

CASE NO. 124-V-23

PRELIMINARY MEMORANDUM

December 20, 2023

Petitioner: **Michael Moynihan**

Request: **Authorize a variance in the AG-1 Agriculture Zoning District for an existing detached shed with a side yard of 0 feet in lieu of the minimum required 10 feet, per Section 7.2.1 of the Zoning Ordinance.**

Subject Property: **A 2.16-acre parcel in the Northeast corner of Section 8, Township 22 North, Range 10 East of the Third Principal Meridian in Harwood Township, with an address of 1995 CR 3500N, Ludlow.**

Site Area: **2.16 acres**

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

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

BACKGROUND

Mr. Moynihan applied for a Zoning Use Permit for a solar array on November 20, 2023. He added a small strip of land to the south side of his property to accommodate the proposed solar array and recorded that land transfer on November 22, 2023. During review of the application, P&Z Staff noted that an existing shed in the southwest corner of the lot was on the west side property line. Since Mr. Moynihan had just finished the process of finalizing the land transfer, he decided to apply for the variance and hope for its approval rather than investing more time and money in acquiring another piece of land. Mr. Moynihan paid the permit fees for both the solar array and the previously constructed shed.

No comments have been received from relevant jurisdictions.

In a letter received December 4, 2023, Mr. Hood, owner of the land to the south and west of the shed needing the variance, stating that he has no concerns with the location of the shed, and his farmer likewise has expressed no concerns. The shed is 16 feet away from the cultivation line.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Residential	AG-1 & AG-2 Agriculture
North	Agriculture	AG-1 Agriculture
South	Agriculture	AG-1 Agriculture
East	Agriculture	AG-1 Agriculture
West	Agriculture	AG-1 Agriculture

EXTRATERRITORIAL JURISDICTION

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

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

SPECIAL CONDITIONS

No special conditions are proposed.

