# Shelby County Board of Zoning Appeals

December 12, 2023 at 7:00 PM

# **Table of Contents**

Agenda	3
BZA 23-44 Joel Neuenschwander – Development Standards Variances	4
Staff Report	4
A3 District Intent, Permitted Uses, and Special Exception Uses	7
Petitioner's Findings of Fact	8
Site Plan	9
BZA 23-45 Brian & Joanne Klunk – Development Standards Variance	10
Staff Report	10
Petitioner's Statement of Intent	13
Petitioner's Findings of Fact	14
Site Plan	15
BZA 23-46 Rex Olds – Development Standards Variance	16
Staff Report	16
City of Shelbyville Planning Department Comments	18
Petitioner's Findings of Fact	19
Site Plan	20
2024 Meeting Calendar	21

## **MEETING AGENDA**

# Shelby County Board of Zoning Appeals December 12, 2023, 7:00 P.M.

December 12, 2023, 7:00 P.M.

CALL TO ORDER	
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**ROLL CALL** 

#### APPROVAL OF MINUTES

Minutes from the November 14, 2023 meeting.

#### **OLD BUSINESS**

None.

#### **NEW BUSINESS**

**BZA 23-44 – JOEL NEUENSCHWANDER:** DEVELOPMENT STANDARDS VARIANCES. Located at 11903 S SR 9, Flat Rock, Washington Township.

**BZA 23-45 – BRIAN & JOANNE KLUNK:** DEVELOPMENT STANDARDS VARIANCE. Located at 5943 S SR 9, Shelbyville, Shelby Township.

**BZA 23-46 – REX OLDS:** DEVELOPMENT STANDARDS VARIANCE. Located at 482 E Edgewood Dr, Shelbyville, Addison Township.

#### **APPROVAL OF 2024 MEETING CALENDER**

#### **DISCUSSION**

**V23-14 – DANNY & MARIA RIGDON:** ZONING VIOLATION. Update on progress to correct violation. Located at 5879 N PR 660 W, Fairland, Brandywine Township.

#### APPROVED HEARING OFFICER CASES

**BZA 23-42 – CHAD CHRISTIAN:** DEVELOPMENT STANDARDS VARIANCES. Located at 4789 S SR 9, Shelbyville, Shelby Township. *Approved November 28, 2023*.

**BZA 23-43 – JOSHUA CORD:** DEVELOPMENT STANDARDS VARIANCE. Located at 4629 S SR 9, Shelbyville, Shelby Township. *Approved November 28, 2023.* 

#### **ADJOURNMENT**

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, January 9, 2024 at 7:00 PM.

#### **Property Details**

Location: 11903 S SR 9, Flat Rock,

Washington Township.

Property Size: 7.76-acres.

Current Land Use: Livestock Operation

/ Homestead.

#### Zoning Classification:

A3 (Intense Agricultural)

<u>Intent</u>: This district is established for high intensity agricultural operations or operations likely to have a significant adverse impact on surrounding nonagricultural uses.

<u>Development Standards</u>: Enact strict development standards to maximize protection of common agricultural practices. <u>BZA</u>: Protect the integrity of land and operations within the Intense Agricultural District. Be sensitive to the potential for water pollution and other negative impacts to nearby agricultural, residential, and commercial land.

# Future Land Use per Comp Plan Agriculture

The purpose of this category is to provide for traditional agricultural practices (such as crop production and livestock grazing) and modern agricultural practices (such as agricultural research facilities and CAFOs). Rural home sites may also occur within this category; however, the emphasis should remain on agriculture. New residential subdivisions that remove prime farmland from production should be discouraged. The residential density of this category should be one lot for every five acres.

#### Surrounding Development

	Zoning	Land Use
North	A1	Cropland
South	AP (Bartholomew	Cropland
	County)	
East	A1	Cropland
West	A1	Cropland

## Staff Report

Case Number: BZA 23-44

Case Name: Joel Neuenschwander – Development

**Standards Variances** 

#### Request

Variances of Development Standards to allow for a reduction in the required 750-foot property line setback requirement for structures in the A3 (Intense Agricultural) District.

