific Ordinance Requirements 3 - 5

Variance Evidence..... 5 - 7

Documents of Record..... 8

Case 125-V-23 Findings of Fact 9 - 10

Case 125-V-23 Final Determination 11

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. Petitioners Tony and Erin Studer, 3327 CR 1700E, Ludlow, own the subject property.
2. The subject property is a 2.58-acre parcel in the Northeast Quarter of the Southeast Quarter of Section 14, Township 22 North, Range 9 East of the Third Principal Meridian in Ludlow Township, with an address of 3327 CR 1700E, Ludlow.
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 Ludlow 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 2.58-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.
 - (1) There is one residence to the southeast of the subject property but otherwise the surrounding land 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 December 7, 2023, indicates the following:
 - (1) The following are existing structures on the subject property:
 - a. One 30 feet by 36 feet (1,080 square feet) detached garage located northwest of the house, constructed in 2023.
 - (a) This garage replaces a 30 feet by 60 feet garage built without a permit sometime between 1988 and 1996 that was damaged by a tornado.
 - b. One 2,100 square feet residence constructed prior to adoption of the Zoning Ordinance on October 10, 1973.
 - c. One 18 feet by 22 feet (396 square feet) detached shed constructed prior to adoption of the Zoning Ordinance on October 10, 1973.
 - d. One 1,440 square feet detached shed located southwest of the house constructed prior to adoption of the Zoning Ordinance on October 10, 1973.

PRELIMINARY DRAFT

- e. Two structures north of the house were destroyed by a tornado and have been torn down.
- B. There is one previous Zoning Use Permit for the subject property:
- (1) ZUPA # 218-96-04 was approved on August 7, 1996 for construction of an above-ground swimming pool, which has since been removed.
 - (2) The house and two buildings located south of the house were constructed prior to adoption of the Zoning Ordinance on October 10, 1973.
 - (3) There was no Zoning Use Permit on file for the 30 feet by 60 feet garage and the two other outbuildings that were destroyed by the tornado.
- C. There are no prior Zoning Cases for the subject property.
- D. The required variance is as follows:
- (1) Authorize a variance in the AG-1 Agriculture Zoning District for an existing detached garage with a front yard of 25 feet in lieu of the minimum required 35 feet adjacent to US 45 North, per Section 4.3.2 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) “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) “FRONTAGE” is that portion of a LOT abutting a STREET or ALLEY.
 - (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) “RIGHT-OF-WAY” is the entire dedicated tract or strip of land that is to be used by the public for circulation and service.
 - (6) “SETBACK LINE” is the BUILDING RESTRICTION LINE nearest the front of and across a LOT establishing the minimum distance to be provided between a

PRELIMINARY DRAFT

line of a STRUCTURE located on said LOT and the nearest STREET RIGHT-OF-WAY line.

- (7) “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.

 - (8) “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.

 - (9) “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.

 - (10) “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.
- 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.

PRELIMINARY DRAFT**Case 125-V-23**

Page 5 of 11

- 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 FRONT YARD from the street right of way of a Federal or State Highway to a STRUCTURE is established in Section 4.3.2 of the Zoning Ordinance as 35 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 lot is an irregular shape with two street frontages.”**
 - B. The petitioners built a new, smaller garage on top of the existing foundation for a garage that was destroyed by a tornado.
 - C. A detached building in the AG-1 Agriculture Zoning District only requires a 10 foot rear yard, but since the rear yard on this property fronts a federal highway, that is counted as a frontage requiring 35 feet between the building and the right-of-way line.

GENERALLY REGARDING ANY PRACTICAL DIFFICULTIES OR HARDSHIPS RELATED TO CARRYING OUT THE STRICT LETTER OF THE ORDINANCE

8. Generally regarding the Zoning Ordinance requirement of a finding that practical difficulties or hardships related to carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot:
- A. The Petitioner has testified on the application, **“Moving the structure further away from the property line will prevent farm equipment from being able to access the field.”**
 - B. Regarding the variance for an existing detached building with a front yard of 25 feet in lieu of 35 feet: without the variance, the petitioners would have to move the building 10 feet to the east.

PRELIMINARY DRAFT**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 special conditions are not the result of our actions. The placement of the driveway, utilities, well, and septic were all in place prior to us purchasing the property. These things, along with visibility from the driveway, prevent us from choosing another location for this structure. We were unaware that prior construction did not meet regulations.”**
 - B. The garage that was destroyed by the tornado was built without a permit prior to the petitioners’ ownership of the subject property. They used the existing concrete slab to build the replacement garage. They were not aware that the previous building location was not in compliance.