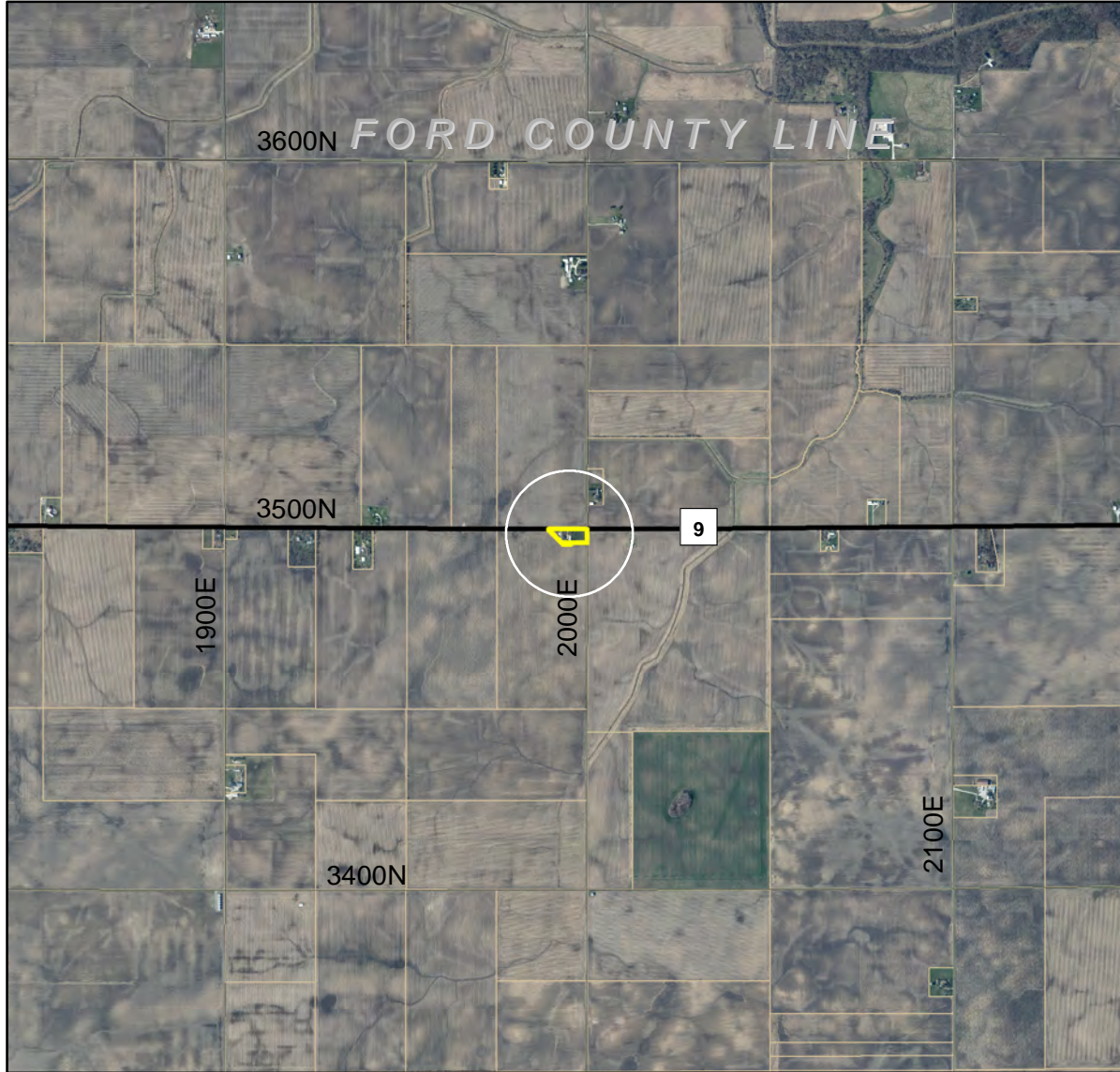
ATTACHMENTS



- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received on December 4, 2023
- C Annotated 2023 aerial photo created by P&Z Staff on December 7, 2023
- D Letter from D. Eugene Hood, neighboring landowner, received on December 4, 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 124-V-23
December 28, 2023

