

# CASE NO. 147-V-24

## PRELIMINARY MEMORANDUM

September 18, 2024

Petitioner: **Jerry & Diamond Hay**

Request: **Authorize a variance for a proposed single-family dwelling with a rear yard of 10 feet in lieu of the minimum required 20 feet in the R-1 Single Family Residence Zoning District per Section 5.3 of the Champaign County Zoning Ordinance.**

Subject Property: **The East 67 feet of Lots 1, 2 and 3 of B.R. Hammer’s Addition to the Town of Dewey, in the Northwest Quarter of Section 34, in East Bend Township, with an address of 301 Independence Ave., Dewey.**

Site Area: **.23 acres**

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

Prepared by: **Charlie Campo, Senior Planner  
John Hall, Zoning Administrator**

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### BACKGROUND

The Petitioner purchased the subject property in 2024 and would like to construct a single-family residence. The rectangular subject property has street frontage on three sides and a “rear” property line on one side. The subject property was created prior to the adoption of the Champaign County Zoning Ordinance and is 10,050 square feet in area. The Zoning Ordinance requires lots created between October 10, 1973, and September 21, 1993, to be a minimum of 10,000 sq. ft. and lots created after September 21, 1993 to be a minimum of 20,000 sq. ft if they are connected to a public water system and will use a private septic system.

Constructing a 30x80 ft. home on the property so that it does not encroach on the front setback or visibility triangle lines will require positioning the house toward the west side of the lot. This also leaves more space for the leach field as shown on the site plan.

### EXISTING LAND USE AND ZONING

**Table 1. Land Use and Zoning in the Vicinity**

| <b>Direction</b> | <b>Land Use</b>            | <b>Zoning</b>             |
|------------------|----------------------------|---------------------------|
| Onsite           | Vacant                     | R-1 Single Family Res.    |
| North            | Residential                | R-1 Single Family Res.    |
| East             | Residential and Commercial | R-1 and B-5 Central Bus.  |
| West             | Residential                | R-1 Single Family Res.    |
| South            | Agriculture and Commercial | AG-1, B-5, I-1 Light Ind. |

continued

Brookens Administrative  
Center  
1776 E. Washington Street  
Urbana, Illinois 61802

(217) 384-3708  
zoningdept@co.champaign.il.us  
www.co.champaign.il.us/zoning

## EXTRATERRITORIAL JURISDICTION

The subject property is not within the one and one-half mile extraterritorial jurisdiction of 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 East Bend Township, which does not have a Plan Commission.

## PROPOSED SPECIAL CONDITIONS

- A. **The Zoning Administrator shall not issue a Zoning Use Permit for a dwelling on the property until the applicant has received an approved permit for a private sewage disposal system from the Champaign County Public Health Department.**

The above special condition is required to ensure the following:

**That any dwelling on the property conforms to County regulations for private sewage disposal systems.**

## ATTACHMENTS

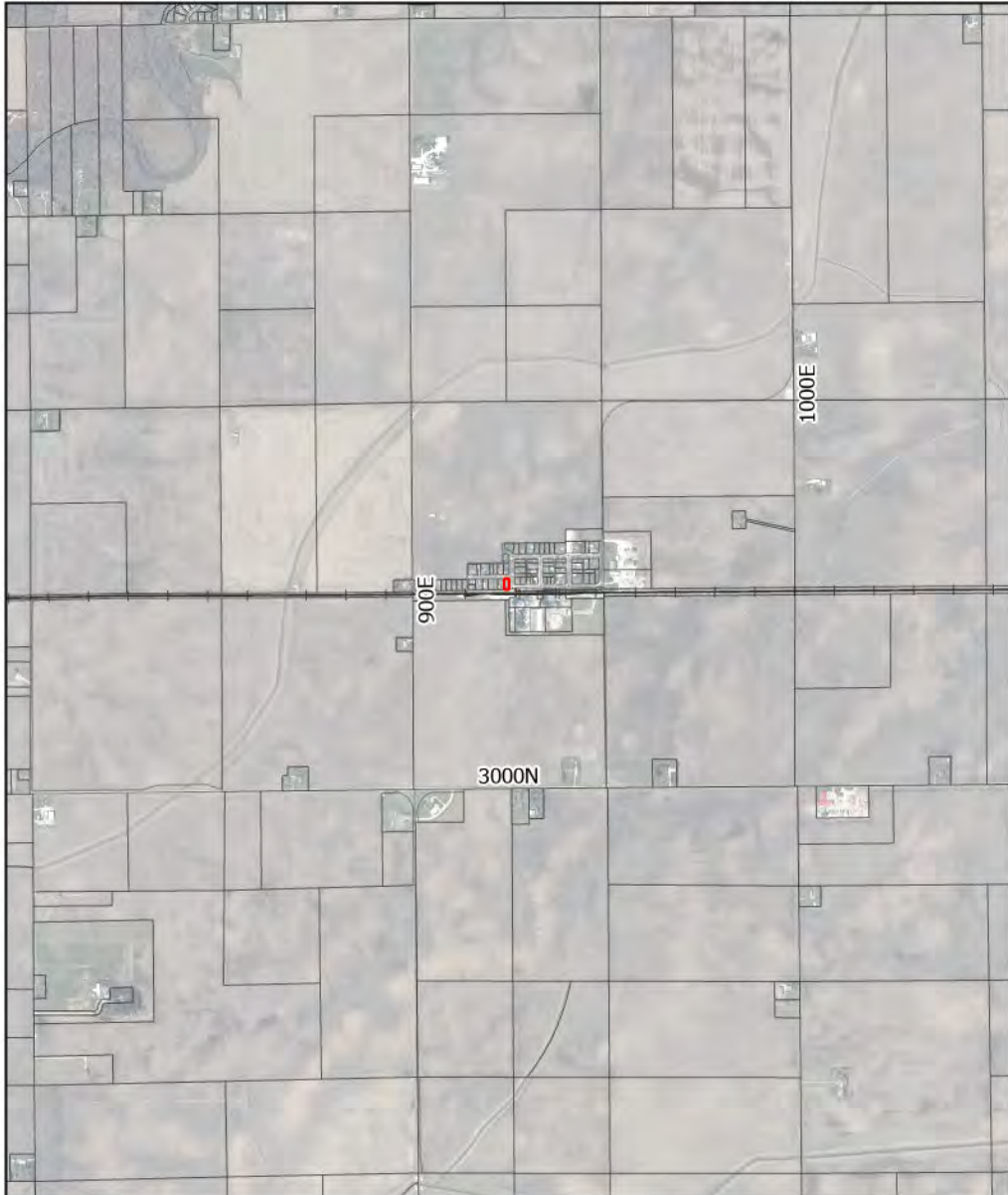
- A Case Maps (Location, Land Use, Zoning)
- B Aerial Photo 1973/2023
- C Aerial Photo 2023 with Setback lines
- D Site Plan received August 3, 2024, and House Floorplan received July 29, 2024
- E Images of Subject Property taken September 18, 2024
- F Draft Summary of Evidence, Finding of Fact, and Final Determination dated September 26, 2024