#### Code Requirement

**UDO Section 2.08** – A3 District Development Standards: Minimum Front Yard Setback – 750 feet

**UDO Section 2.08** – A3 District Development Standards: Minimum Side Yard Setback – 750 feet

**UDO Section 2.08** – A3 District Development Standards: Minimum Rear Yard Setback – 750 feet

**Purpose of Requirement:** The UDO allows for medium and large confined feeding operations in the A3 District. The setback requirement mitigates adverse odor and environmental impacts associated with confined feeding operations to adjacent properties.

#### Property Map



#### **Case Description**

- The petitioner currently uses the property for a calve livestock operation and resides in the home on the property.
- The petitioner stated that he keeps fewer than 300 calves on the property and IDEM records do not list the property as an active confined feeding operation.
- The petitioner intends to enlarge an agricultural building and to add a porch onto the residential structure.
- The property is not large enough for any structure to comply with the 750-foot setback requirement.
- Property History
  - In March of 2014, the petitioner applied for a rezoning of the property from A1 (Conservation Agricultural) to A3 to allow for transition of the existing calf livestock operation to a medium size confined feeding operation.
  - Use of the property for a confined feeding operation would not comply with the setback standards for confined feeding operations listed in the UDO. For structures used for a confined feeding operation, the UDO requires a 750-foot setback from the property lines and a 1,300-foot setback from residential structures on adjacent property.
  - The Plan Commission recommended approval of the rezoning with a stipulation: That the petitioner would not be allowed to operate as a Confined Feeding Operation (300 or more cattle) until specifications in the Confined Feeding Standards could be met.
  - The County Commissioners approved the rezoning in April of 2014.

#### Staff Analysis of Findings of Fact

1. State Requirement: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Staff Analysis: The stipulation attached to the zoning approval of the property and setback standards applicable to confined feeding operations identified in the UDO prohibit use of the property for a confined feeding operation. Application of the setback standards for the A1 (Conservation Agricultural) District for other uses of property permitted in the A3 District would protect the public health, safety, morals, and general welfare of the community.

2. State Requirement: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

Staff Analysis: The stipulation attached to the zoning approval of the property and setback standards applicable to confined feeding operations identified in the UDO prohibit use of the property for a confined feeding operation. Application of the setback standards for the A1 (Conservation Agricultural) District for other uses of property permitted in the A3 District would protect the use and value of the area adjacent to the property.

3. State Requirement: The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in use of the property.

Staff Analysis: The property is not large enough for any structure to comply with the 750-foot setback requirement.

#### Staff Recommendation

**APPROVAL** primarily because the property cannot accommodate a confined feeding operation. Application of the setback standards for the A1 (Conservation Agricultural) District for other uses of property permitted in the A3 District would protect the community and adjacent property.

#### Staff Recommends the following stipulation:

- 1. All structures shall comply with the minimum setback requirement for the A1 District, specifically:
  - a. Minimum Front Yard Setback 50 feet
  - b. Minimum Side Yard Setback
    - i. 40 feet for primary structure
    - ii. 10 feet for accessory structure
  - c. Minimum Rear Yard Setback
    - i. 40 feet for primary structure
    - ii. 10 feet for accessory structure

#### Applicant/Owner Information

Applicant: Joel Neuenschwander

11903 S SR 9

Flat Rock, IN 47234

Owner:

Joel & Maria Neuenschwander

## Intense Agricultural (A3) District



#### 2.07 A3 District Intent, Permitted Uses, and Special Exception Uses

#### **District Intent**

## The A3 (Intense Agricultural) District is intended to be used as follows:

#### **Use, Type and Intensity**

- High intensity agricultural operations that may have a high impact on adjacent properties
- Primarily established for confined feeding operations