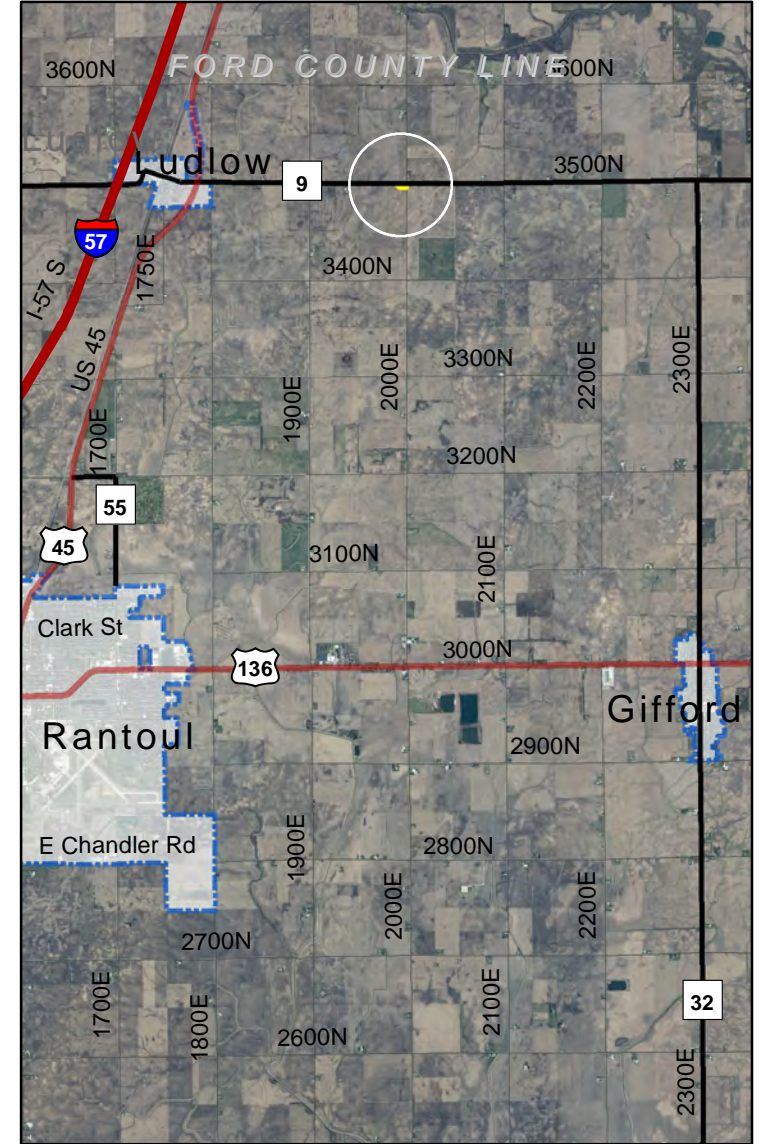
Subject Property



-  Subject Properties
-  Municipal Boundary

0 0.25 0.5 Miles

Property location in Champaign County



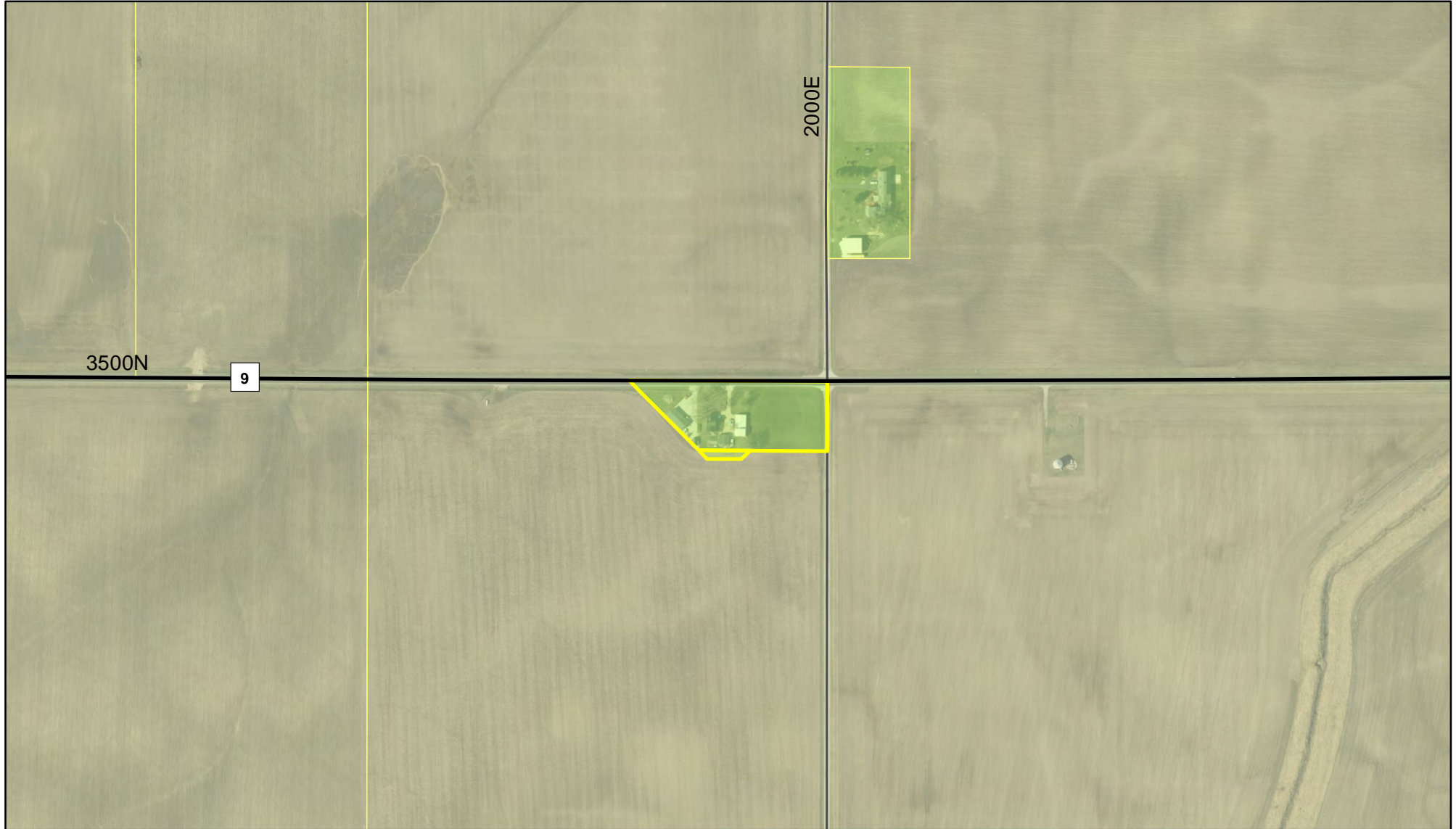
0 0.5 1 2 Miles



Champaign County