# Location Map

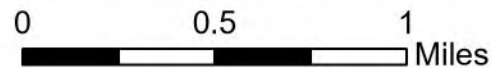
Case 147-V-24

September 26, 2024

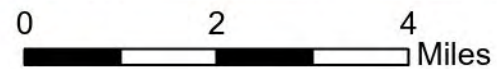
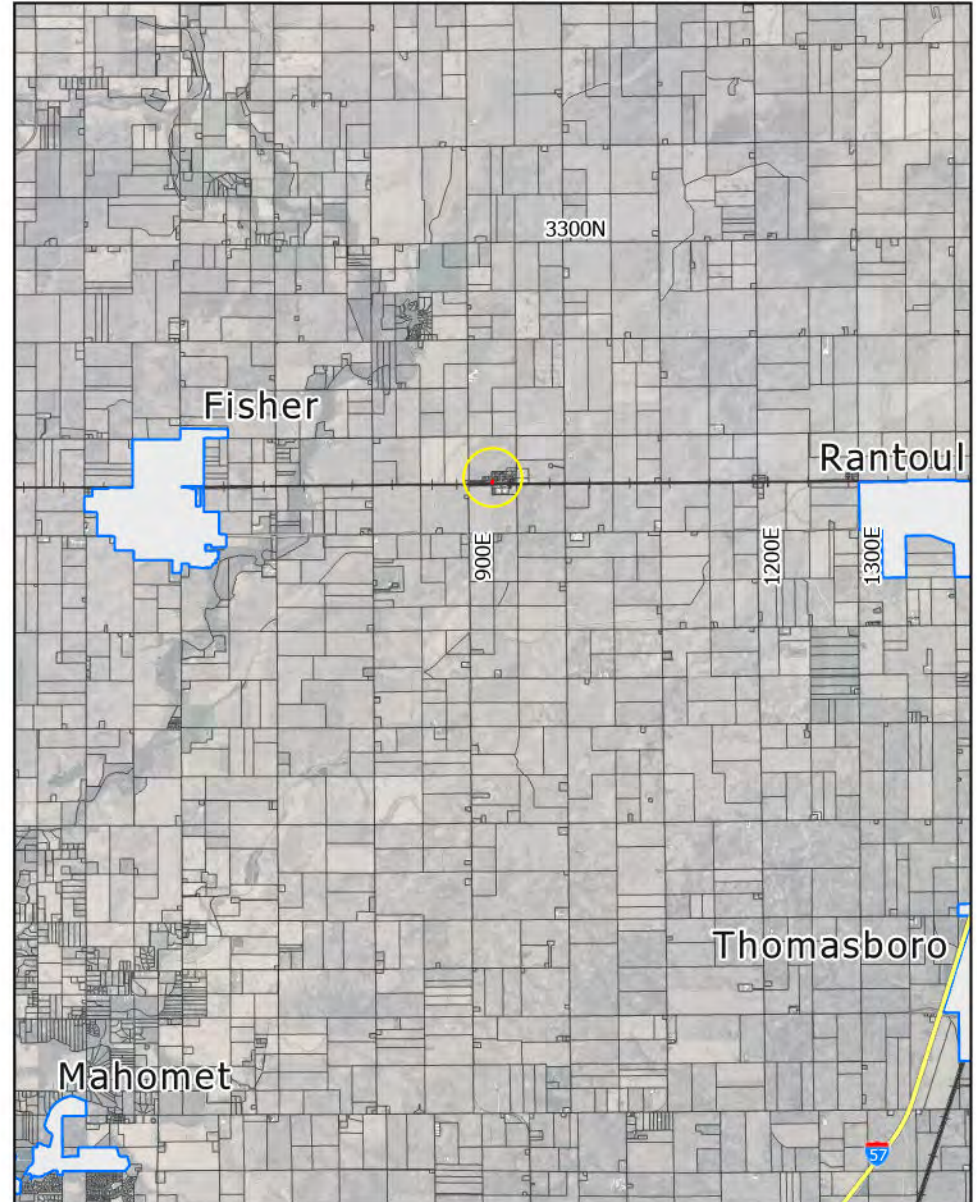
### Subject Property in Dewey



-  Subject Property
-  Municipal Boundary



### Property Location in Champaign County



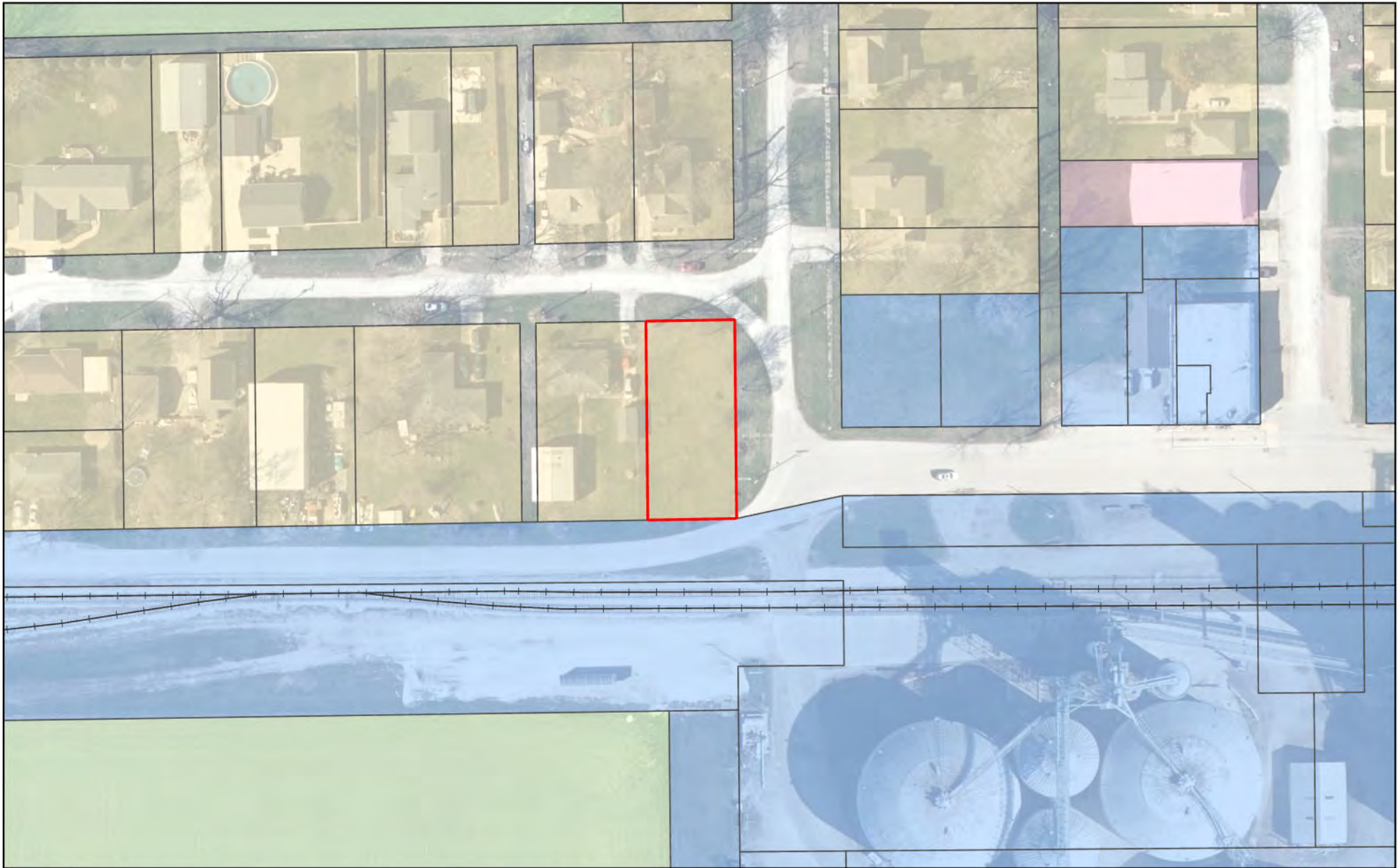
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# Land Use Map