#### **Application of District**

Existing agricultural areas

#### **Development Standards**

 Enact strict development standards to maximize protection of common agricultural practices

#### Appropriate Adjacent Districts

• OP, A1, A2, A3, A4, I2, and HI

#### **Plan Commission**

- Use this zoning district for existing agricultural land
- Protect the land and operations within the Intense Agricultural District from residential, commercial, and industrial encroachment through the use of appropriate buffers and setbacks

#### **Board of Zoning Appeals**

- Protect the integrity of land and operations within the Intense Agricultural District
- Be sensitive to the potential for water pollution and other negative impacts to nearby agricultural, residential, and commercial land

BZA standard added per Ord. 2020-26. See Appendix B.07

#### Permitted Uses

#### **Agricultural Permitted Uses**

- agricultural crop production
- confined feeding operation (small)
- confined feeding operation (medium)
- hobby farming
- orchard
- processing of agricultural products
- raising of farm and exotic animals
- sale of agricultural products
- stable
- storage of agricultural products
- tree farm
- vineyard

#### **Industrial Permitted Uses**

- bio-diesel production ≤ 5,000 gallons per year
- methane production

#### **Special Exception Uses**

#### **Agricultural Special Exception Uses**

confined feeding operation (large)

#### **Commercial Special Exception Uses**

kenne

#### **Residential Special Exception Uses**

dwelling, single-family detached

#### **DEVELOPMENT STANDARDS VARIANCE**

FINDINGS OF FACT

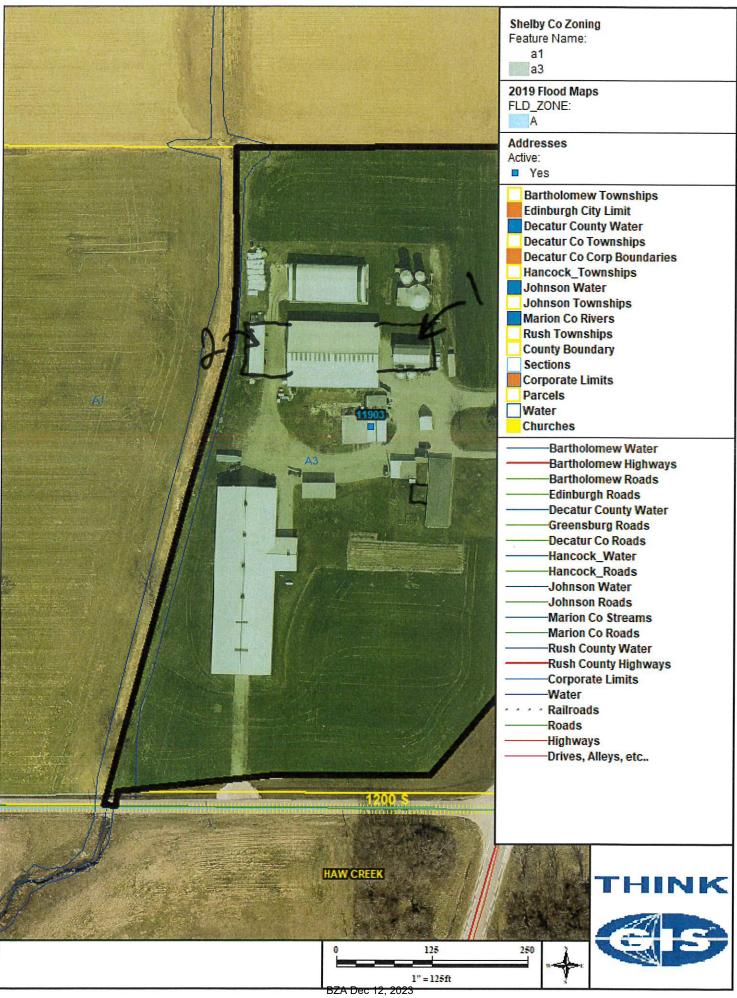
Applicant:	Joe L	Neuen	schwander								
Case #:											
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The Board of Zoning Appeals may review the applicant's findings of fact to assist with their decision-making process. Please see below for general guidance related to completing the findings of fact:

**General Welfare:** How does the request do no harm to the overall community of Shelby County? (ex. pollution, customer safety, road network safety, building code compliance, etc.)