Department of
PLANNING &
ZONING

Land Use Map

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December 28, 2023



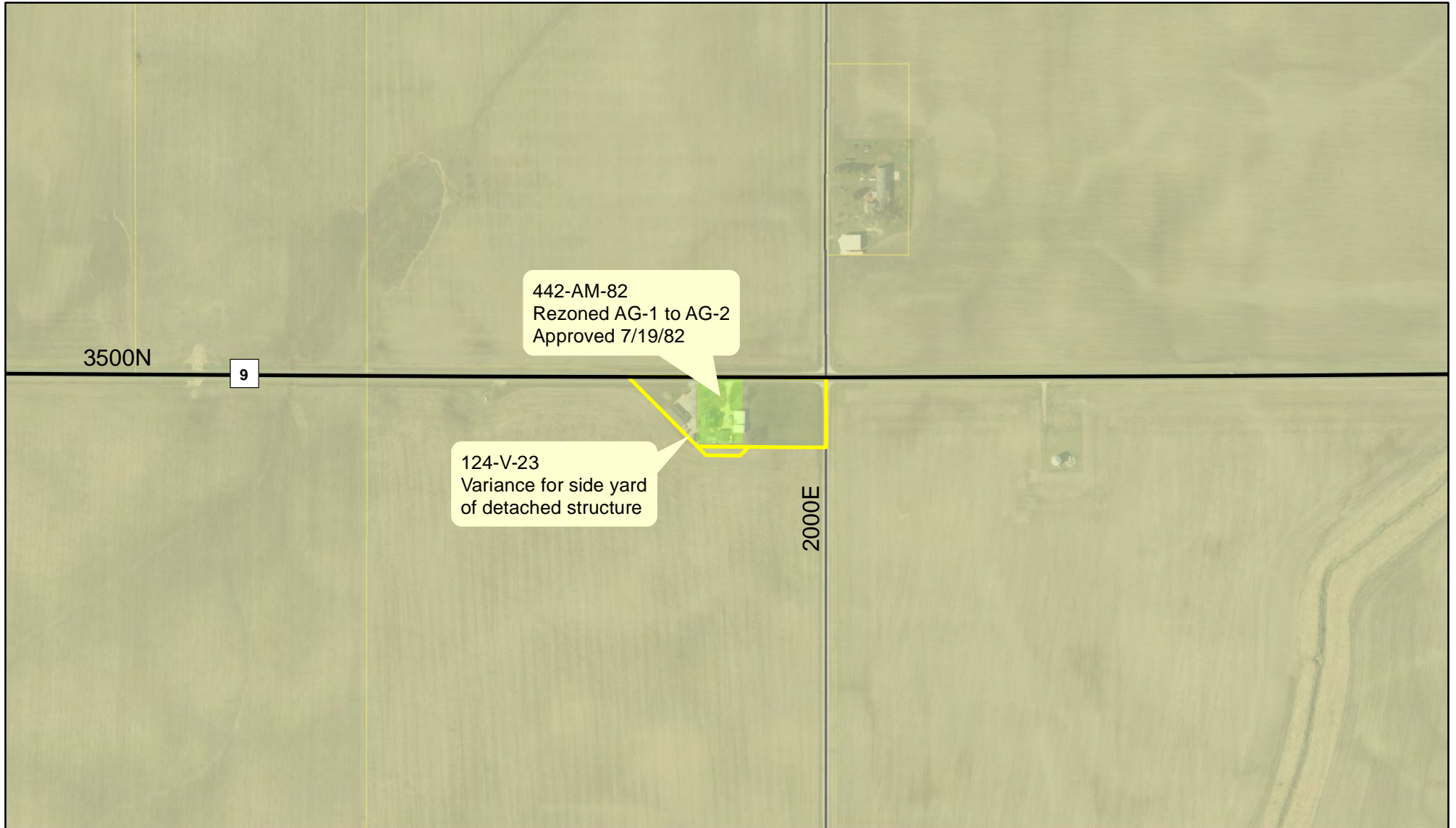
-  Subject Properties
-  Ag/Residential
-  Parcels
-  Agriculture