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, **“This variance would be in harmony with the purpose and intent of the district (AG-1) because it helps maintain the agriculture functions of the property. There would be no effect on traffic, congestion, or the environment. It also does not present any hazards to people or properties.”**
 - B. Regarding the variance for an existing detached building with a front yard of 25 feet in lieu of 35 feet: the requested variance is 71.4% of the minimum required, for a variance of 28.6%.
 - C. Regarding the proposed variance, the Zoning Ordinance does not clearly state the considerations that underlie the minimum front yard requirement. Presumably the front yard minimum is intended to ensure the following:
 - (1) Adequate separation from roads.
 - a. US 45 has a 230-foot wide right-of-way.
 - (2) Allow adequate area for road expansion and right-of-way acquisition.
 - a. There are no known plans to widen US 45.
 - (3) Parking, where applicable.
 - a. No parking is allowed on US 45.

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:

PRELIMINARY DRAFT**Case 125-V-23**

Page 7 of 11

- A. The Petitioner has testified on the application: **“The variance will not be injurious to the neighborhood or public safety, as the structure sits in the same spot as a previous structure that was destroyed by a natural disaster. There is adequate room for firefighting purposes. The corner lot visibility and driveway visibility are not impeded. The property fronts US 45 and CR 1700E. Traffic levels will not be affected. The structure will not increase runoff or direct it to a different location.”**
- B. The Ludlow Township Road Commissioner and IDOT were notified of this variance, and no comments have been received.
- C. The Ludlow Fire Protection District was notified of this variance, and no comments have been received.
- D. The nearest structure on adjacent property is the residence located to the southeast, which is about 340 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: **“We were not aware that the old structure did not meet the setback ordinance when we replaced it after the tornado. The new structure was moved further from the property line, however, any more distance would prevent farm equipment from getting back to the field. Another location for the building was not possible given the placement of trees, underground utilities and visibility needs. The structure does not sit parallel to the road (US 45) because of the lot’s irregular shape. While the structure’s northwest corner sits at about 30 feet from the property line, the southwest corner is at about 45 feet. This makes the average distance from the property line about 37.5 feet. The structure is also approximately 135 feet from the road (US 45) at it’s closest point on the northwest corner, which is 50 feet beyond the required 85 feet.”**

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

- 13. Regarding proposed special conditions of approval:
 - A. **The existing garage can remain in its current location, but replacement of the garage or repair of more than 50% replacement value in any 365-day period means the garage 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 garage conforms to the Zoning Ordinance.

DOCUMENTS OF RECORD

1. Variance Application received December 7, 2023, with attachment:
 - A Site Plan

2. Preliminary Memorandum dated December 20, 2023, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received December 7, 2023
 - C Annotated 2023 aerial photo created by P&Z Staff on December 7, 2023
 - D Images of subject property taken December 8, 2023
 - E Draft Summary of Evidence, Finding of Fact, and Final Determination dated December 28, 2023

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **125-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. ***The petitioners built a new, smaller garage on top of the existing foundation for a garage that was destroyed by a tornado.***
 - b. ***A detached building in the AG-1 Agriculture Zoning District only requires a 10 foot rear yard, but since the rear yard on this property fronts a federal highway, that is counted as a frontage requiring 35 feet between the building and the right-of-way line.***
2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied **{WILL / WILL NOT}** prevent reasonable or otherwise permitted use of the land or structure or construction because:
 - a. ***Without the variance, the petitioners would have to move the building 10 feet to the east.***
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
 - a. ***The garage that was destroyed by the tornado was built without a permit prior to the petitioners' ownership of the subject property. They used the existing concrete slab to build the replacement garage. They were not aware that the previous building location was not in compliance.***
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. ***US 45 has a 230-foot right-of-way. There are no known plans to widen US 45 North.***
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.***
 - b. ***Neighboring landowners were notified, and no comments have been received.***
 - c. ***The closest structure on adjacent property is approximately 340 feet from the garage.***
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 variance is the minimum variation without moving the existing garage.***
7. **{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITION IMPOSED HEREIN IS REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}**

PRELIMINARY DRAFT

- A. **The existing garage can remain in its current location, but replacement of the garage or repair of more than 50% replacement value in any 365-day period means the garage 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 garage 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 **125-V-23** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Tony and Erin Studer**, to authorize the following:

Authorize a variance in the AG-1 Agriculture Zoning District for an existing detached garage with a front yard of 25 feet in lieu of the minimum required 35 feet adjacent to US 45 North, per Section 4.3.2 of the Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

- A. **The existing garage can remain in its current location, but replacement of the garage or repair of more than 50% replacement value in any 365-day period means the garage 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