

CASE NO. 138-V-24

PRELIMINARY MEMORANDUM

May 23, 2024

Petitioner: Frank LeFever & Rita Armes

Request: Authorize a variance for a proposed 9.56-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.

Subject Property: A proposed 9.56-acre tract in the Southeast Quarter of the Northwest Quarter and the Southwest Quarter of the Northeast Quarter of Section 33, Township 22 North, Range 14 West of the Second Principal Meridian in Kerr Township, with an address of 2749 CR 3075 N, Penfield.

Site Area: 9.56 acres

Time Schedule for Development: As soon as possible

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

BACKGROUND

The petitioners own an 88.9-acre tract that contains two dwellings and is currently in use as a residential lot, grassland, and row crop production. The petitioner would like to sell off the westernmost 3 acres to the adjacent landowner, retain 9.56 acres that contain the two dwellings and accessory structures and sell the remaining (approx.) 75 acres.

One of the dwellings on the property was constructed prior to the adoption of the Champaign County Zoning Ordinance in 1973. The second dwelling (the western most dwelling that is nearest to 3075 N) was constructed around 1978 without a permit on a 5-acre lot that was later combined with other property to form the current 88.9-acre lot.

If the western most dwelling is ever damaged to more than 50% of replacement value it cannot be repaired or reconstructed without a Zoning Use Permit and the creation of a conforming zoning lot.

To divide off the 9.56-acre lot that contains the dwellings and accessory buildings requires a variance for creating a lot greater than 3 acres on Best Prime Farmland. The proposed 9.56-acre tract contains approximately 1.5 acres of soils that are considered Best Prime Farmland. The Champaign County Zoning ordinance considers any development site to be Best Prime Farmland when 10% or more of the area contains soils considered to be Best Prime Farmland. The proposed lot contains approximately 15% Best Prime Farmland.

The P&Z Department has not received any comments regarding the proposed variance, and staff does not propose any special conditions of approval.

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

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www.co.champaign.il.us/zoning

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Residential, Agriculture	AG-1 Agriculture
North	Residential, Agriculture	AG-1 Agriculture
East	Residential, Agriculture	CR Conservation/Recreation
West	Agriculture	AG-1 Agriculture
South	Residential, Agriculture	AG-1 Agriculture