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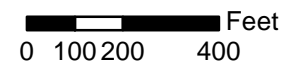


Zoning Map

Case 124-V-23
December 28, 2023



-  Subject Properties
-  AG-1 Agriculture
-  Municipal Boundary
-  AG-2 Agriculture



RECEIVED

DEC 04 2023

CHAMPAIGN CO. P & Z DEPARTMENT

353

5266.8

5305.08

3500N

CO HWY 9

2000E

282.84
318.3

1995

370

224

98'

353

RECEIVED

NOV 22 2023

CHAMPAIGN CO. P & Z DEPARTMENT



Sources: Esri, HERE, Garmin, FAO, NOAA, GIS User Community, Champaign County GIS Consortium

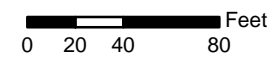


2023 Annotated Aerial

Case 124-V-23
December 28, 2023



-  Subject Properties
-  Parcels



12-1-23

I am the adjacent landowner to Mr. Moynihan's property. I have no concerns with the location of the shed in the Southwest corner of his property. The farmer who farms my land has expressed no concerns with the location of the shed.

Hood Farms Inc.
D. Eugene Hood, Pres
Barbara Hood Secy

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DEC 04 2023

CHAMPAIGN CO. P & Z DEPARTMENT

124-V-23 Site Images



From edge of cultivation line facing NE to shed – distance is 16 feet



From corner property line facing NW to shed

124-V-23 Site Images



From driveway facing south to shed. Note hedge at left and electrical conduit on front left of shed is an impediment to moving shed



From driveway facing south to shed

PRELIMINARY DRAFT

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**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: **Michael Moynihan**

Request: **Authorize a variance in the AG-1 Agriculture Zoning District for an
existing detached shed with a side yard of 0 feet in lieu of the minimum
required 10 feet, per Section 7.2.1 of the Zoning Ordinance.**

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SUMMARY OF EVIDENCE

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

1. Petitioner Michael Moynihan, 1995 CR 3500N, Ludlow, owns the subject property.
2. The subject property is a 2.16-acre parcel in the Northeast corner of Section 8, Township 22 North, Range 10 East of the Third Principal Meridian in Harwood Township, with an address of 1995 CR 3500N, 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 Harwood Township, which does not have a Plan Commission. Townships with Plan Commissions have protest rights on a variance and are notified of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. The subject property is a 2.16-acre lot and is zoned AG-1 and AG-2 Agriculture. Land use is a single-family residence.
 - (1) The shed that is the subject of the variance is in the AG-1 district.
 - B. Land surrounding the subject property is zoned AG-1 Agriculture and is land 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 4, 2023 indicates the following:
 - (1) The following are existing structures on the subject property:
 - a. One 1,562 square foot residence;
 - b. One 28 feet by 32 feet (896 square feet) garage located south of the house;
 - c. One 30 feet by 60 feet (1,800 square feet) shed located east of the house;
 - d. One 24 feet by 60 feet (1,440 square feet) garage located west of the house;
 - e. One 20 feet by 12 feet (240 square feet) shed located southwest of the house, constructed sometime between 2017 and 2020 without a permit.
 - B. The following are previous Zoning Use Permits for the subject property:
 - (1) The single family residence and the garage were constructed prior to adoption of the Zoning Ordinance on October 10, 1973.