Case 147-V-24

September 26, 2024



- Subject Property
- Agriculture
- Government
- Residential
- Commercial

0 100 200 Feet

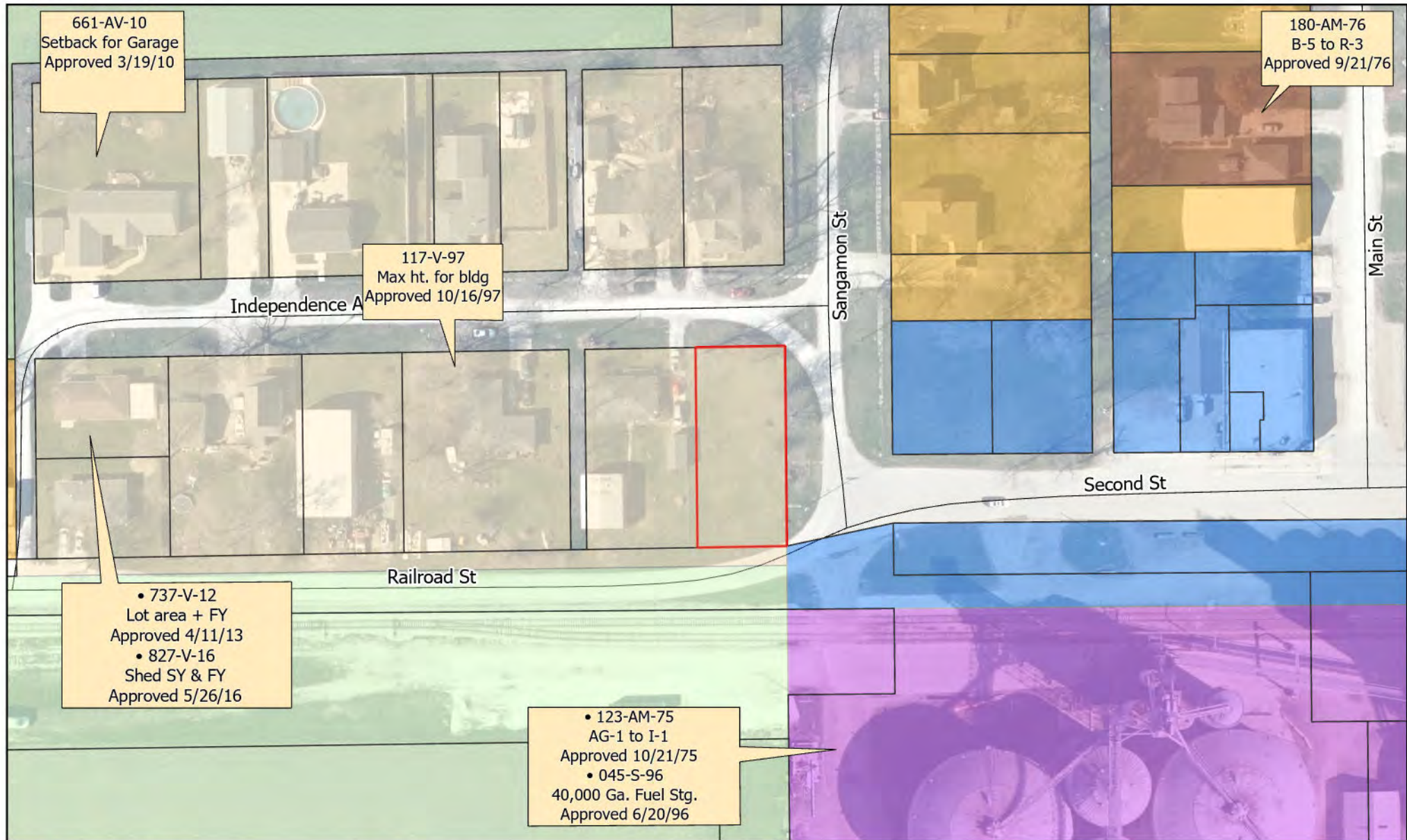
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PLANNING & ZONING