EXTRATERRITORIAL JURISDICTION

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

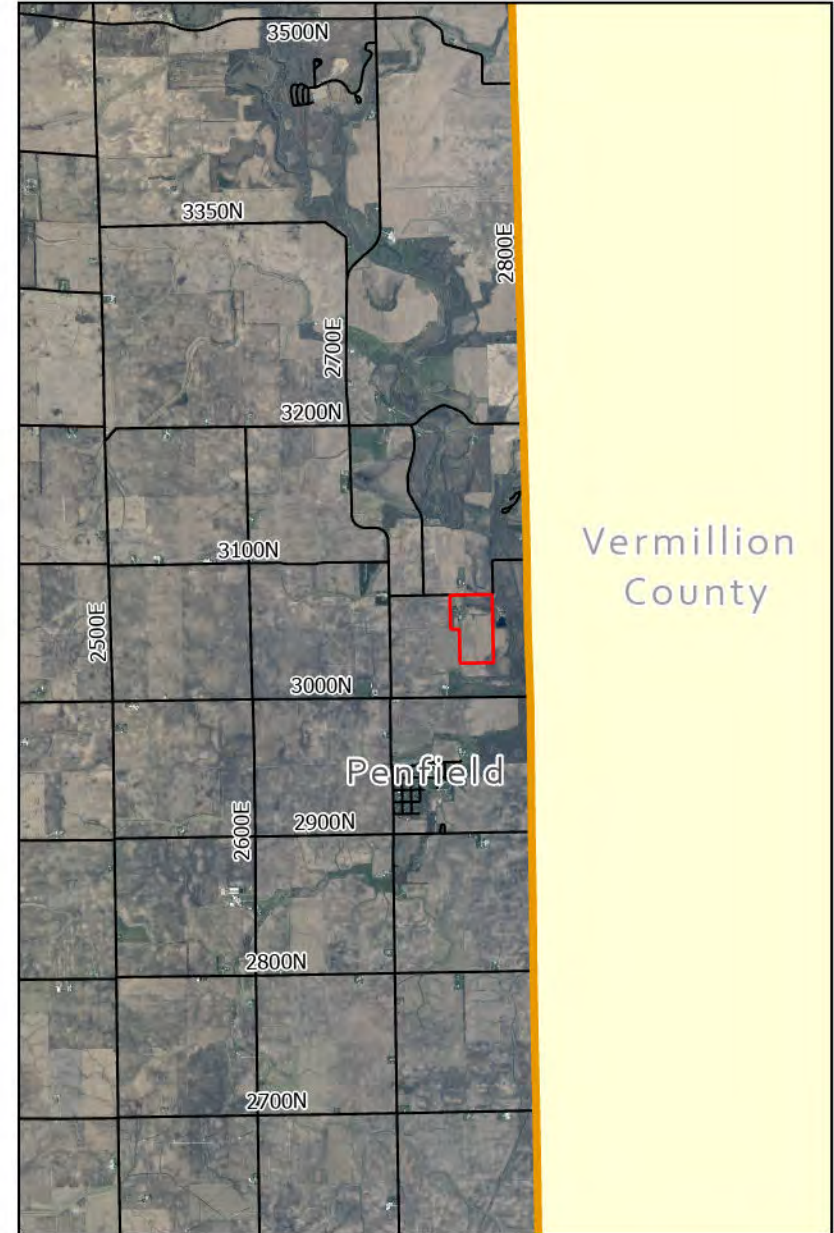
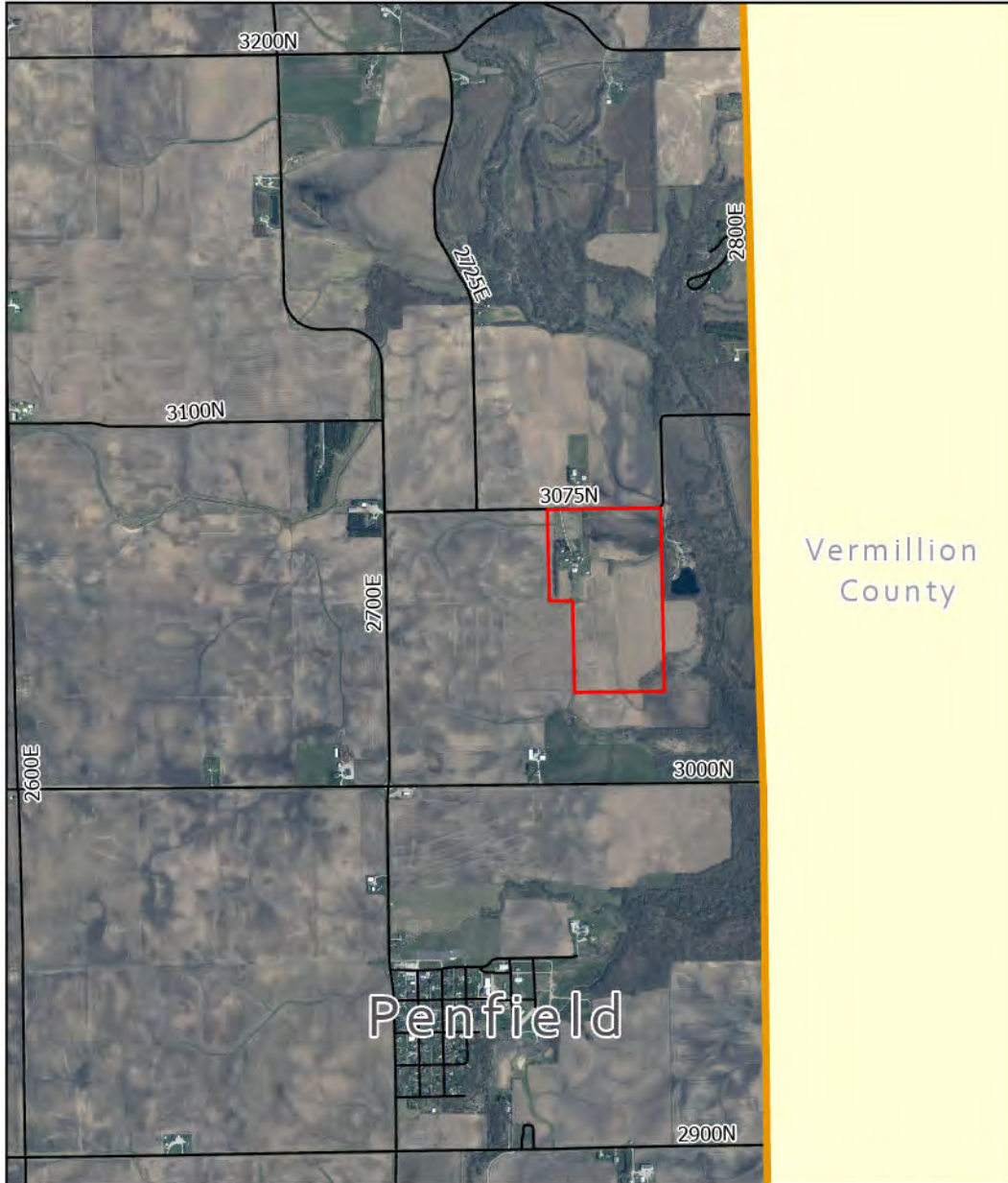
The subject property is located within Kerr Township, which has a Plan Commission. Townships with Plan Commissions have protest rights on a variance and receive notification of such cases.