Adjacent Property: How does the request do no harm to adjoining property and neighborhood? (ex. noise, odor, traffic generation, distance from property lines, appearance of property, etc.)

**Practical Difficulty:** This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain (ex. of practical difficulty: topography of property, location of septic system, consistency with nearby land uses, historical use of property, etc.)



Page 9 of 21

#### **Property Details**

Location: 5943 S SR 9, Shelbyville,

Shelby Township.

Property Size: 2.11-acres.

Current Land Use: Estate

Residential.

Zoning Classification: RE (Residential Estate)

<u>Intent</u>: This district is established for single-family detached dwellings in a

rural or country setting.

<u>Development Standards</u>: Promote lowimpact development in harmony with a

natural setting.

#### Future Land Use per Comp Plan Agriculture

The purpose of this category is to provide for traditional agricultural practices (such as crop production and livestock grazing) and modern agricultural practices (such as agricultural research facilities and CAFOs). Rural home sites may also occur within this category; however, the emphasis should remain on agriculture. New residential subdivisions that remove prime farmland from production should be discouraged. The residential density of this category should be one lot for every five acres.

#### Surrounding Development

	Zoning	Land Use
North	A1	Cropland
South	R1	Single-Family
		Residential
East	IS	Church
West	A1/R1	Cropland /
		Single-Family
		Residential

## Staff Report

Case Number: BZA 23-45

Case Name: Brian & Joanne Klunk – Development

Standards Variance

#### Request

**Variance of Development Standards** to legally establish a fence exceeding 5-feet in height in the front yard.

#### Code Requirement

**UDO Section 2.23 F 1:** Maximum Hight: RE District Front Yard – 5 feet.

**Purpose of Requirements:** Limiting the height of fences in the front yard ensures that the residence remains visible from the road, promotes neighborliness, protects the character of residential neighborhoods, and prevents fencing from obstructing clear vision along roadways.

#### Property Map



#### Case Description

- The petitioner has constructed a 6-foot-tall fence south of the house along the intersection of SR 9 and CR 600 S.
- The site plan submitted by the petitioner shows that the fence sits 42-feet from the center of SR 9, 14-feet from the center of CR 600 S, approximately 30-feet in front of the adjacent house on CR 600 S, and behind all utility meters and poles.
- The fence does not encroach into the assumed SR 9 right-of-way or into the clear vision triangle at the intersection of SR 9 and CR 600 S.
- The fence may encroach into the clear vision triangle at the intersection of SR 9 and the driveway on the subject property.
- The fence does encroach 4-feet into the 18-foot half right-of-way of CR 600 S.
- In November of 2023, the Planning Director received a complaint alleging that the fence posed visibility issues along a school bus route. The Planning Director issued a violation letter for construction of a fence exceeding 5-feet in height in the front yard and the petitioner promptly contacted the Planning Director to inquire about corrective action. The petitioner explained that they did not realize that regulations applied to fences because the County does not require a permit for a fence. The petitioner chose to apply for a Variance.
- The petitioner indicated that they constructed the fence to keep pets and grandchildren using the yard safe from traffic.
- The UDO defines a front yard as any area between a house and a public right-of-way. Therefore, the 5-foot maximum height requirement applies even though the fence does not sit in front of the front façade of the house.

#### Staff Analysis of Findings of Fact

- 1. State Requirement: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
  - Staff Analysis: A fence in the right-of-way exceeding the height requirement would likely hinder the visibility of traffic traveling south on SR 9 from vehicles making a left turn from CR 600 S onto SR 9.
- 2. State Requirement: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
  - Staff Analysis: A fence exceeding the height requirement projecting in front of the front façade of the adjacent residential property to the west would impact the viewshed from the front yard of this property.
- 3. State Requirement: The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in use of the property.