PRELIMINARY DRAFT

- (2) ZUPA #169-99-04 was approved on June 22, 1999 to construct an addition to a single family residence.
 - (3) ZUPA #104-14-01 was approved on April 21, 2014 to construct the 1,440 square foot detached garage and authorize the previously constructed 1,800 square foot detached shed.
 - (4) ZUPA #324-23-02 was approved on November 30, 2023 for the previously constructed 20 feet by 12 feet (240 square feet) shed located southwest of the house and a proposed solar array.
- C. There is one prior Zoning Case for the subject property:
- (1) Case 442-AM-82 rezoned the original 24,960 square foot residential lot from AG-1 to AG-2 Agriculture in order to create a conforming lot size. It was sold to Mr. Moynihan through an attorney who was not aware that Champaign County had a Zoning Ordinance and that there was a required minimum lot size.
- D. The required variance is as follows:
- (1) Authorize a variance in the AG-1 Agriculture Zoning District for an existing detached shed with a side yard of 0 feet in lieu of the minimum required 10 feet, per Section 7.2.1 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) “BUILDING, DETACHED” is a BUILDING having no walls in common with other BUILDINGS.
 - (3) “LOT” is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (4) “LOT LINES” are the lines bounding a LOT.
 - (5) “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.

PRELIMINARY DRAFT

- (6) “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.
- (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 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. The AG-2 Agriculture DISTRICT is intended to prevent scattered indiscriminate urban development and to preserve the AGRICULTURAL nature within areas which are predominately vacant and which presently do not demonstrate any significant potential for development. This DISTRICT is intended generally for application to areas within one and one-half miles of existing communities in the COUNTY.
- 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:
 - 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.

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- E. Regarding the proposed variance:
- (1) Minimum side yard for a detached structure in the AG-1 Agriculture Zoning District is established in Section 7.2.1 of the Zoning Ordinance as 10 feet.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
 - A. The Petitioner has testified on the application, **“I received bad information that if the shed was on skids and had no foundation, that it could be on the property line. There is a hedge limiting ability to move it north.”**
 - B. Mr. Moynihan applied for a Zoning Use Permit for a solar array on November 20, 2023. He added a small strip of land to the south side of his property to accommodate the proposed solar array and recorded that land transfer on November 22, 2023. During review of the application, P&Z Staff noted that an existing shed in the southwest corner of the lot was on the west side property line. Since Mr. Moynihan had just finished the process of finalizing the land transfer, he decided to apply for the variance and hope for its approval rather than investing more time and money in acquiring another piece of land.
 - C. In a letter received December 4, 2023, Mr. Hood, owner of the land to the south and west of the shed needing the variance, stating that he has no concerns with the location of the shed, and his farmer likewise has expressed no concerns.
 - (1) The shed is 16 feet away from the cultivation 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, **“Electrical hookups are on the northeast corner of the shed. Alarm system and satellite hookups are also on the shed.”**
 - B. Regarding the proposed variance for a side yard of 0 feet in lieu of the minimum required 10 feet: without the proposed variance, the petitioner would have to buy more land or shift the shed 10 feet north.
 - (1) There is a hedge to the north that would limit how much the shed could be moved.
 - (2) Electrical, satellite, and security systems would all have to be relocated if the shed must be moved.

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:

PRELIMINARY DRAFT

- A. The Petitioner has testified on the application, **“I thought that because it is a movable shed, that I did not need a permit and was not aware of the yard requirement.”**
- B. The petitioner did not know that a movable shed required a permit and did not know that a movable shed has a minimum yard requirement.

GENERALLY PERTAINING TO WHETHER OR NOT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE

- 10. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance is in harmony with the general purpose and intent of the Ordinance:
 - A. The Petitioner has testified on the application, **“There is adequate light, air, and space between buildings. No complaints have been received about the shed disrupting adjacent agricultural production. There is 16 feet between corner of shed and cultivation line.”**
 - B. Regarding the proposed variance for a side yard of 0 feet in lieu of the minimum required 10 feet: the requested variance is 0% of the minimum required, for a variance of 100%.
 - C. The Zoning Ordinance does not clearly state the considerations that underlie the side yard requirement. In general, the side yard is presumably intended to ensure the following:
 - (1) Adequate light and air: The subject property is in residential use. The surrounding properties are in agricultural production.
 - (2) Separation of structures to prevent conflagration: The subject property is within the Ludlow Fire Protection District and the station is approximately 2.6 road miles from the subject property. There are no structures on adjacent properties. The closest structure on the property is the house, which is about 35 feet away.
 - (3) Aesthetics: Aesthetic benefit may be a consideration for any given yard and can be very subjective.