ATTACHMENTS

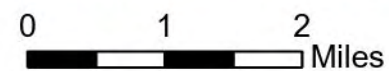
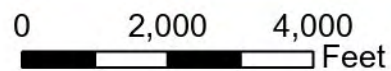
- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received April 26, 2024
- C 2023 aerial photo
- D 1988 aerial photo
- E Soils Map
- F Site Images taken May 22, 2024
- G Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 138-V-24 dated May 30, 2024

Location Map

Case 138-V-24
May 30, 2024

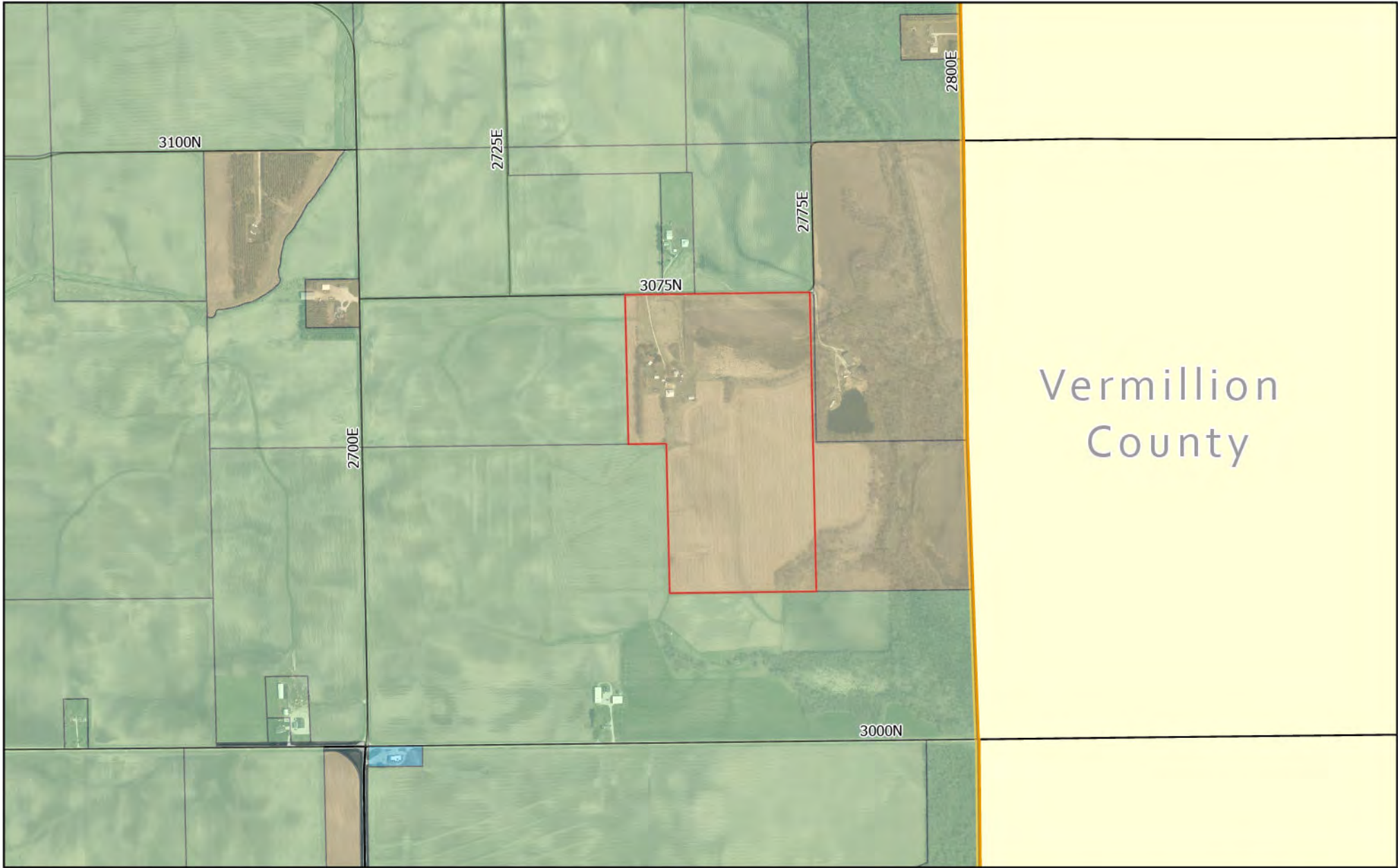


 Subject Property

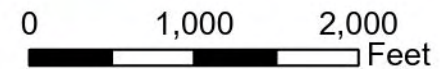


Land Use Map

Case 138-V-24
May 30, 2024

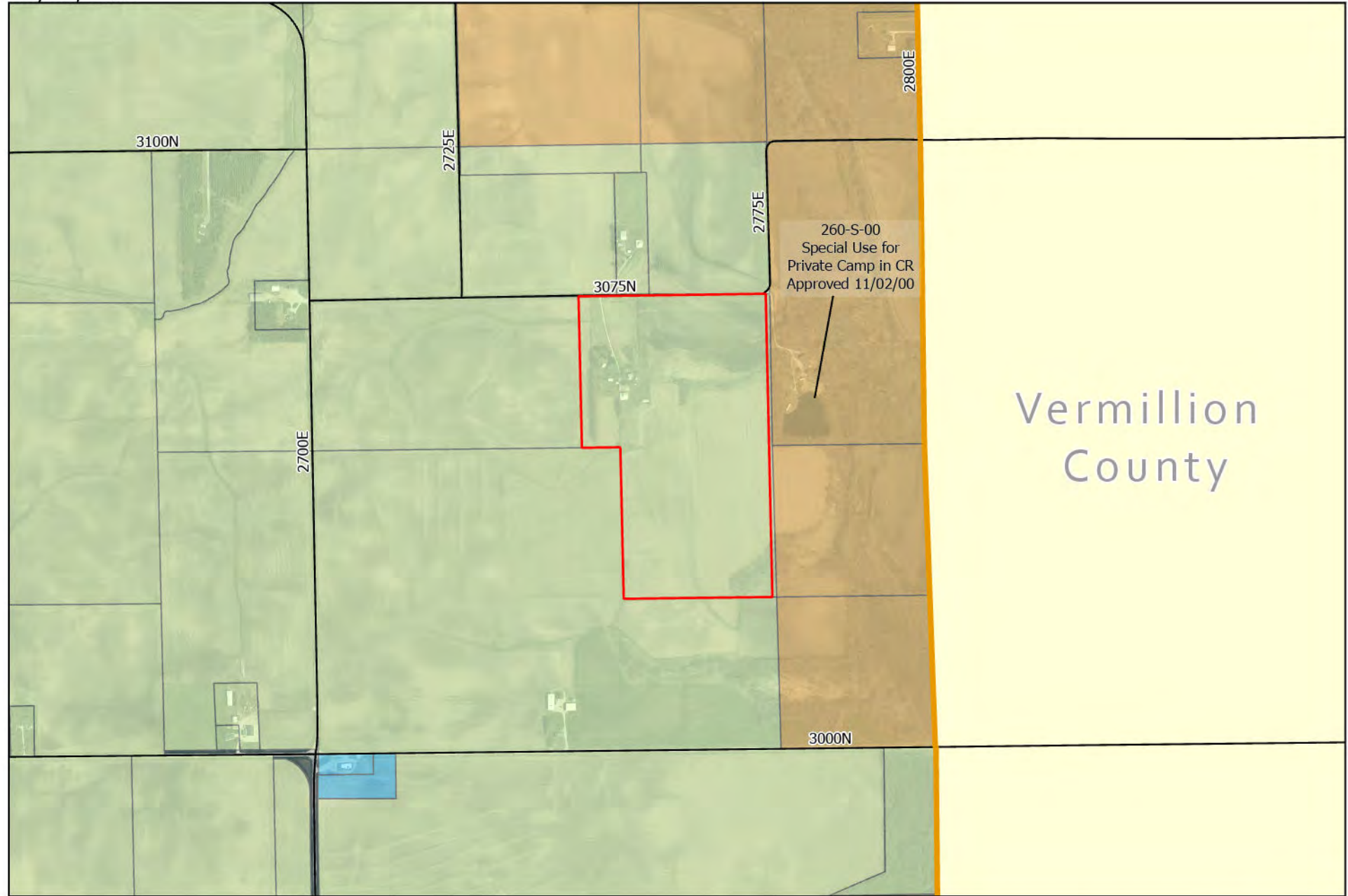


-  Agriculture
-  Agriculture/Residential
-  Commercial
-  Subject Property

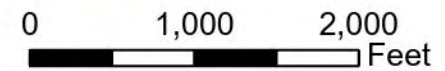