# Zoning Map

Case 147-V-24

September 26, 2024




 Subject Property

 R-1 Single-Family Residence

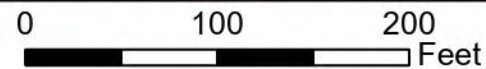
 R-2 Single-Family Residence

 R-3 Two-Family Residence

 AG-1 Agriculture

 B-5 Central Business

 I-1 Light Industry



# Aerial Imagery 2023 & 1973

Case 147-V-24

September 26, 2024

2023 Aerial Imagery



1973 Aerial Imagery



0 50 100 Feet



# Annotated Aerial with Setbacks

Case 147-V-24  
September 26, 2024

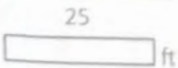
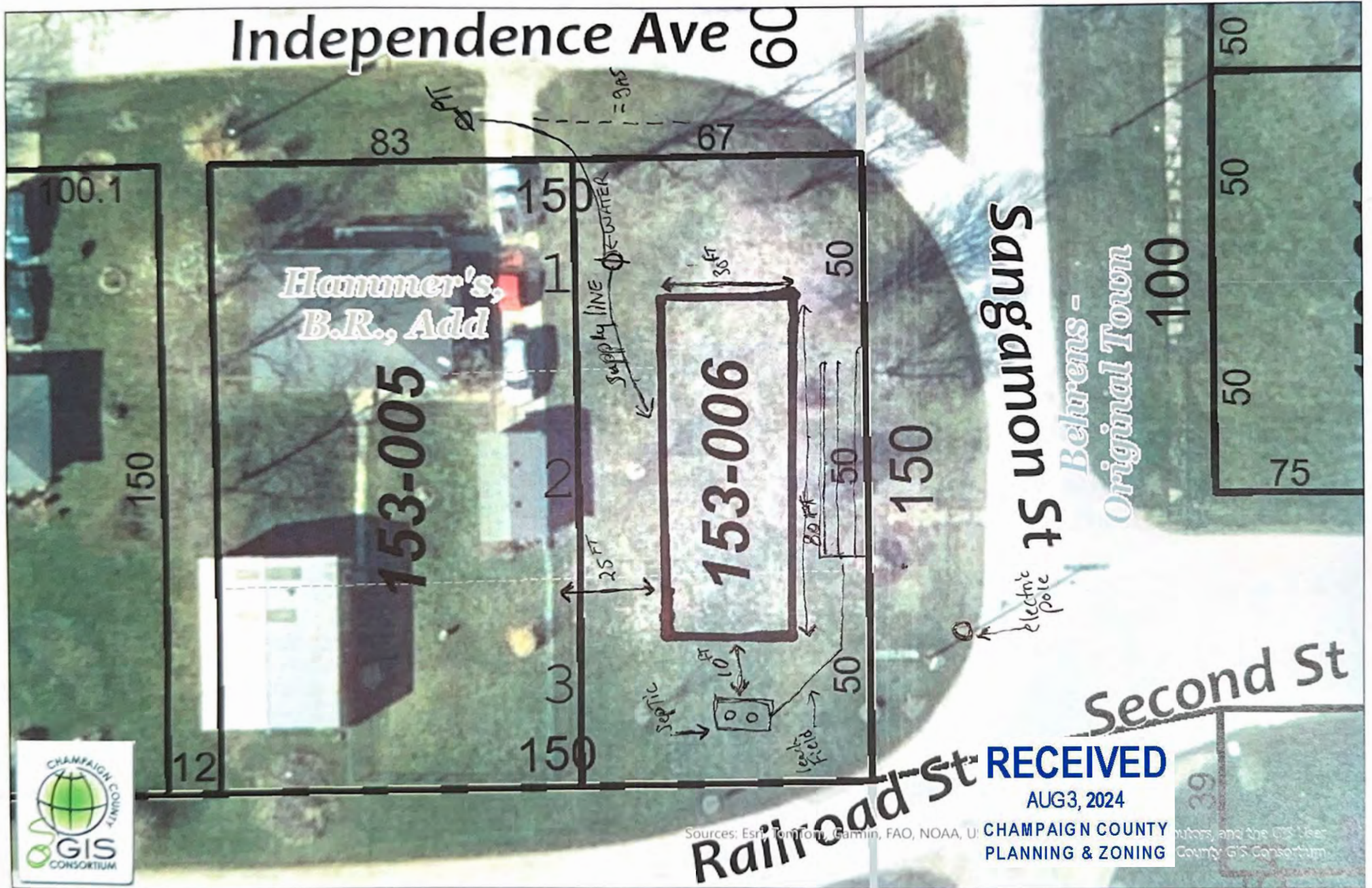