GENERALLY PERTAINING TO THE EFFECTS OF THE REQUESTED VARIANCE ON THE NEIGHBORHOOD AND THE PUBLIC HEALTH, SAFETY, AND WELFARE

- 11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
 - A. The Petitioner has testified on the application: **“No complaints have been received from neighboring landowner. I will have a letter stating that the landowner has no complaints with the shed.”**
 - B. The Ludlow Township Road Commissioner and County Highway Department have been notified of this variance, and no comments have been received.
 - C. The Ludlow Fire Protection District has been notified of this variance, and no comments have been received.

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- D. Notice was sent to neighboring landowners. Mr. Eugene Hood, who owns the farmland surrounding the shed on the south and west sides, provided a letter received December 4, 2023 stating that he has no concerns with the location of the shed, and his farmer likewise has expressed no concerns.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

12. Generally regarding and other circumstances which justify the Variance:
A. The Petitioner did not provide a response on the application.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. There are no proposed special conditions.

DOCUMENTS OF RECORD

1. Variance Application received on December 4, 2023, with attachments:
 - A Site Plan
 - B Letter from D. Eugene Hood, neighboring landowner

2. Preliminary Memorandum dated December 20, 2023, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received on December 4, 2023
 - C Annotated 2023 aerial photo created by P&Z Staff on December 7, 2023
 - D Letter from D. Eugene Hood, neighboring landowner, received on December 4, 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

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **124-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. *Mr. Moynihan applied for a Zoning Use Permit for a solar array on November 20, 2023. He added a small strip of land to the south side of his property to accommodate the proposed solar array and recorded that land transfer on November 22, 2023. During review of the application, P&Z Staff noted that an existing shed in the southwest corner of the lot was on the west side property line. Since Mr. Moynihan had just finished the process of finalizing the land transfer, he decided to apply for the variance and hope for its approval rather than investing more time and money in acquiring another piece of land.*
 - b. *In a letter received December 4, 2023, Mr. Hood, owner of the land to the south and west of the shed needing the variance, stating that he has no concerns with the location of the shed, and his farmer likewise has expressed no concerns.*
 - c. *The shed is 16 feet away from the cultivation 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 proposed variance, the petitioner would have to buy more land or shift the shed 10 feet north.*
 - b. *There is a hedge to the north that would limit how much the shed could be moved.*
 - c. *Electrical, satellite, and security systems would all have to be relocated if the shed must be moved.*

3. The special conditions, circumstances, hardships, or practical difficulties *{DO / DO NOT}* result from actions of the applicant because:
 - a. *The petitioner did not know that a movable shed required a permit and did not know that a movable shed has a minimum yard requirement.*

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. *In general, the side yard is presumably intended to ensure adequate light and air, separation of structures to prevent conflagration, and aesthetics. The subject property is in residential use. The surrounding properties are in agricultural production. The subject property is within the Ludlow Fire Protection District and the station is approximately 2.6 road miles from the subject property. There are no structures on adjacent properties. The closest structure on the property is the house, which is about 35 feet away.*

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:

PRELIMINARY DRAFT

- a. Relevant jurisdictions were notified of this variance, and no comments have been received.*

6. The requested variance *{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}* the minimum variation that will make possible the reasonable use of the land/structure because:
 - a. The requested variance is the minimum variation without attempting to move the structure or invest time and money in purchasing more land.*

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

FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements for approval in Section 9.1.9.C *{HAVE/HAVE NOT}* been met, and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Variance requested in Case **124-V-23** is hereby *{GRANTED / GRANTED WITH CONDITIONS / DENIED}* to the petitioner, **Michael Moynihan**, to authorize the following:

Authorize a variance in the AG-1 Agriculture Zoning District for an existing detached shed with a side yard of 0 feet in lieu of the minimum required 10 feet, per Section 7.2.1 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