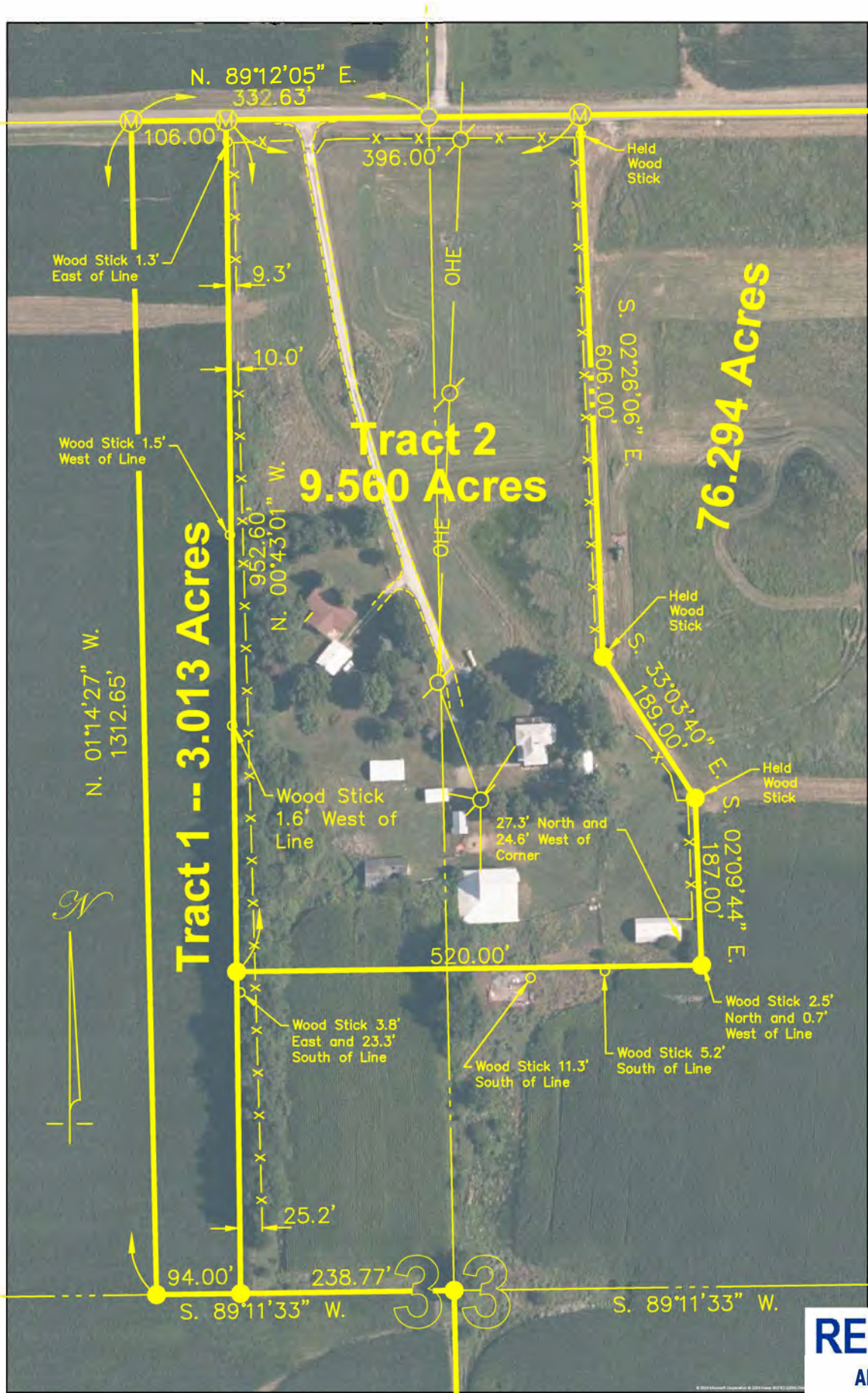
Zoning Map

Case 138-V-24
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-  AG-1 Agriculture
-  B-3 Highway Business
-  CR Conservation & Recreation
-  Subject Property





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
Annotated Aerial

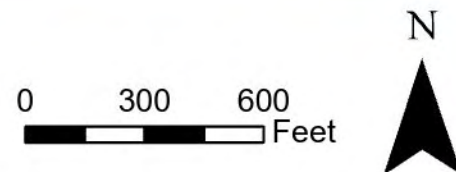
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138-V-24, ZBA 05/30/24, Attachment C



-  Subject Property
-  Proposed Lot
-  Proposed 3-acre lot to be sold to adjacent farmer



Annotated 1988 Aerial

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May 30, 2024



This lot depicts the 5-acre tract on which the house at 2749A County Road 3075N sits. This tract was later combined into the current 87.8-acre lot.

0 150 300 Feet



Soils Map

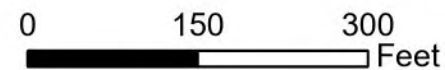
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138-V-24, ZBA 05/30/24, Attachment E



Best Prime Farmland
687B Penfield Loam



137-V-24 Site Images



From 3075N facing S to subject property



From 3075N facing N to adjacent property.

137-V-24 Site Images



From 3075N facing SW to subject property



From 3075N facing SE to subject property.

PRELIMINARY DRAFT

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**FINDING OF FACT
AND FINAL DETERMINATION
of the
Champaign County Zoning Board of Appeals**