Staff Analysis: A strict application of the ordinance would prohibit construction of a fence compliant with the fence height standards for side yards in an area of the property that functions as a side yard.

#### Staff Recommendation

#### Staff recommends **DENIAL**.

A fence in the right-of-way exceeding the height requirement would likely hinder the visibility of traffic traveling south on SR 9 from vehicles making a left turn from CR 600 S onto SR 9 and would impact the viewshed from the front yard of the adjacent residential property to the west.

If the Board chooses to approve the variance, Staff recommends following stipulation:

1. The fence shall be relocated so as not to encroach past the front façade of the house located at 1194 E 600 S.

Owner:

#### Applicant/Owner Information

Applicant: Brian & Joanne Klunk

5943 S SR 9

Shelbyville, IN 46176

Same



Staff Photograph, Nov, 2023

#### 5. Description of Land Use Request

The land immediately to the south of the house is the flattest and least obstructed on this property. We have dogs and young grandsons that like to be outside that cannot be counted on to be safe around cars and trucks on State Road 9 or county road 500 so we have fenced the property to keep them and any toys from entering the roadways and causing a distraction or injury to passersby or themselves. The larger dog is skittish and starts at loud noises making her a risk to run into traffic when startled.

Otherwise this area is to be used for family games, volleyball, kickball, frisbee golf, bocce, pétanque and horseshoes on the weekends. The 6' height eliminates most of the perceivable risks to the general public and our young ones.

#### **DEVELOPMENT STANDARDS VARIANCE**

**FINDINGS OF FACT** 

Applicant: Brian, Joanne Klunk
Case #:
Location: 5943 S. State Road 9, Shelbyrille, IN 46176
The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Development Standards Variance. Using the lines provided, please explain how your request meets each of these criteria.
1. <b>General Welfare</b> : The approval will not be injurious to the public health, safety, and general welfare of the community.  Don't Block Vision of Food
<ol><li>Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.</li></ol>
Noise reduction
3. <b>Practical Difficulty:</b> The strict application of the terms of the Shelby County Zoning Ordinance will result in a practical difficulty in the use of the property.
the coads

The Board of Zoning Appeals may review the applicant's findings of fact to assist with their decision-making process. Please see below for general guidance related to completing the findings of fact:

General Welfare: How does the request do no harm to the overall community of Shelby County? (ex. pollution, customer safety, road network safety, building code compliance, etc.)

Adjacent Property: How does the request do no harm to adjoining property and neighborhood? (ex. noise, odor, traffic generation, distance from property lines, appearance of property, etc.)

**Practical Difficulty:** This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain (ex. of practical difficulty: topography of property, location of septic system, consistency with nearby land uses, historical use of property, etc.)

11/20/23, 7:15 PM



#### **Property Details**

Location: 482 E Edgewood Dr, Shelbyville, Addison Township. Edgewood, Lot 10.

Property Size: 0.73-acres.

Current Land Use: Single-Family Residential.

#### **Zoning Classification:**

R1 (Single-Family Residential)

Intent: This district is established for single-family detached, medium to large sized homes on medium to large sized lots.

<u>Development Standards</u>: Promote lowimpact development in harmony with a natural setting.

Future Land Use per Comp Plan Incorporated Planning Area: Single-Family Residential

Single-family residential can indicate a few varieties of densities including high, medium and low densities.