- Subject Property
- Front Yard Setbacks
- Setback Measurements

- 67' Lot Dimensions
- Visibility Triangle\*  
\*Visibility Triangles are 50' on each lot line



PLANNING &  
ZONING



This map was prepared with geographic information system (GIS) data created by the Champaign County GIS Consortium (CCGIS), or other CCGIS member agency. These entities do not warrant or guarantee the accuracy or suitability of GIS data for any purpose. The GIS data within this map is intended to be used as a general index to spatial information and not intended for detailed, site-specific analysis or resolution of legal matters. Users assume all risk arising from the use or misuse of this map and information contained herein. The use of this map constitutes acknowledgement of this disclaimer.

Sources: Esri, TomTom, Garmin, FAO, NOAA, U.S. Department of Agriculture, and the U.S. Census Bureau  
**RECEIVED**  
 AUG 3, 2024  
 CHAMPAIGN COUNTY  
 PLANNING & ZONING





PROPERTY LINE

15' WIDE ST

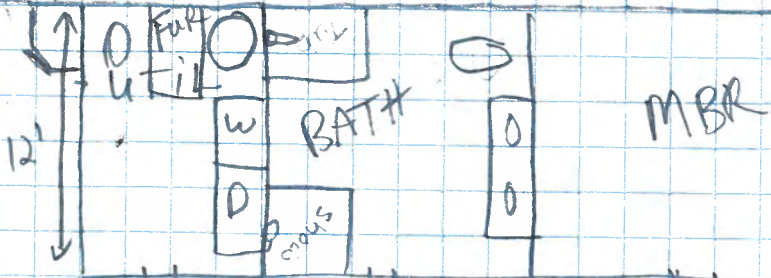
RAILROAD ST

80'

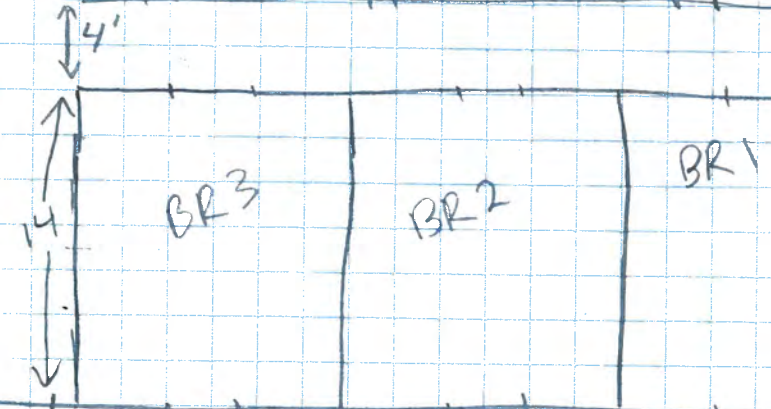
30'

20' 8'

Kit



LR



8x7 Driveway

24'

69 1/4 x 82'

RECEIVED

JULY 29, 2024

CHAMPAIGN COUNTY  
PLANNING & ZONING

SANG ST

### 147-V-24 Site Images



**From intersection of Independence & Sangamon facing SW to Subject Property**



**From Subject Property facing North across Independence Ave.**

### 147-V-24 Site Images



**From Independence Ave. facing South along property line**



**From intersection of Second St. and Sangamon St facing West toward Subject Property**

### 147-V-24 Site Images



**From Railroad St. facing South along property line**

**PRELIMINARY DRAFT**

**147-V-24**

**SUMMARY OF EVIDENCE, FINDING OF FACT  
AND FINAL DETERMINATION  
of  
Champaign County Zoning Board of Appeals**

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Final Determination: ***{GRANTED/ GRANTED WITH SPECIAL CONDITIONS/ DENIED}***