Final Determination: ***{GRANTED/GRANTED WITH SPECIAL CONDITION(S)/DENIED}***

Date: ***{May 30, 2024}***

Petitioners: **Frank LeFever & Rita Armes**

Request: **Authorize a variance for a proposed 9.56-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture 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 **May 30, 2024**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioners Frank LeFever, 1284 Sebring Ct. Elgin, IL, and Rita Armes, 30608 Cedar St. Armstrong, IL own the 88.9-acre lot with an address's of 2749A and 2749B CR 3075N, in the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of Section 33, Township 22 North, Range 14 West of the Second Principal Meridian in Kerr Township.
2. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is not located within the one and one-half mile extraterritorial jurisdiction of a municipality with zoning.
 - B. The subject property is located within Kerr Township, which has a Plan Commission. Townships with Plan Commissions have protest rights on a variance and receive notification 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 proposed 9.56-acre subject property is zoned AG-1 Agriculture and is in use as residential and agriculture.
 - B. Land surrounding the subject property is zoned AG-1 Agriculture to the north, south and west and is used for residential and in agricultural production, and zoned CR Conservation Recreation to the east and is used for residential and agriculture.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Site Plan received on April 26, 2024, indicates the following:
 - (1) Existing structures on the property include:
 - a. Two single family dwellings
 - b. A detached garage
 - c. Several agricultural and storage buildings
 - (2) The petitioner is not proposing any construction at this time.
 - B. One dwelling was constructed prior to 1973, the second dwelling was constructed on its own 5-acre lot that was divided off in 1978. The 5-acre lot was incorporated into the larger adjacent lot as the property was passed down through heirship.
 - C. The petitioners are planning to split off the westernmost 3 acres to that is west of the tree line, and currently in row crop production, to sell to the adjacent farm owner. The petitioners propose to split off a 9.56 acre lot that contains the two dwellings, outbuildings, orchard and animal runs. The petitioners plan to sell the remaining 75.24 acres of farmland.

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- D. There are no previous zoning cases for the subject property.
- E. The requested variance is a proposed 9.56-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

- 6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
 - A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variances (capitalized words are defined in the Ordinance):
 - (1) “AGRICULTURE” is the growing, harvesting and storing of crops including legumes, hay, grain, fruit and truck or vegetable crops, floriculture, horticulture, mushroom growing, orchards, forestry and the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, pony and horse production, fur farms, and fish and wildlife farms; farm BUILDINGS used for growing, harvesting and preparing crop products for market, or for use on the farm; roadside stands, farm BUILDINGS for storing and protecting farm machinery and equipment from the elements, for housing livestock or poultry and for preparing livestock or poultry products for market; farm DWELLINGS occupied by farm OWNERS, operators, tenants or seasonal or year-round hired farm workers. It is intended by this definition to include within the definition of AGRICULTURE all types of agricultural operations, but to exclude therefrom industrial operations such as a grain elevator, canning or slaughterhouse, wherein agricultural products produced primarily by others are stored or processed. Agricultural purposes include, without limitation, the growing, developing, processing, conditioning, or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds.
 - (2) “AREA, LOT” is the total area within the LOT LINES.
 - (3) “BEST PRIME FARMLAND” is Prime Farmland Soils identified in the Champaign County Land Evaluation and Site Assessment (LESA) System that under optimum management have 91% to 100% of the highest soil productivities in Champaign County, on average, as reported in the *Bulletin 811 Optimum Crop Productivity Ratings for Illinois Soils*. Best Prime Farmland consists of the following:
 - (a) Soils identified as Agriculture Value Groups 1, 2, 3 and/or 4 in the Champaign County Land Evaluation and Site Assessment (LESA) System;
 - (b) Soils that, in combination on a subject site, have an average LE of 91 or higher, as determined by the Champaign County LESA System; or
 - (c) Any development site that includes a significant amount (10% or more of the area proposed to be developed) of Agriculture Value Groups 1, 2, 3 and/or 4 soils, as determined by the Champaign County LESA System.
 - (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.

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- (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.
- B. Section 5.3 of the Zoning Ordinance Footnote 13 states:
- 13. The following maximum LOT AREA requirements apply in the CR, AG-1 and AG-2 DISTRICTS:
 - A) LOTS that meet all of the following criteria may not exceed a maximum LOT AREA of three acres:
 - 1) The LOT is RRO-exempt;
 - 2) The LOT is made up of soils that are BEST PRIME FARMLAND; and
 - 3) The LOT is created from a tract that had a LOT AREA greater than or equal to 12 acres as of January 1, 1998.
- 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 9.1.9C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - d. That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.
 - e. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
 - (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9 D.2.
- D. Paragraph 9.1.9 E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

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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 testified the following on the application: **“Seventy year old hedge tree line (Wind break) west of property”**
 - B. Regarding the soils that make up the subject property:
 - (1) The proposed 9.56-acre lot contains approximately 1.5 acres (approximately 16% of the lot area) of Penfield Loam 2 soil which has a relative value of 91 LE and is considered BEST PRIME FARMLAND. The balance of the proposed lot is composed of Ockley Silt Loam and Sawmill Silty Clay.
 - (2) The proposed lot has an average LE score of 84.
 - C. The petitioner wants to keep the dwellings and outbuildings separate from the surrounding farmland. The proposed 9.56 acre lot will provide adequate setbacks for the existing structures as well as retain the area of the property that contains the well and existing animal pasture and orchard.
 - D. No land is proposed to be taken out of agricultural production.