#### **Surrounding Development**

	Zoning	Land Use
North	R1	Single-Family
		Residential
South	R1	Single-Family
		Residential
East	R1	Single-Family
	(Shelbyville)	Residential
West	R1	Single-Family
		Residential

## Staff Report

Case Number: BZA 23-46

Case Name: Rex Olds – Development Standards

Variance

#### Request

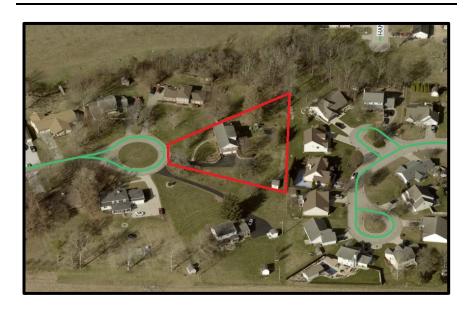
**Variance of Development Standards** to allow for a 1,440 sq. ft. barn exceeding 50% the square footage of the footprint of the residence.

#### Code Requirement

**UDO Section 5.07 F 1:** <u>Maximum Size:</u> The total square footage of all enclosed accessory structures on a lot adjoining one or more lots in the RE, R1, R2, VR, M1, M2, MP, VM, IS, C1, C2, I1, I2, or HI Districts shall not exceed fifty percent (50%) of the footprint of the primary structure.

**Purpose of Requirements:** Limiting the size of residential accessory structures ensures that the residence remains the visual focal point of the property and discourages use of residential accessory buildings for commercial activities utilizing large trucks, large machinery, and/or large equipment.

#### **Property Map**



#### Case Description

- The petitioner plans to construct a 36'x40' (1,440 sq. ft.) pole barn at the southeast corner of the property. The petitioner's variance application indicates that he plans to use the pole barn for storage and recreational purposes.
- The square footage of the pole barn would equal approximately 73% the square footage of the footprint of the house. The property tax card provides the square footage of the house for the square footage calculation.
- The barn would sit over twice the required minimum setback from the property lines.
- The City of Shelbyville municipal limits adjoin the Edgewood subdivision on two sides. The structure would comply with Shelbyville's zoning code.
- The property lies within the City of Shelbyville's Incorporated Planning Area. City planning staff has reviewed the request and has no objection to the variance.

#### Staff Analysis of Findings of Fact

1. State Requirement: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Staff Analysis: Construction of the structure would require a building permit and the structure must comply with all building codes before passing a final inspection. The public would not have access to the structure.

2. State Requirement: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

Staff Analysis: The structure slightly exceeds the maximum size requirement and would sit twice the required minimum setback from the property lines. Therefore, the structure would not impact adjacent property in an adverse manner.

3. State Requirement: The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in use of the property.

Staff Analysis: A strict application of the ordinance would prohibit construction of an accessory structure permittable within the Shelbyville city limits on property adjacent to the city limits.

#### Staff Recommendation

Staff recommends **APPROVAL** primarily because a strict application of the ordinance would prohibit construction of an accessory structure permittable within the Shelbyville city limits on property adjacent to the city limits.

Applicant/Owner Information

Applicant: Rex Olds Owner: Rex & Mary Kate Olds

482 E Edgewood Dr Shelbyville, IN 46176 
 From:
 Allan Henderson

 To:
 Desiree Calderella

 Cc:
 Adam Rude

Subject: Re: Variance in Incorporated Planning Area

Date: Wednesday, December 6, 2023 1:54:26 PM

#### Desiree-

We do not have any issues with this request. Looks like they are meeting setback requirements, the only other issue would be lot coverage, without calculating the numbers, looks like they would be within that threshold as as well.

Let me know if you have any other questions.

Thanks.

# Allan Henderson, AICP Deputy Planning Director, Planning and Building Department

?

T: 317-392-5102 x 326 | M: 317-401-1380 E: ahenderson@cityofshelbyvillein.com

W: www.citvofshelbyvillein.com

A: 44 W. Washington Street, Shelbyville, IN, 46176

Schedule a meeting with me:

https://calendar.app.google/77SPryGpXtZYf6gN6

On Tue, Dec 5, 2023 at 9:10 AM Desiree Calderella < dcalderella@co.shelby.in.us > wrote:

Good Morning,

Let me know if you have any comments on this case. Also, can you let me know if city ordinance would permit this structure or if it would require any variances? I'd like to have my meeting materials finished by tomorrow.