Date: ***{September 18, 2024}***

Petitioner: **Jerry & Diamond Hay**

Request: **Authorize a variance for a proposed single-family dwelling with a rear yard of 10 feet in lieu of the minimum required 20 feet in the R-1 Single Family Residence Zoning District per Section 5.3 of the Champaign County 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 **September 26, 2020**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioners, Jerry & Diamond Hay, own the subject property.
2. The subject property is a 0.23-acre in Section 34, in East Bend Township, and is the east 67 feet of Lots 1,2 and 3 of B.R. Hammer's Addition to the Town of Dewey, with an address of 301 Independence Ave., Dewey.
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. Municipalities do not have protest rights on a variance and are not notified of such cases.
  - B. The subject property is located within East Bend Township, which does not have a Plan Commission. Township Plan Commissions have protest rights on a variance and are notified of such cases.

***GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY***

4. Land use and zoning on the subject property and in the vicinity are as follows:
  - A. The subject property is currently zoned R-1 Single Family Residence. Land use is vacant residential.
  - B. Land to the north and west is zoned R-1 Single Family Residence and is residential in use.
  - C. Land to east is zoned R-1 Single Family Residence and B-6 Central Business and is residential and commercial in use.
  - D. Land to the south is zoned AG-1 Agriculture, B-5 Central Business and I-1 Light industry is and is in use as a grain elevator facility.

***GENERALLY REGARDING THE PROPOSED SITE PLAN***

5. Regarding the site plan for the subject property:
  - A. The Site Plan received on August 3, 2024, indicates the following:
    - (1) A proposed 30x80 ft. single family residence facing Sangamon St.
    - (2) A floor plan of the house was submitted with the Variance Application on July 29, 2024.
  - B. There are no previous Zoning Cases or Zoning Use Permits for the subject property.
  - C. The requested variance is for a proposed single-family dwelling with a rear yard of 10 feet in lieu of the minimum required 20 feet in the R-1 Single Family Residence Zoning District.

***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) “BUILDING, DETACHED” is a BUILDING having no walls in common with other BUILDINGS.
  - (2) “BUILDING, MAIN or PRINCIPAL: The BUILDING in which is conducted the main or principal USE of the LOT on which it is located.
  - (3) “DWELLING” is a BUILDING or MANUFACTURED HOME designated for non-transient residential living purposes and containing one or more DWELLING UNITS and/or LODGING UNITS.
  - (4) “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.
  - (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, 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-1 Single FAMILY Residence DISTRICT is intended to provide areas for single FAMILY detached DELLINGS, set on LOTS and is intended for application in mainly non-urban and developing areas where community facilities can be made readily available.
- C. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9 C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
    - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
    - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
    - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
    - d. That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.

**PRELIMINARY DRAFT**

- e. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
- (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9 D.2.
- D. Minimum REAR YARD for a principal structure in the R-1 Single Family Residence District is established in Section 5.3 of the Zoning Ordinance as 20 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, **“Buildable area is unusually narrow and has three street frontages.”**
  - B. The subject property was created prior to the adoption of the Champaign County Zoning Ordinance on October 10, 1973, and is currently a vacant lot. The property previously contained a single-family residence that was constructed prior to October 10, 1973, and was demolished sometime after 2002.
  - C. The required setback for a principal structure in the R-1 Zoning District is 55 feet from the centerline of the road or 25 feet from the property line whichever is further back on the property.
    - (1) The platted right-of-way width of Independence Ave. is 60 feet making the setback line 25 feet from the north property line.
    - (2) The platted right-of-way width of Sangamon St. is 80 feet making the setback line 25 feet from the east property line.
    - (3) The platted right-of-way width of Railroad St. is 50 feet however with the railroad tracks on the south side of the road the width of railroad street right-of-way is approximately 47 feet measured on the Champaign County GIS. This results in a setback line approximately 32 feet from the south property line.
    - (4) The required rear yard on the west side of the subject property is 20 feet from the property 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, **“No additional land is available for purchase, proposed buildable area is extremely narrow.”**
  - B. Regarding the proposed variance: without the proposed variance, the petitioner would have to construct a smaller home and may have difficulty putting in a septic system for the home.



***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 purchasing the property we were originally told a larger buildable area, which was not accurate.”**
  - B. The Department of Planning and Zoning has received inquiries about this lot since it was listed for sale in 2021. The setback and yard requirements as well as the process for variance approval was noted.