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 Petitioners testified the following on the application: **“Cutting off specific pasture for owner’s livestock, no construction is planned for the subject lot.”**
 - B. Without the proposed variance, the petitioners would not be able to configure the lot lines in a way that keeps the dwellings, accessory buildings, pasture, and orchard on the lot.

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 Petitioners testified the following on the application: **“No.”**
 - B. The petitioners inherited the property in 2022. Previous divisions of the property and construction of the dwellings and accessory structures were done by the previous owners.

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

PRELIMINARY DRAFT

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 Petitioners testified the following on the application: **“Allows well pump (water) for livestock and existing orchard.”**
 - B. The maximum lot size on best prime farmland requirement was first established by Ordinance No. 726 (Case 444-AT-04) on July 22, 2004. It was made permanent with Ordinance No. 773 approved December 20, 2005.
 - C. Ordinance No. 914 (Case 711-AT-12) approved on November 27, 2012, revised the best prime farmland definition to have a Land Evaluation (LE) rating of 91 or higher rather than the previous rating of 85 or higher.
 - D. The 9.56-acre lot area is 319% of the required three acre maximum, for a variance of 219%.
 - E. No land is proposed to be taken out of agricultural production.
 - F. The requested variance is not prohibited by the *Zoning Ordinance*.

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 Petitioners testified the following on the application: **“These items do not apply to existing livestock”.**
 - B. Kerr Township Planning Commission has been notified of this variance, and no comments have been received.
 - C. The Kerr Township Highway Commissioner has been notified of this variance, and no comments have been received.
 - D. The Kerr Township Supervisor has been notified of this variance, and no comments have been received.
 - E. The Gifford 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 Petitioners testified the following on the application: **“Proposed recommended change cuts off existing well (water) pump and also eliminated existing orchard (apple & cherry trees).”**
 - B. Attempts to arrange the property lines for the lot that contains the dwellings, accessory buildings, pasture and orchard and avoid the area that contains Best Prime Farmland Soils

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were not practical and would result in an irregular lot that doesn't capture all of the improvements that the petitioners want to retain.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:

No special conditions are proposed at this time.

PRELIMINARY DRAFT

DOCUMENTS OF RECORD

1. Application for Variance Permit received March 22, 2024, with attachment:
 - Site Plan received April 26, 2024
 - Legal description

2. Preliminary Memorandum dated May 23, 2024, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received April 26, 2024
 - C 2023 aerial photo
 - D 1988 aerial photo
 - E Soils Map
 - F Site Images taken May 22, 2024
 - G Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 138-V-24 dated May 30, 2024

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SUMMARY DRAFT FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **138-V-24** held on **May 30, 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 petitioners want to create a lot that will provide adequate setbacks for the existing structures as well as encompass the existing well, pasture and orchard, currently on the property. No land is proposed to be removed from production.***
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 petitioners would need to reconfigure their property in order to provide adequate setbacks for the existing improvements and would be left with an irregular shaped lot.***
3. The special conditions, circumstances, hardships, or practical difficulties **{DO / DO NOT}** result from actions of the applicant because:
 - a. ***The existing improvements on the property were not made by the petitioner. The petitioners inherited the property in 2022.***
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. ***No land is proposed to be taken out of production.***
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 this case, 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: ***it is the minimum lot size that will provide adequate setbacks for existing structures and encompass the existing well, pasture and orchard.***
7. **{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}**

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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 **138-V-24** is hereby *{GRANTED/ GRANTED WITH CONDITIONS/ DENIED}* to the petitioners, **Frank LeFever & Rita Armes**, to authorize the following:

Authorize a variance for a proposed 9.56-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County 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