Thanks!

Desiree Calderella, AICP

#### **Planning Director**

Shelby County Plan Commission / Building Inspector

25 W Polk St. Room 201, Shelbyville, IN 46176

317-392-6338

#### **DEVELOPMENT STANDARDS VARIANCE**

FINDINGS OF FACT

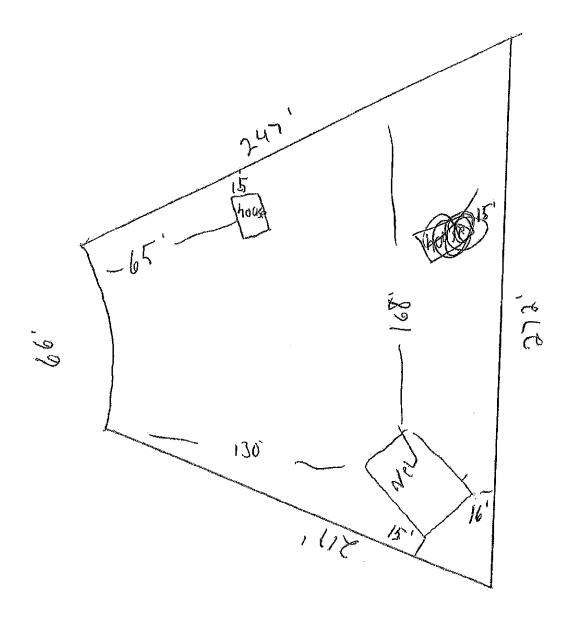
Applicant: Rex Olds
Case #:
Case #:  Location: 482 East Edge rand Prive, Shelbyville, IN 46170
The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approvan an application for a Development Standards Variance. Using the lines provided, please explain how your request mee each of these criteria.
1. General Welfare: The approval will not be injurious to the public health, safety, and general welfare of the communit
The Pole Barn will be located in the back Yard and used for
secrention at activities for my children,
<ol><li>Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.</li></ol>
The building use to my knowledge this building will not
produce edgess noise, odar, traffic, and by working with this committee will the
appropriate distance from property lines.
<ol> <li>Practical Difficulty: The strict application of the terms of the Shelby County Zoning Ordinance will result in a practic difficulty in the use of the property.</li> </ol>
To my knowledge, this brilding will not leduce or lestrict economic gain
of adjacent properties.

The Board of Zoning Appeals may review the applicant's findings of fact to assist with their decision-making process. Please see below for general guidance related to completing the findings of fact:

**General Welfare:** How does the request do no harm to the overall community of Shelby County? (ex. pollution, customer safety, road network safety, building code compliance, etc.)

Adjacent Property: How does the request do no harm to adjoining property and neighborhood? (ex. noise, odor, traffic generation, distance from property lines, appearance of property, etc.)

**Practical Difficulty:** This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain (ex. of practical difficulty: topography of property, location of septic system, consistency with nearby land uses, historical use of property, etc.)



### **Shelby County BZA**

<b>BZA Scheduled Meetings</b>	<b>BZA Application Deadline</b>	<b>BZA Legal Notice Deadline</b>
January 9, 2024	December 19, 2023	December 30, 2023
February 13, 2024	January 23, 2024	February 3, 2024
March 12, 2024	February 20, 2024	March 2, 2024
April 9, 2024	March 19, 2024	March 30, 2024
May 14, 2024	April 23, 2024	May 4, 2024
June 11, 2024	May 21, 2024	June 1, 2024
July 9, 2024	June 18, 2024	June 29, 2024
August 13, 2024	July 23, 2024	August 3, 2024
September 10, 2024	August 20, 2024	July 31, 2024
October 8, 2024	September 17, 2024	September 28, 2024
November 12, 2024	October 22, 2024	November 2, 2024
December 10, 2024	November 19, 2024	November 30, 2024