***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, **“With an additional 8 feet, does not cause any hazards, changes to easements or utilities.”**
  - B. The required variance is for a 10-foot side yard in lieu of the minimum required 20 feet.
  - B. Regarding the proposed Variance for a principal building with a side yard of 10 feet in lieu of the minimum required 20 feet in the R-1 Single Family Residence District: the requested variance is 50% of the minimum required, for a variance of 50%.
  - C. The Zoning Ordinance does not clearly state the considerations that underlay the side yard requirements. In general, the side yard is presumably intended to ensure the following:
    - (1) Adequate light and air: The adjacent property has a detached garage that was constructed prior to the adoption of the Champaign County Zoning Ordinance and is approximately 2 feet from the property line. The home on the adjacent property is approximately 22 feet from the property line. With the proposed 10-foot side yard for the home on the subject property there would be approximately 12 feet between the home and the nearest structure and approximately 32 feet to the nearest home.
    - (2) Separation of structures to prevent conflagration: The subject property is within the Sangamon Valley Fire Protection District and the station is approximately 4.3 road miles from the subject property. The nearest structure is a detached garage approximately 12 feet to the west and the nearest home is approximately 32 feet to the west.
    - (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***

***PRELIMINARY DRAFT***

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: **“No, traffic is low, will not cause congestion, will not impede other properties, will not use or cause hazardous waste.”**
  - B. The East Bend Township Road Commissioner has been notified of this variance, and no comments have been received.
  - C. The Sangamon Valley Fire Protection District has been notified of this variance, and no comments have been received.
  - D. The nearest structure is a detached garage approximately 12 feet to the west.
  - E. 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: **“This lot has three frontages, which causes this lot to have ample space that is considered unbuildable.”**

***GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL***

13. Regarding proposed special conditions of approval:
  - A. **No special conditions are proposed at this time.**

**DOCUMENTS OF RECORD**

1. Variance Application received July 29, 2024, with attachments:
  - A Site Plan received July 29, 2024
  - B Floor Plan received July 29, 2024
  - C Revised Site Plan received August 3, 2024
  
2. Preliminary Memorandum dated September 18, 2024, with attachments:
  - A Case Maps (Location, Land Use, Zoning)
  - B Aerial Photo 1973/2023
  - C Aerial Photo 2023 with Setback lines
  - D Site Plan received August 3, 2024, and House Floorplan received July 29, 2024
  - E Images of Subject Property taken September 17, 2024
  - F Draft Summary of Evidence, Finding of Fact, and Final Determination dated September 26, 2024

**PRELIMINARY DRAFT****FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **147-V-24** held on **September 26, 2024**, 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 property has frontage on three streets and one rear yard resulting in a small buildable area based on the zoning regulations.***
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 approval of the proposed variance, the petitioner would have to construct a smaller home and may have difficulty putting in a septic system for the home.***
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
  - a. ***The lot was created prior to the adoption of the Champaign County Zoning Ordinance and its location along three streets results in a small buildable area.***
4. The requested variance **{SUBJECT TO THE PROPOSED CONDITION}** **{IS / IS NOT}** in harmony with the general purpose and intent of the Ordinance because:
  - a. ***The requested variance is 50% of the minimum required, for a variance of 50%.***
  - b. ***There is adequate light and air surrounding the proposed home site and adjacent structures.***
  - c. ***There is separation to adjacent properties and structures to prevent conflagration and the Sangamon Valley Fire Protection District has been notified of the requested variance and no comments have been received.***
5. The requested variance **{SUBJECT TO THE PROPOSED CONDITION}** **{WILL / WILL NOT}** be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because:
  - a. ***Relevant jurisdictions were notified of this case, and no comments have been received.***
  - b. ***The nearest structure on adjacent property is 12 feet away and the nearest dwelling is 32 feet away.***
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 variance required to construct the proposed home on the lot.***

7. ***{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}***

- A. **The Zoning Administrator shall not issue a Zoning Use Permit for a dwelling on the property until the applicant has received an approved permit for a private sewage disposal system from the Champaign County Health Department.**

The above special condition is required to ensure the following:

**That any dwelling on the property conforms to County regulations for private sewage disposal systems.**

**PRELIMINARY DRAFT**

**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 **147-V-24** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioners, **Jerry & Diamond Hay**, to authorize the following variance:

**Authorize a variance for a proposed single-family dwelling with a rear yard of 10 feet in lieu of the minimum required 20 feet in the R-1 Single Family Residence Zoning District per Section 5.3 of the Champaign County Zoning Ordinance.**

*{SUBJECT TO THE FOLLOWING CONDITION(S):}*

- A. **The Zoning Administrator shall not issue a Zoning Use Permit for a dwelling on the property until the applicant has received an approved permit for a private sewage disposal system from the Champaign County Health Department.**

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